UNITED STATES INTERNATIONAL TRADE COMMISSION

STAINLESS STEEL WIRE ROD FROM BRAZIL, FRANCE, INDIA, AND SPAIN
Investigations Nos. 701-TA-178 (Review) and 731-TA-636-638 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3321, July 2000)

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DETERMINATIONS

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the countervailing duty order on stainless steel wire rod from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines[2] that revocation of the antidumping duty orders on stainless steel wire rod from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on July 1, 1999 (64 F.R. 35697) and determined on October 1, 1999, that it would conduct full reviews (64 F.R. 55962, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 18, 2000 (65 F.R. 2644). The hearing was held in Washington, DC, on May 23, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Koplan and Vice Chairman Okun dissenting with respect to France; Commissioner Askey dissenting with respect to Brazil, France, and India.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty orders covering imports of stainless steel wire rod ("SSWR") from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3] [4] Based on the record in these five-year reviews, we also determine under section 751(c) of the Act that revocation of the countervailing duty order on SSWR from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

On December 22, 1982, the Commission determined that an industry in the United States was materially injured by reason of subsidized imports of stainless steel wire rod from Spain.[5] Subsequently, on January 3, 1983, Commerce imposed a countervailing duty order on imports from Spain.[6] In November 1993, the Commission determined that the domestic industry was materially injured by less than fair value ("LTFV") imports from India.[7] Commerce imposed an antidumping duty order on these imports on December 1, 1993.[8] In January 1994, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of LTFV imports from Brazil and France.[9] Commerce imposed antidumping duty orders on these imports from Brazil and France on January 28, 1994.[10]

On July 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Act, to determine whether revocation of the antidumping and/or countervailing duty orders on stainless steel wire rod from these four countries would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[11]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) – demonstrate a sufficient willingness among each group to participate and provide

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[3] Chairman Koplan and Vice Chairman Okun dissenting with respect to France. Chairman Koplan and Vice Chairman Okun do not join section V.C of the Commission's opinion.

[4] Commissioner Askey dissenting with respect to Brazil, France, and India. She joins sections I, II, and III of the Commission's opinion.

[5] Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod from Spain, Invs. Nos. 701-TA-176-78 (Final), USITC Pub. 1333 (Dec. 1982).

[6] 48 Fed. Reg. 52 (Jan. 3, 1983).

[7] Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 (Nov. 1993).

[8] 58 Fed. Reg. 63335 (Dec. 1, 1993).

[9] Stainless Steel Wire Rod from Brazil and France, Invs. Nos. 731-TA-636-37 (Final), USITC Pub. 2721 (Jan. 1994).

[10] 59 Fed. Reg. 4021-22 (Jan. 28, 1994).

[11] 64 Fed. Reg. 35697 (July 1, 1999).

information requested in a full review.[12] If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

The Commission received responses to the notice of institution from all of the domestic producers of SSWR and determined the domestic group response to be adequate. The sole French producer also responded to the notice and the Commission found the French group response to be adequate. As the Commission received no responses from producers or importers of the subject merchandise from Brazil, India, or Spain, the Commission found the foreign interested party group responses to be inadequate with respect to those orders. The Commission nevertheless determined to conduct full reviews of those orders in order to promote administrative efficiency.[13]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines "the domestic like product" and the "industry."[14] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[15] In a section 751(c) review, the Commission must also take into account "its prior injury determinations."[16]

SSWR is a stainless steel product produced in a wide variety of grades, shapes, diameters, and sizes in accordance with specific customer requirements.[17] Like other stainless steel products, SSWR is distinguished from carbon and other lower grade alloy wire rod by its superior resistance to corrosion or oxidation at atmospheric or elevated temperatures.[18] Generally, SSWR is a hot-rolled semi-finished product that is produced and sold in coils.[19]

Redrawers purchase the majority of SSWR sold on the open market for use in the production of stainless steel wire. Converters purchase a smaller proportion of larger diameter wire rod for use in the production of small-diameter stainless steel bar.[20] Forgers and fabricators also purchase SSWR for use in the production of various other downstream products, including industrial fasteners, springs, medical and dental instruments, automotive parts, and welding electrodes.[21]

In its final five-year review determinations for the subject merchandise from Brazil, France, and India, Commerce defined the subject merchandise as:

> products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are

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[12] *See* 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

[13] Explanation of Commission Determination on Adequacy (Oct. 1999); 64 Fed. Reg. 55962 (Oct. 15, 1999).

[14] 19 U.S.C. § 1677(4)(A).

[15] 19 U.S.C. § 1677(10). *See* NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (CIT, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991). *See also* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[16] 19 U.S.C. § 1675a(a)(1)(a).

[17] Confidential Report to the Commission, June 16, 2000 (CR) at I-14 to I-15; Public Report (PR) at I-12 to I-13.

[18] *Id.*

[19] CR at I-14, PR at I-12.

[20] *Id.*

[21] *Id.*

> made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. [22]

The starting point of the Commission's like product analysis in a five-year review is the like product definition in the Commission's original determination.[23] Despite a slightly narrower definition of the subject merchandise with respect to Spain,[24] the Commission determined that the domestic like product was all SSWR in the original investigations with respect to Brazil, France, India, and Spain.[25] There is no evidence in the record of these reviews that suggests the Commission should revisit the definition of the like product.[26] Therefore, for the reasons outlined in the Commission's original determinations, we define the

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[22] 65 Fed. Reg. 5315, 5317, 5320 (Feb. 3, 2000). Commerce's scope definition also provides that

> [t]hese products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Id.

[23] In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See* The Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g.*, S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

[24] Commerce defined the subject merchandise more narrowly with respect to imports from Spain:

> Imports covered by this order are shipments of stainless steel wire rod ("SSWR") from Spain, which includes coiled, semi-finished, hot-rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured, from Spain. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the Harmonized Tariff Schedule ("HTS") of the United States.

65 Fed. Reg. 6166, 6167 (Feb. 8, 2000).

[25] USITC Pub. 1333 at 6-7; USITC Pub. 2704 at I-8; USITC Pub. 2721 at I-8. The Commission rejected the argument that it should split the like product definition into specialty and commodity SSWR because there was a continuum of SSWR products with no clear dividing line between commodity and specialty SSWR. Also, the Commission rejected the suggestion that it should include stainless steel bar in the like product definition because the Commission found that bar and SSWR were not interchangeable and had different end uses. USITC Pub. 2704 at I-6 to I-8; USITC Pub. 2721 at I-6 to I-8.

[26] In these reviews, the domestic interested parties, Empire Specialty Steel Inc., Carpenter Technology Corp., Republic Technologies International and the United Steelworkers of America, AFL-CIO/CLC ("Domestic Parties"), argued that the Commission should continue to define the domestic like product in the same fashion. Domestic Parties' Prehearing Brief (May 12, 2000) at 3-10. The French producers and importers, Ugine-Savoie Imphy (U-SI), Ugine Stainless & Alloy, Inc. (US&A), and Techalloy Company, Inc. ("French Respondents"),

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like product as all SSWR, included within the definition of the subject merchandise from Brazil, France, and India.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[27] In the original determinations concerning SSWR, the Commission defined the domestic industry to include all producers of SSWR.[28] There is no new information obtained during these five-year reviews that would suggest a reason for revisiting the Commission's original determinations of the domestic industry.[29] Thus, in accordance with our domestic like product determination, we determine that the domestic industry for these five-year reviews consists of all domestic producers of SSWR.[30]

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[26] (...continued)
indicated that they were not contesting the Commission's original determination of a single like product. French Respondents' Response to Notice of Institution, Aug. 20, 1999, at 13.

[27] 19 U.S.C. § 1677(4)(A).

[28] USITC Pub. 1333 at 7; USITC Pub. 2704 at I-11; USITC Pub. 2721 at I-11.

[29] *See* CR at I-6-I-7, PR at I-5 to I-6.

[30] There is no evidence that any domestic producer is a related party under section 771(4)(B) of the Act.

III. LEGAL STANDARDS[31]

The legal standards discussed below apply to each of our determinations with respect to Brazil, France, India, and Spain.

A. Cumulation

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[32]

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.[33] We note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.[34] With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.[35] [36]

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[31] Commissioner Bragg joins only in Section III.B of this section. For a complete statement of Commissioner Bragg's analytical framework regarding cumulation in sunset reviews, *see* Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, found in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); *see also* Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000).

[32] 19 U.S.C. § 1675a(a)(7).

[33] 19 U.S.C. § 1675a(a)(7).

[34] SAA, H.R. Rep. No. 103-316, vol. I (1994).

[35] For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the "no discernible adverse impact" provision, *see* Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand, Invs. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review) USITC Pub. 3274 (Feb. 2000). For a further discussion of Chairman Koplan's analytical framework, *see* Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 303-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) USITC Pub. 3247 (Oct. 1999) (Views of Commissioner Stephen Koplan Regarding Cumulation).

[36] Commissioner Askey notes that the Act clearly states that the Commission is precluded from exercising its discretion to cumulate if the imports from a country subject to review are likely to have "no discernible adverse impact on the domestic industry" upon revocation of the order. 19 U.S.C. § 1675a(a)(7). Thus, the Commission

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The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.[37] Only a "reasonable overlap" of competition is required.[38] In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission's traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.[39]

B. Likelihood of Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time If the Orders Are Revoked

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[40] The SAA states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."[41] Thus, the likelihood standard is prospective in nature.[42] The statute states that "the Commission

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[36] (...continued)
must focus on whether the imports will impact the condition of the industry discernibly as a result of revocation, and not solely on whether there will be a small volume of imports after revocation, *i.e.*, by assessing their negligibility after revocation of the order. For a full discussion of her views on this issue, *see* Additional Views of Commissioner Thelma J. Askey in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999).

[37] The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the 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 geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (CIT 1989).

[38] *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (CIT 1996); Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996)).

[39] *See, e.g.*, Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (CIT 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (CIT 1988).

[40] 19 U.S.C. § 1675a(a).

[41] SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

[42] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in
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shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[43] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[44] [45]

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked."[46] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, whether the industry is vulnerable to material injury if the order is revoked, and any findings by Commerce regarding duty absorption[47] under section 1675(a)(4) of the Act.[48]

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."[49] In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence

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[42] (...continued)
making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[43] 19 U.S.C. § 1675a(a)(5).

[44] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." Id.

[45] In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

[46] 19 U.S.C. § 1675a(a)(1).

[47] Commerce has made no findings of duty absorption concerning the subject imports from Brazil, France or India. CR at I-11 and PR at I-9.

[48] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[49] SAA at 869.

in the record from the Commission's original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by the domestic producers and other parties in these reviews.

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.[50] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[51]

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.[52]

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[53] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[54] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.[55]

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[50] 19 U.S.C. §1675a(a)(2).

[51] 19 U.S.C. § 1675(a)(2)(A)-(D).

[52] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[53] 19 U.S.C. § 1675a(a)(4).

[54] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce assigned likely margins for manufacturers in Brazil that range from 24.63 percent to 26.50 percent. 65 Fed. Reg. 5319, 5322 (Feb. 3, 2000). The likely margin of dumping for all producers in France is 24.51 percent. 65 Fed. Reg. 8121 (Feb. 17, 2000). All producers in India were assigned a likely margin of dumping of 48.80 percent. 65 Fed. Reg. 5315, 5317 (Feb. 3, 2000). The likely subsidization margin for one producer in Spain is 0.19 percent and 0 percent for the other producer. 65 Fed. Reg. 6167, 6171 (Feb. 8, 2000).

[55] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at

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IV. CUMULATION

In these reviews, the statutory requirement for cumulation that all of the SSWR reviews be initiated on the same day is satisfied. We find that subject imports from Spain are likely to have no discernible adverse impact on the domestic industry if the order is revoked and thus do not cumulate the subject imports from Spain. We also do not cumulate subject imports from France with imports from Brazil or India due to other considerations.[56]

A. No Discernible Adverse Impact

We find that subject imports of SSWR from Spain would have no discernible adverse impact on the U.S. industry if the countervailing (CVD) order is revoked and, therefore, do not cumulate subject SSWR from Spain with subject SSWR from Brazil, India, or France.[57]

Subject imports from Spain are currently subject to an antidumping duty order, which was imposed in 1998. This order is not under review. Thus, after revocation of the CVD order, subject imports from Spain will still be subject to the price disciplining effect of the antidumping duty order. This will in turn prevent subject imports from Spain from having a discernible adverse impact on the domestic industry if the CVD order is revoked.[58] Thus, we do not cumulate imports from Spain with imports from Brazil, India, or France.

We discuss below our likely material injury determinations with respect to SSWR from Brazil, France, and India if the orders are revoked. For the reasons indicated in the following sections of the opinion regarding the likely volume, price effects and impact of the subject imports from Brazil, France, and India if the orders are revoked, we do not find that subject imports from those countries, respectively, are likely to have no discernible adverse impact on the domestic industry.[59] [60] [61]

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[55] (...continued)
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[56] Commissioner Bragg cumulates subject imports from France with those from Brazil and India.

[57] Commissioner Bragg joins the majority's determination that subject imports from Spain are likely to have no discernible adverse impact if the order is revoked. Commissioner Bragg notes that she reaches this determination only after having first found a reasonable overlap of competition between the subject imports from Brazil, France, India, and Spain and between those imports and the domestic merchandise.

[58] In fact, the Domestic Parties concede that the Commission could properly find that revocation of the countervailing duty order would not have a discernible adverse impact and did not oppose its revocation. Domestic Parties' Prehearing Brief at 1 n.1; Domestic Parties' Posthearing Brief, Exh. 1, at 10.

[59] The French Respondents urged us to find no discernible adverse impact with respect to imports from France. We note that the French manufacturer has substantially increased exports to the United States in the past, most notably between 1991 and 1992 before the antidumping duty order was in place. Further, French SSWR has maintained a solid presence in the market before and after the imposition of the antidumping duty order. *See* CR and PR at Table I-2.

[60] Commissioner Bragg notes that she reaches this determination only after having first found a reasonable overlap of competition between the subject imports from Brazil, France, India, and Spain and between those imports and the domestic merchandise.

[61] While Chairman Koplan and Vice Chairman Okun do not make an affirmative determination with respect to France, they concur with their colleagues with respect to the issue of no discernible adverse impact. They considered the size and capacity of the French manufacturer, its established presence in the U.S. market, and the acknowledged attractiveness of the U.S. market.

B. Reasonable Overlap of Competition[62]

In the original investigations concerning SSWR from Brazil, France, and India, the Commission found that there was a reasonable overlap of competition, rejecting the contention that quality differences among the subject imports justified not cumulating the subject imports, and finding that subject imports from Brazil, France, and India competed with each other and with the domestic like product.[63] The current record does not indicate any change in quality such that it would be inappropriate to cumulate these imports. Subject imports and the domestic product are generally substitutable.[64] While Indian SSWR appears to be of lower quality, purchasers indicated its quality was improving.[65]

In the original investigations, the Commission found that the subject imports and the domestic product were sold throughout the United States.[66] Although only insignificant quantities of Indian and Brazilian SSWR remained in the U.S. market after the imposition of the 1993/94 orders until 1999 and 2000, there is no information in the record that suggests that subject imports and the domestic like product would not again compete on a nationwide basis.[67] Similarly, the record indicates that the domestic like product and subject imports from France and India are simultaneously present in the U.S. market as they were during the original investigations[68] and that subject imports from Brazil have been and likely would be present in the U.S. market.[69]

In the original investigations, the Commission found that the subject imports from Brazil, France, and India and the domestic like product were sold through the same channels of distribution.[70] The evidence in the record of these reviews indicates that both subject imports and the domestic like product continue to be sold to end users.[71] Although French SSWR is sold primarily through companies (Techalloy and US&A) that are subsidiaries of the French producer, U-SI,[72] and *** percent of domestic SSWR is captively consumed,[73] we find it likely that there would be substantial competition among subject imports from Brazil, France, and India and the domestic like product.[74]

Therefore, we conclude that there would be a reasonable overlap of competition in the absence of the orders and that the subject imports and the domestic like product would likely compete with each other in the U.S. market.

C. Other Considerations[75]

[62] Commissioner Bragg finds the following discussion applies equally to likely imports from Spain as well as from Brazil, France, and India, in the event of revocation.

[63] USITC Pub. 2704 at I-16; USITC Pub. 2721 at I-18.

[64] CR at II-7 to II-8, PR at II-5.

[65] The large increase in imports of Indian SSWR in the first three months of this 2000 compared to the first three months of 1999 suggests a trend toward greater acceptance of Indian SSWR. *See* CR and PR at Table I-II.

[66] USITC Pub. 2704 at I-14; USITC Pub. 2721 at I-16.

[67] We note that imports of SSWR from India have increased dramatically during the first quarter of 2000. CR and PR at Table I-2.

[68] USITC Pub. 2704 at I-14; USITC Pub. 2721 at I-16.

[69] CR and PR at Table I-2, Table V-6. OINV Memorandum INV-Q-182 (Nov. 9, 1993) at Tables 22-31.

[70] USITC Pub. 2704 at I-14; USITC Pub. 2721 at I-16.

[71] CR and PR at II-1.

[72] CR at I-19, PR at I-15. U-SI resulted from the combination of the two producers in France in 1998. CR at IV-6, PR at I-15.

[73] CR at III-5, PR at III-3.

[74] Chairman Koplan and Vice Chairman Okun find that the level of captive consumption by the domestic industry lessens the degree competition between subject imports and the domestic like product.

[75] Commissioner Bragg does not join this section of the Commission's Views.

While we have concluded that there is a reasonable overlap in competition among the subject imports and the domestic like product, other factors lead us to decline to exercise our discretion to cumulate subject imports from France with subject imports from Brazil and India.

The Commission cumulated imports of SSWR from Brazil and India in making its original determinations with respect to these countries.[76] The record in these reviews contains no evidence indicating differences in the conditions of competition between subject merchandise from these two countries and we find it appropriate to cumulate subject merchandise from Brazil and India.[77]

However, the record in these reviews indicates significantly different conditions of competition for French SSWR relative to imports from Brazil and India. Unlike SSWR from Brazil and India, SSWR from France has maintained a solid presence in the U.S. market since at least 1979; SSWR from Brazil and India entered the U.S. market later, and have been unable to maintain a consistent presence in the U.S. market.[78] Imports of SSWR from France have remained in the market after issuance of the order, whereas imports from Brazil have ceased and those from India have been minimal until 1999 and 2000.[79] Unlike SSWR from Brazil and India, French SSWR is sold through or to U-SI's U.S. subsidiaries (Techalloy and US&A).[80] The average unit values of SSWR from France have been much higher than those for SSWR from India, reflecting differences in pricing practices and product mix.[81] We note that unlike the French producer, the Brazilian and Indian industries both face non-preferential tariff treatment in the European Union, and antidumping duty orders in the United States on a primary downstream product, stainless steel bar.[82] Further, Indian SSWR is subject to countervailing duty orders in the EU.[83] For these reasons, we decline to exercise our discretion to cumulate French SSWR with SSWR from Brazil or India.

V. CONTINUATION OR RECURRENCE OF MATERIAL INJURY

A. Conditions of Competition[84]

SSWR is produced in a wide variety of sizes and grades, typically in accordance with customer requirements.[85] Overall demand does not respond significantly to price changes as there are few substitutes for SSWR.[86] Manufacturers can produce products other than SSWR (e.g., bar and wire) using the same

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[76] USITC Pub. 2704 at I-16; USITC Pub. 2721 at I-18.

[77] There is limited evidence in the record concerning SSWR from Brazil as no Brazilian manufacturers or exporters supplied information to the Commission in these reviews. CR at IV-5, PR at IV-4 to IV-5.

[78] *See* CR and PR at Table I-2.

[79] *See* CR and PR at Table I-2.

[80] CR at I-19 to I-20, PR at I-15 to I-16.

[81] The average unit value of French SSWR was 78 percent higher in 1999, 32 percent higher in 1998, and 34 percent higher in 1997 than average unit value of the subject merchandise from India. CR and PR at Table I-2. Average unit values for SSWR from Brazil are not available for these years as there were no imports. The average unit value of French SSWR was 57 percent higher in 1990, 50 percent higher in 1991, and 41 percent higher in 1992 than Brazilian SSWR. *Id.*

[82] Domestic Parties' Prehearing Brief at 47. *See also* Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995).

[83] Domestic Parties' Posthearing Brief at 8-9.

[84] Chairman Koplan and Vice Chairman Okun concur with this discussion of conditions of competition, but elaborate on the conditions of competition of particular importance to their determinations in their Additional and Dissenting Views.

[85] CR at I-15, PR at I-12.

[86] CR at II-4 to II-5, PR at II-3.

equipment and thus are able to switch production among long steel products.[87]

The Commission found in the original investigations with respect to Brazil, France, and India that apparent U.S. consumption had increased 11.5 percent between 1990 and 1992.[88] Over the past several years, demand for SSWR in the U.S. has increased about 5 to 7 percent annually.[89] Since the time of the original investigations, the industry has undergone substantial consolidation, and Carpenter and its subsidiary, Talley, now account for *** percent of U.S. production of SSWR.[90] As at the time of the original investigations, about *** of the production of SSWR is captively consumed.[91] [92] The domestic industry has increased capacity, although declining production contributed to significant declines in capacity utilization.[93] In quantity terms, nonsubject imports accounted for approximately *** percent of the U.S. market in 1998 and 1999.[94] Antidumping duty orders were imposed in 1998 on U.S. imports of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan.[95]

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

B. Revocation of the Orders on Subject Imports From Brazil and India Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time [96]

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[87] Hearing May 23, 2000, Transcript at 96 (Mr. McElwee) (hereinafter "Tr."); Domestic Parties' Prehearing Brief at 39-40. The French Respondents do not deny that it is possible to switch from production of downstream products, but assert that it is not economically rational for them to do so. French Respondents' Posthearing Brief, Answers to Commissioners' Questions at 7.

[88] USITC Pub. 2721 at I-13; USITC Pub. 2704 at I-12.

[89] CR at II-4, PR at II-3. Witnesses for the Domestic Parties and the American Wire Producers Association (AWPA) agreed that the apparent decline in U.S. consumption of SSWR in 1998 relative to 1997 reflected reliance on inventories in 1998 and purchasers' stocking up in 1997 after the filing of antidumping petitions concerning several countries. Tr. at 28 (Mr. Blot); Tr. at 93. (Mr. Kerwin); Tr. at 222 (Ms. Coelho). *See also* Posthearing Statement of AWPA at Exh 12.

[90] CR at I-17, PR at I-14. There were seven domestic producers during the original investigations. *See* USITC Pub. 2704 at II-3, II-7. Although there were five companies that produced SSWR during the period of review, Carpenter, Empire and Talley are now the only three remaining producers. CR at III-5, III-6, III-14, PR at III-3, III-4.

[91] CR at III-5, PR at III-3; USITC Pub. 2721 at I-13; USITC Pub. 2704 at I-12. The captive production provision of the statute, 19 U.S.C. § 1677(7)(c)(iv), does not apply to five-year reviews, but we consider the significant degree of captive production as a condition of competition. *See, e.g.,* Industrial Phosphoric Acid from Israel and Belgium, 701-TA-286 (Review), 731-TA-365 (Review) USITC Pub. 3302 (May 2000) at 8 n.43.

[92] Chairman Koplan and Commissioner Hillman don't reach the issue of whether the captive production provision of the statute, 19 U.S.C. § 1677(7)(C)(iv), applies to five-year reviews, because even if it does, it would clearly not apply in this case. The third criterion of the test (whether "the production of the domestic like product sold in the merchant market is not generally used in production of th[e] downstream article" that is produced captively) is not met under our analysis, *see* Certain Hot-Rolled Steel Products from Japan, 731-TA-807 (Final), USITC Pub. 3202 (June 1999) (Views of Vice Chairman Marcia E. Miller, Commissioner Jennifer A. Hillman, and Commissioner Stephen Koplan Concerning Captive Production). Both the French Respondents and the Domestic Parties agree that the provision does not apply to the SSWR industry. French Respondents' Posthearing Brief, Exh. A, at 4; Domestic Parties' Posthearing Brief, Exh. 1, at 16.

[93] CR and PR at Table III-1.

[94] CR and PR at Table I-2.

[95] CR at I-3, PR at I-2.

[96] Commissioner Bragg finds that the following discussion of likely volume and price effects, as well as the

(continued...)

1. Likely Volume of Subject Imports

In the original investigations, the Commission observed that the market share of cumulated imports was increasing while the domestic producers' market share was declining.[97] The domestic producers' market share fell from 79.4 percent in 1990 to 68.0 percent in 1992 in terms of quantity, and from 81.0 percent in 1990 to 73.1 percent in 1992 in value terms.[98]

There is limited evidence in the record concerning the present state of the Brazilian SSWR industry as no Brazilian producers supplied information to the Commission in these reviews.[99] Evidence from the original investigations indicated, however, that significant capacity existed in Brazil,[100] and no evidence indicates that the capacity has declined.[101] [102] Indeed, the review revealed that Brazil's production of SSWR increased by 16 percent during 1997-99 and rose even further in the first quarter of 2000.[103] Also, Brazil's largest producer of stainless steel, Gerdau SA, increased its overall exports of stainless products from 200,000 metric tons in 1998 to over 750,000 metric tons in 1999, allegedly in part due to the devaluation of the Brazilian currency.[104] Finally, we note that the Brazilian manufacturers had no major export markets other than the United States at the time of the original investigations.[105] To date, Brazilian manufacturers do not appear to have developed alternative export markets.[106]

Indian manufacturers of SSWR increased their presence in the U.S. market rapidly between 1990 and 1992.[107] Information received from four of five producers in India in these reviews indicates that capacity has increased by *** percent from 1997 to 1999.[108] In 1999, unused capacity in India was equivalent to *** percent of U.S. production and *** percent of U.S. apparent consumption.[109] India's exports of SSWR to the United States accelerated from 1997 to 1999, increasing from *** short tons to ***

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[96] (...continued)
likely impact if the orders on Brazil and India are revoked, is only strengthened when likely imports from France are included in the analysis. Accordingly, based upon a cumulative analysis and for the reasons stated below, Commissioner Bragg finds that the revocation of the orders on Brazil, France, and India, would be likely to lead to continuation or recurrence of material injury to the domestic SSWR industry within a reasonably foreseeable time.

[97] USITC Pub. 2721 at I-21; USITC Pub. 2704 at I-17 to I-18. In the original investigations, the Commission analyzed the cumulated volume of imports from Brazil, France, and India. Imports from Brazil and India alone increased their share of the U.S. market from 1.8 percent in 1990 to 2.7 percent in 1991 and 5.9 percent in 1992. CR and PR at Table I-2. In terms of value, the share increased from 1.4 percent in 1990 to 2.0 percent in 1991 and 4.1 percent in 1992.

[98] CR and PR at Table I-2.

[99] CR at IV-5, PR at IV-3 to IV-4.

[100] Two of the three producers in Brazil had combined capacity of *** short tons in 1992. CR at IV-5 n.3, PR at IV-3 n.3.

[101] CR at IV-5 to IV-6, PR at IV-3 to IV-4.

[102] Commissioner Bragg infers that, at a minimum, production capacity in Brazil remains at the level evidenced in the original investigation and that, in the event of revocation, such capacity will be used to direct significant volumes of SSWR exports to the U.S. market.

[103] CR at IV-5, PR at IV-3 to IV-4.

[104] CR at IV-6, PR at IV-4.

[105] OINV Memorandum INV-Q-182 (Nov. 9, 1993) at Tables 14 and 15.

[106] CR at IV-5, PR at IV-4.

[107] Imports from India were 97 short tons in 1990, 1,731 short tons in 1991 and 4,344 short tons in 1992. These imports represented 0.1 percent in 1990, 1.4 percent in 1991, and 3.3 percent in 1992 of the U.S. market in terms of quantity. CR and PR at Table I-2.

[108] CR and PR at Table IV-4.

[109] CR and PR at Table IV-4; CR and PR at Table I-2. The Indian producers' capacity utilization ranged from *** percent to *** percent during 1997, 1998, and 1999. CR and PR at Table IV-4.

short tons, and also was higher in interim 2000 than in interim 1999, at *** short tons compared to *** short tons.[110] Indian producers' inventories of SSWR increased *** between 1997 and 1999 and *** in the first quarter of 2000.[111]

Mukand, which estimated that it accounts for *** percent of Indian production, announced plans in 1999 to increase its exports of stainless steel by 50 percent over the previous year.[112] The United States is a particularly attractive market since U.S. prices are described as higher than anywhere else in the world.[113] Although *** percent of Mukand's production of rod is ***, it stated that ***.[114] The European Union has a CVD order in place against SSWR from India, suggesting that Indian exports likely would be directed to the United States if the U.S. order were revoked.[115] Finally, the United States presently imposes antidumping duty orders on stainless steel bar from Brazil and India.[116] If the orders on SSWR were revoked, producers in Brazil and India would have an incentive to shift production from stainless steel bar to SSWR for export to the United States.

We therefore conclude, based on the record in these reviews, that the volume of subject SSWR imports from Brazil and India likely would be significant in the reasonably foreseeable future if the orders were revoked.

2. Likely Price Effects of Subject Imports

In the original investigations, the Commission noted that prices for the products for which the Commission obtained pricing data showed downward trends, despite an increase in domestic consumption of 11.5 percent between 1990 and 1992.[117] Prices for imports from Brazil declined by more than 15 percent during that period of investigation and prices for imports from India also declined steadily and were consistently below domestic prices.[118] The Commission also noted that the domestic price of the most common grade of SSWR, AISI grade 304, declined by nearly 15 percent during the period of investigation and the prices of imports from Brazil declined by an even greater percentage.[119]

The current record indicates that the subject imports are substitutable for domestic SSWR and the majority of purchasers reported that purchasing decisions were usually based on price.[120] Furthermore, demand is relatively inelastic while the domestic elasticity of supply is high in the U.S. market.[121] While there is a significant level of captive production, a substantial portion of production, approximately ***, enters the merchant market where it competes directly with subject imports. The level of captive production

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[110] *Id.*

[111] CR and PR at Table IV-4. The Indian industry maintains a *** ratio of inventories to production than does the U.S. industry. *Compare* CR and PR at Table III-3 *with* CR and PR at Table IV-4.

[112] CR at IV-10, IV-12, PR at IV-6.

[113] Chairman Koplan and Vice Chairman Okun believe that generalizations regarding price differentials tend to be overstated because of cost differentials, primarily freight and duties.

[114] CR at IV-10, PR at IV-6.

[115] Domestic Parties' Posthearing Brief at 8-9.

[116] Domestic Parties' Prehearing Brief at 47. *See also* Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995).

[117] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18. We note that, in the original investigations, Brazilian SSWR undersold the domestic product in 88 percent of the producer/importer comparisons and in 85 percent of the purchaser comparisons. Indian SSWR undersold the domestic product in 100 percent of the producer/importer comparisons and in 98 percent of the purchaser comparisons. OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-60 and I-63.

[118] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[119] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[120] CR at II-2, II-7, PR at II-1, II-5.

[121] CR at II-4, II-9, II-10, PR at II-3, II-6, II-7.

is *** during the original investigations when the subject imports were found to have had a significant adverse impact on the domestic industry.[122] Due to the small level of imports from the subject countries, there is limited current pricing data for SSWR from India and no current data for SSWR from Brazil,[123] but the available data indicate consistent underselling by Indian SSWR, despite the antidumping duty order.[124] Prices for domestically produced products 1, 2, and 5 generally declined during the period examined and prices for the other two products were relatively flat.[125]

Given the likely significant volume of imports, the substitutability of the subject imports from Brazil and India, the current underselling with orders in place, and the consistent underselling by the imports in the original investigations, we find that, in the absence of the orders, SSWR from Brazil and India likely would be priced aggressively and have significant depressing and suppressing effects on the prices of the domestic like product.

3. Likely Impact of Subject Imports

In the original investigations, the Commission found declining production by the U.S. producers despite increases in apparent consumption.[126] Capacity utilization was below 50 percent.[127] U.S. producers reported positive operating income in 1990 and 1991, but significant losses in 1992.[128] The domestic producers' capital expenditures declined significantly late in the period as well.[129] The Commission concluded that the lower prices of the subject imports enabled them to increase market share in an expanding market at the expense of the domestic producers, leading to declines in domestic prices, domestic market share, production, shipments, and profitability.[130]

The condition of the domestic industry, including its financial performance, is moderately improved from the time of the original investigations.[131] While production volumes and capacity utilization have increased, capacity is *** lower.[132] The industry's operating income as a ratio to net sales is generally better.[133] [134] The domestic industry has increased its output, as measured by production and U.S.

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[122] *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-12 with CR at III-5 and PR at III-3.

[123] Commissioner Bragg infers that, in the event of revocation, producers in Brazil will revert to aggressive pricing practices with regard to SSWR exports to the U.S. market, as evidenced in the Commission's original investigation.

[124] Indian SSWR undersold the domestic product in five of the seven quarters in which comparisons were available. The margins of underselling ranged from *** percent, while the overselling ranged from *** percent. CR and PR at Table V-6.

[125] CR at V-8, PR at V-6 to V-7. The average unit value of U.S. shipments likewise declined. The unit value per short ton for domestic shipments was *** in 1997, *** in 1998, and *** in 1999. CR and PR at Table III-2.

[126] USITC Pub. 2704 at I-12; USITC Pub. 2721 at I-13.

[127] USITC Pub. 2704 at I-12; USITC Pub. 2721 at I-13.

[128] USITC Pub. 2704 at I-13; USITC Pub. 2721 at I-15; *See also* CR and PR at Table I-2.

[129] USITC Pub. 2704 at I-13; USITC Pub. 2721 at I-15;

[130] USITC Pub. 2704 at I-18 to I-19; USITC Pub. 2721 at I-23.

[131] *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at Table 4 *with* CR and PR at Table E-7.

[132] *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at Table 2 *with* CR and PR at Table III-1

[133] *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at Table 4 *with* CR and PR at Table E-7. In evaluating the financial condition of the domestic industry, we have relied upon verified data, which include a material adjustment for indirect costs by ***.

[134] Chairman Koplan and Vice Chairman Okun note that financial data prepared on a comparable basis as those submitted in prior investigations indicate that any recent improvement in the financial condition of the domestic industry is most apparent in the first quarter of 2000. *See* CR and PR at Table I-2, CR at I-4 to I-7, PR at I-3 to I-6. For purposes of analyzing vulnerability, however, they too have relied upon data which include a material

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shipments.[135] Worker productivity is markedly higher than during the early 1990s. However, the domestic industry has lost market share and reduced its employment levels.[136] Moreover, comparable or lower average unit sales have contributed to uneven financial performance.[137]

As noted above, there has been ongoing consolidation in the industry since the original investigations. The record indicates that, since 1997, some indicators of the industry's performance have improved, while others have deteriorated. The ratio of operating income to sales was *** percent in 1997 and *** percent in 1998, but then declined to *** percent in 1999.[138] However, the ratio improved in the interim period comparison, from *** percent to *** percent.[139] Capacity increased from 1998 to 1999 and between the interim periods, but capacity utilization fell during the period of review.[140] Domestic production and shipments also fell between 1997 and 1999 but were higher in the first quarter of 2000 compared to the first quarter of 1999.[141] Domestic inventories declined.[142] While the market share of the domestic producers *** in 1999 to the 1997 level, it was lower comparing interim 2000 to interim 1999.[143] Employment was steady, but employees' hours worked decreased somewhat.[144] Capital expenditures were *** increased in 1999 over the prior two years.[145] Antidumping duty orders are now in place on other nonsubject imports. Given this mixed picture on indicators of the industry's condition, and the generally positive level of profitability, we do not find the industry to be in a vulnerable state.[146] While there is a substantial level of captive production, a portion of production, approximately ***, enters the merchant market where it competes directly with subject imports.[147]

As discussed above, we conclude that revocation of the antidumping duty orders on SSWR from Brazil and India likely would lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. We also find that the volume and price effects of the subject imports likely would have a significant adverse impact on the

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[134] (...continued)
adjustment for indirect costs by ***.

[135] CR and PR at Table I-2.

[136] CR and PR at Table I-2.

[137] *See* CR and PR at Tables E-7 and E-9. We do not have financial performance data for the years immediately following the imposition of the orders at issue in these reviews. For this reason, and in light of the antidumping duty orders on SSWR issued in 1998, we cannot conclude whether any improvement in the industry's performance is related to the imposition of the orders at issue in these reviews.

[138] CR and PR at Table E-7.

[139] CR and PR at Table E-7.

[140] CR and PR at Table III-1. Capacity utilization was *** percent in 1997, *** percent in 1998, and *** percent in 1999. It was lower in interim 2000 at *** percent. *Id.*

[141] Domestic production was *** short tons in 1997, *** short tons in 1998, *** short tons in 1999, *** short tons in interim 1999, and *** short tons in interim 2000. CR and PR at Table III-1. Domestic shipments were *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999; shipments were higher in interim 2000 than interim 1999, at *** short tons compared to *** short tons. CR and PR at Table III-2.

[142] CR and PR at Table III-3.

[143] CR and PR at Table I-2. The domestic producers' market share in terms of quantity was *** percent in 1997, *** percent in 1998, and *** percent in 1999. Market share in interim 2000 was *** percent compared with *** percent in interim 1999. *Id.*

[144] CR and PR at Table III-4. Hours worked by production and related workers declined from *** in 1997 to *** in 1998 and *** in 1999.

[145] CR and PR at Table III-11.

[146] Commissioner Bragg finds the domestic industry to be in a vulnerable condition.

[147] The level of captive production is *** during the original investigations when the subject imports had a significant adverse impact on the domestic industry. *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-12 *with* CR at III-5 and PR at III-3.

production, shipments, sales, market share, and revenues of the domestic industry. This reduction in the industry's production, shipments, sales, market share, and revenues would adversely impact the industry's profitability and ability to raise capital and maintain necessary capital investments. We therefore find that revocation of the antidumping duty orders on SSWR imports from Brazil and India is likely to lead to continuation or recurrence of material injury to the U.S. SSWR industry within a reasonably foreseeable time.

C. Revocation of the Order on Subject Imports From France Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time[148] [149]

1. Likely Volume of Subject Imports

In the original investigations, the Commission observed that cumulated imports were increasing their share of the U.S. market[150] at the same time the domestic producers' market share was declining.[151] The domestic producers' market share fell from 79.4 percent in 1990 to 68.0 percent in 1992 in terms of quantity, and from 81.0 percent in 1990 to 73.1 percent in 1992 in value terms.[152] The Commission found that the loss of market share by the domestic producers coincided with the gain in share by the subject imports.[153] Unlike Brazilian and Indian SSWR, French SSWR has maintained a substantial presence in the U.S. market,[154] and the French producer, U-SI, has increased exports of SSWR to the United States over the past three years despite the existence of the order.[155]

We find it likely that, in the absence of the order, the volume of subject imports from France would be significant. U-SI, the sole French producer of SSWR, is a subsidiary of Usinor, the world's third largest producer of steel.[156] U-SI's SSWR capacity equaled *** percent of U.S. consumption in 1999.[157] While U-SI is currently operating at a high level of capacity utilization,[158] U-SI still has significant excess capacity which it could direct to the United States market.[159] Moreover, it plans ***.[160] US-I exports the majority of its production.[161] Because several other sources of SSWR are under antidumping duty orders

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[148] Commissioner Bragg concurs that revocation of the order on France would be likely to result in continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. However, Commissioner Bragg bases her determination upon a cumulative analysis of likely imports from Brazil, France, and India, in the event of revocation. Consequently, she does not join section V.C of these Views.

[149] Chairman Koplan and Vice Chairman Okun dissent with respect to France. *See* Additional and Dissenting Views of Chairman Stephen Koplan and Vice Chairman Deanna Tanner Okun.

[150] USITC Pub. 2721 at I-21. In the original investigations, the Commission analyzed the cumulated volume of imports from Brazil, France and India. Imports from France alone increased their share of the U.S. market from 3.9 percent in 1990 to 4.5 percent in 1991 and 8.5 percent in 1992. CR and PR at Table I-2. In terms of value, the share increased from 4.6 percent in 1990 to 5.0 percent in 1991 and 8.5 percent in 1992. *Id.*

[151] USITC Pub. 2721 at I-21; USITC Pub. 2704 at I-17.

[152] CR and PR at Table I-2.

[153] USITC Pub. 2721 at I-21.

[154] CR and PR at Table I-2.

[155] CR and PR at Table I-2. Imports from France were 3,153 short tons in 1997, 5,372 short tons in 1998, and 6,643 short tons in 1999. *Id.* These represented *** percent of the U.S. market in quantity terms in 1997, *** percent in 1998, and *** percent in 1999. These represented *** percent of the U.S. market in value terms in 1997, *** percent in 1998, and *** percent in 1999. *Id.*

[156] CR at IV-6, PR at IV-4.

[157] CR and PR at Table IV-3; CR at Table I-2.

[158] CR and PR at Table IV-3. It reported capacity utilization of *** percent in 1997, *** percent in 1998 and *** percent in 1999.

[159] U-SI reported excess capacity of *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999. In 1999, U-SI's excess capacity represented *** percent of U.S. consumption. *Compare* CR and PR at Table IV-3 *with* CR and PR at Table I-2.

[160] CR at IV-9, PR at IV-5.

[161] It ships *** of its production to the home market and exports ***. CR and PR at Table IV-3. Furthermore, U-SI's captively consumes a ***. CR and PR at Table IV-3 (captive consumption represented *** percent of total

(continued...)

as a result of the 1998 investigations, U-SI would have an advantage in the U.S. market in the absence of the order.[162] French producers almost doubled the quantity of exports to the United States in 1992 over 1991,[163] suggesting that U-SI could again likely rapidly increase its exports to the U.S. market particularly since purchasers prefer to have multiple sources of SSWR.[164] The United States also appears to be a particularly attractive market as prices here are higher than anywhere else in the world.[165] U-SI has affiliated companies in the United States, Techalloy and US&A, providing a natural customer base.

A portion of French production is captively consumed. The French Respondents argue that they would not shift production away from higher-value downstream products in order to export more SSWR to the U.S. market.[166] The French Respondents do not deny that they can sell SSWR in the merchant market; they instead argue that it is irrational for them to do so because it is more profitable for them to produce higher value products with SSWR such as bar and wire.[167] However, the majority of U-SI's SSWR production is ***.[168] In fact, ***.[169] Moreover, U-SI reported ***.[170] Thus, U-SI's captive production does not alter our conclusion regarding likely volume.

We therefore conclude, based on the record in these reviews, that the volume of subject SSWR imports from France would likely be significant in the reasonably foreseeable future if the order were revoked.

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[161] (...continued)
shipments in 1999, *** percent in 1998 and *** percent in 1997). *Id.*

[162] Moreover, the U.S. antidumping duty orders on several European producers likely increase competitive pressures in the European market, providing an incentive for U-SI to seek sales in other markets, including the United States.

[163] CR and PR at Table I-2.

[164] Tr. at 216 (Ms.Coelho). Also, importers' inventories of French SSWR increased from 1997 to 1999. CR at Table IV-2.

[165] Tr. at 179 (Mr. O'Donnell). The French Respondents argued that European demand has been increasing at a 6 percent rate. French Respondents' Posthearing Brief, Responses to Commissioners' Questions, at 22. Their data only reveal that European demand increased in the past and varied considerably. *See* French Respondents' Posthearing Brief at Exh. 4. In any event, even if the European market continues to grow at such a rate, this would not remove the incentive to sell in a market where higher prices prevail.

[166] French Respondents' Posthearing Brief, Responses to Commissioners' Questions, at 6-10.

[167] French Respondents' Posthearing Brief, Answers to Commissioners' Questions at 7.

[168] CR at Table IV-3.

[169] *Compare* CR at III-5, PR at III-3 *with* CR and PR at Table IV-3.

[170] French Respondents' Posthearing Brief, Exh. 1.

2. Likely Price Effects of Subject Imports

In the original investigations, the Commission noted that prices for the five products for which the Commission made comparisons trended downward, despite an increase in domestic consumption of 11.5 percent between 1990 and 1992.[171] The Commission noted that the domestic price of the most common grade of SSWR, AISI grade 304, declined by nearly 15 percent during the period of investigation, and prices of French imports declined by an even greater percentage.[172] Price comparisons in the original investigation revealed equal instances of underselling and overselling.[173]

The current record indicates that the subject imports are highly substitutable for domestic SSWR and the majority of purchasers reported that their purchasing decisions were usually based mainly on price.[174] Furthermore, demand is relatively inelastic while the domestic elasticity of supply is high in the U.S. market.[175] While there is a substantial level of captive production, a portion of production, approximately ***, enters the merchant market where it competes directly with subject imports. The level of captive production is *** during the original investigations when the subject imports were found to have had a significant adverse impact on the domestic industry.[176]

Despite the antidumping duty order, French SSWR undersold the domestic product in 8 of the 21 quarters in which price comparisons were available.[177] Price comparisons for products 1, 2 and 5 showed underselling in the majority of comparisons and prices for domestically produced products 1, 2, and 5 generally declined during the period examined (1997 through first quarter of 2000).[178] Product 4 price comparisons revealed that French SSWR undersold domestic SSWR during two quarters,[179] and ***.[180] With an antidumping duty order in place, overselling is not necessarily probative of likely price behavior absent the order.

Given the likely significant volume of imports, the high level of substitutability of the subject imports, the commodity-type nature of the product, the limited change in demand in response to price, the current underselling with an order in place, and the underselling by the imports in the original investigation, we find that, in the absence of the order, SSWR from France would likely be priced aggressively and have significant depressing and suppressing effects on the prices of the domestic like product.

3. Likely Impact of Subject Imports

As discussed above, we do not find the domestic industry to be currently vulnerable. As we noted, demand for SSWR is expanding, but similar circumstances during the original investigation did not prevent dumped imports from France from capturing market share at the expense of the domestic industry.[181] While there is a substantial level of captive production, a significant portion of production, approximately ***, enters the merchant market, where it competes directly with subject imports.[182]

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[171] USITC Pub. 2721 at I-22.
[172] USITC Pub. 2721 at I-22.
[173] OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-71.
[174] CR at II-2, II-7, PR at II-1, II-5.
[175] CR at II-4, II-9, II-10, PR at II-3, II-6, II-7.
[176] *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-12 *with* CR at III-5, PR at III-3.
[177] CR and PR at Table V-6.
[178] CR and PR at Table V-6.
[179] CR and PR at Table V-6.
[180] Questionnaire of ***.
[181] USITC Pub. 2721 at I-22.
[182] The level of captive production is *** during the original investigations when the subject imports had a

(continued...)

We have concluded that revocation of the antidumping duty order on SSWR from France would likely lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. We also find that the volume and price effects of the subject imports would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. This reduction in the industry's production, shipments, sales, market share, and revenues would adversely impact the industry's profitability and ability to raise capital and maintain necessary capital investments. We therefore find that revocation of the antidumping duty order on SSWR imports from France is likely to lead to continuation or recurrence of material injury to the U.S. SSWR industry within a reasonably foreseeable time.

D. Revocation of the Order on Subject Imports From Spain Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time[183]

In the original determination with respect to Spain, the Commission found the domestic industry's condition had declined over the period of investigation. Consumption of SSWR was down, capacity utilization was declining, as were employment, profits and sales.[184] The interim period data demonstrated that the trends in declining sales and profitability were worsening.[185] The Commission found that the domestic industry's market share declined significantly over the period of investigation while imports from Spain were increasing dramatically.[186] As a percentage of apparent consumption, Spanish imports accounted for 3.3 percent in 1980 as compared to 6.2 percent in the first 8 months of 1982.[187] The Commission also found significant margins of underselling.[188] Given these findings, the Commission concluded that SSWR from Spain had materially injured the domestic industry.[189]

As discussed above, we find that imports from Spain would be likely to have no discernible adverse impact on the domestic industry if the countervailing duty order were revoked and thus decline to cumulate Spanish imports with those from other subject countries. Subject imports from Spain are currently subject to an antidumping duty order, which imposes significant price discipline.

Commerce has found that at least two of the four Spanish subsidy programs constitute export subsidies as defined in Article 3.1(A) of the Subsidies Agreement. However, Commerce also found that the likely countervailable subsidy would only be 0.19 percent for Roldan and zero for Olarra.[190]

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[182] (...continued)
significant adverse impact on the domestic industry. *Compare* OINV Memorandum INV-Q-182 (Nov. 9, 1993) at I-12 *with* CR at III-5 and PR at III-3.

[183] Commissioner Bragg notes that her negative determination with regard to the CVD order on Spain stems naturally from her determination that there is likely to be no discernible adverse impact on the domestic SSWR industry if the CVD order on Spain is revoked. In particular, for the reasons discussed earlier, Commissioner Bragg is satisfied that revocation of the CVD order on Spain would have no effect on the volume or pricing of Spanish SSWR imports within a reasonably foreseeable time.

[184] USITC Pub. 1333 at 28-29.

[185] USITC Pub. 1333 at 29.

[186] USITC Pub. 1333 at 30 (the industry's market share was 57.5 percent in 1980 versus 44.0 percent in the first 8 months of 1982).

[187] USITC Pub. 1333 at 30.

[188] USITC Pub. 1333 at 30.

[189] USITC Pub. 1333 at 31.

[190] 65 Fed. Reg. 6166, 6170-71 (Feb. 8, 2000). In five-year reviews concerning countervailing duty orders, the Commission is required to consider "information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement." 19 U.S.C. § 1675a(6). Section (continued...)

Imports from Spain increased after issuance of the countervailing duty order, indicating that the order had little restraining effect. The primary Spanish producer, Roldan, is *** and its unused capacity in 1999 was equivalent to ***.[191] Roldan does not ***.[192] The other Spanish producer of SSWR is Olarra which is currently in bankruptcy proceedings.[193] The antidumping duty order on exports of SSWR from Spain may also restrain the volume of Spanish exports to some degree. Therefore, we find that the volume of the SSWR imports from Spain is not likely to change to a significant degree as a result of revocation of the countervailing duty order.

We also do not find that removal of the order would have a significant negative effect on prices for the domestic like product. The antidumping duty order will continue to impose significant price discipline. Thus, removal of the countervailing duty order would not have a significant adverse price effect on the domestic like product.[194] Furthermore, we found that removal of the order would not lead to a significant increase in the volume of Spanish imports. Thus, we find that the price effects of the imports of Spanish SSWR, if any, would not be significant. Given our findings regarding volume and price effects, we find no likelihood of a discernible adverse impact on the domestic industry upon revocation.[195] Thus, we determine that revocation of the countervailing duty order on SSWR from Spain would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders covering imports of SSWR from Brazil, France, and India would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.[196] We also determine that revocation of the countervailing duty order on SSWR from Spain would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

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[190] (...continued)
752(a)(6) of the Act also states that "the Commission may consider . . . the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6).

[191] CR and PR at Table I-2; CR and PR at Table IV-5.

[192] CR at IV-16, PR at IV-8; CR and PR at Table IV-5.

[193] CR at IV-14 n.33, PR at IV-7 n.33; 65 Fed. Reg. 6167 n.4. (Feb. 8, 2000).

[194] CR and PR at Table V-6. In *** *Id.*

[195] The Domestic Parties and French Respondents agree that the Commission could properly find that revocation of the countervailing duty order would not have a discernible adverse impact. Domestic Parties' Posthearing Brief, Exh 1, at 10; French Respondents' Posthearing Brief at 13.

[196] Chairman Koplan and Vice Chairman Okun dissenting with respect to France.

CONCURRING AND DISSENTING VIEWS OF
COMMISSIONER THELMA J. ASKEY

Section 751(d) of the Tariff Act of 1930, as amended, requires the Department of Commerce to revoke an antidumping duty or countervailing duty order in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.[197]

Based on the record in these five-year reviews, I determine that revocation of the antidumping duty orders covering stainless steel wire rod ("SSWR") from Brazil, France, and India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I also determine that revocation of the countervailing duty order covering SSWR from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I write separately to explain my determinations in this proceeding. However, I concur with my colleagues with respect to their findings concerning the domestic like product and the domestic industry. Accordingly, I join the Commission's views on these issues, as well their discussion of the legal standards governing the Commission's cumulation and causation analysis in sunset reviews.

I. Cumulation

A. General

In sunset reviews, the Commission has the discretion to cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews were initiated on the same day if those imports would be likely to compete with each other and with the domestic like product within a reasonably foreseeable time if the orders are revoked.[198] Thus, in five-year reviews, the relevant inquiry is whether there would likely be competition among the domestic and subject merchandise within the reasonably foreseeable future, even if none currently exists. Because of the prospective nature of five-year reviews and the discretionary nature of the cumulation decision, the Commission has also examined other conditions of competition that are likely to prevail upon revocation when deciding whether to cumulate in sunset reviews.

Although cumulation is discretionary in sunset reviews, the statute unambiguously states that the Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise if those imports are "likely to have no discernible adverse impact on the domestic industry" upon revocation of the order covering those imports.[199] As can be seen, the statute does not direct the Commission to focus its discernability analysis solely on the likely volume levels of the imports; instead, the statute expressly directs the Commission to assess whether the subject imports will have a discernible adverse "impact" on the industry upon revocation. Accordingly, when I assess whether I am permitted to cumulate the subject imports in sunset reviews, I first focus on whether the imports will impact the condition of the industry in a

[197] 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1) (1994).
[198] 19 U.S.C §1675a(a)(7).
[199] Section 752(a)(7) of the Act, 19 U.S.C. 1675a(a)(7)

discernible way as a result of revocation, and not simply on whether there will be a small (i.e., negligible) volume of imports after revocation.[200]

In this case, the reviews of the orders covering SSWR from Brazil, France, India and Spain were initiated on the same day. Accordingly, I must first assess whether subject imports from these countries are likely to have a "discernible adverse impact" on the domestic industry upon revocation of the orders. If I find that imports from any of these countries are not likely to have a discernible adverse impact on the domestic industry upon revocation of the order, then I am precluded from cumulating the imports from that country with those of the other subject countries. If I find that they are likely to have a discernible adverse impact on the industry upon revocation of the order, I must then consider whether it is appropriate to exercise my discretion to cumulate the subject countries.

I discuss my cumulation analysis for each of these countries below.

A. Discernible Adverse Impact

1. The Subject Imports from Spain Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within the Reasonably Foreseeable Future Upon Revocation of The Spanish Order

I find that the subject imports from Spain are not likely to have a discernible adverse impact on the domestic industry if the countervailing duty order covering Spain is revoked. Currently, the Spanish imports occupy a small percentage of the market, with their market share fluctuating between *** and *** percent during the period of review.[201] The current market share levels of the Spanish imports are similar to those of the Spanish imports during the original period of review, when their market ranged between 3.3 percent and 5.4 percent.[202] These historically small market shares indicate that the Spanish producers are unlikely to increase the levels of their SSWR imports in a manner that would have a discernible adverse impact on the industry upon revocation of the countervailing duty order, particularly given the considerations I discuss below.

First, the Spanish producers have a very limited amount of available capacity that could be used to ship merchandise to the United States upon revocation of the order. Although Spain has a relatively *** of total reported capacity,[203] the Spanish industry has been operating at *** capacity utilization rates throughout the period of investigation.[204] As a result, the Spanish producers are unlikely to be able to ship more than minimal additional volumes of SSWR merchandise to the United States upon revocation of the order. Moreover, the record indicates that the Spanish producers focus their production and marketing

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[200] I discussed the rationale for my approach in more detail in my Additional Views in Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245, at 31 (October 1999). I also further explained my views in Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 & 379-380 (Review), USITC Pub. 3290, at 36-37 (April 2000).

[201] CR and PR at Table I-2.

[202] CR and PR at Table I-2.

[203] The dominant Spanish producer, Roldan, reported total SSWR capacity of *** short tons in 1999 and *** short tons in interim 2000. CR and PR at Table IV-5. Roldan reported that it accounted for *** percent of Spanish production in 1999. CR at IV-14, PR at IV-7.

[204] The Spanish producer Roldan reported that it was operating at capacity utilization rates of *** percent in 1999 and *** percent in interim 2000. CR and PR at Table IV-5. The record suggests that these *** in this market.

efforts on their home and local markets.[205] Given this and given their *** capacity utilization rates, it is unlikely that the Spanish producers will shift more than minimal production capacity or sales volumes from their existing customer base in local markets to increase their shipments to the United States upon revocation of the countervailing duty order.

Similarly, I find that revocation of the order will not cause the subject Spanish imports to have a discernible adverse impact on domestic prices. Generally, the subject imports from Spain are currently subject to minimal countervailing duties.[206] Moreover, the Commerce Department has determined that most of the subject Spanish producers are likely to be subsidized by the Spanish government at minimal rates upon revocation of the order.[207] In light of these small current and likely subsidization rates for the large part of Spanish production, it is unlikely that revocation of the order covering the Spanish imports would have any impact on domestic prices, given the small volumes of merchandise that can be expected from Spain upon revocation of the order.

For the foregoing reasons, I find that the subject imports from Spain are unlikely to have a discernible adverse impact on the domestic industry upon revocation of the order.[208] I note that petitioners and respondents agree that the Spanish imports are unlikely to have a discernible effect on the industry upon revocation of the order. I have, therefore, not cumulated the subject imports from Spain with imports from the other subject countries for purposes of my analysis in these reviews.

2. The Subject Imports from Brazil Are Likely to Have No Discernible Adverse Impact on the Domestic Industry Within The Reasonably Foreseeable Future Upon Revocation of the Brazilian Order

I also find that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the antidumping order covering Brazil is revoked. Currently, there are no Brazilian imports in the market.[209] During the original period of investigation, the market share of the subject imports SSWR imports from Brazil was small, with their market share ranging between 1.3 and 2.6 percent during 1990 to 1992.[210] Given the small amount of SSWR capacity that exists in Brazil (which I discuss below), these historical patterns of small importation levels indicate that the Brazilian producers are unlikely to ship more than very small volumes of merchandise to the United States within the reasonably foreseeable future.

[205] In this regard, the Spanish producer Roldan reported that it captively consumed between *** and *** percent of its shipments during the period of review, that its shipped between *** and *** percent of its remaining shipments to its home market customers, and that its primary export markets were ***. CR and PR at Table IV-5, CR at IV-16, PR at IV-8.

[206] The dominant Spanish producer Roldan has been found to be subsidized at rates of 1.42, 0.42 and 0.19 percent in the three most recently completed administrative reviews. CR at I-12, PR at I-11.

[207] The Commerce Department found that the producers Roldan, Forjas Alavesas and Olarra were likely to be subsidized at rates of 0.19, 0.21 and 0.00 percent, respectively, upon revocation of the order. CR at I-11, PR at I-9. The Commerce Department found that only one producer, S.A. Echevarria, would be likely to be subsidized at more than de minimis rates.

[208] I also note that the possible impact of the subject imports on the industry is limited as well by the other conditions of competition in this market that I discuss below, such as the extremely large volume of domestic production that is captively consumed in this market and the relative low price-sensitivity of SSWR overall.

[209] CR and PR at Table I-2. During 1997, 1998, 1999, and interim 2000, there were no imports of SSWR from Brazil.

[210] CR and PR at Table I-2.

The available data indicate that the Brazilian industry has only a small amount of capacity. Although the Commission was not able to obtain a significant amount of information on the Brazilian industry's capacity levels, the available evidence indicates that the Brazilian producers have been producing only small amounts of SSWR during the period of review, with their total reported production volumes ranging between 4,176 and 4,834 short tons.[211] Thus, the Brazilian industry's total reported production of SSWR in 1999 was equivalent to less than *** percent of total domestic consumption. I believe that the limited data indicates that there is only a relatively small volume of SSWR capacity in Brazil. In this regard, I note that, even during the original investigation, the Brazilian industry had a small reported aggregate capacity level.[212] Accordingly, I believe that there is likely to be little available capacity in Brazil that could be used to ship additional SSWR merchandise to the United States. I would also note that the record indicates that almost all of Brazilian product is consumed in its home market.[213] Given Brazil's current small market share levels, the small amount of available Brazilian capacity, and Brazil's focus on its home market, I find that Brazil is unlikely to ship more than a minimal amount of merchandise to the United States upon revocation of the order.

I also find that the record indicates that the subject imports from Brazil will not have a discernible adverse impact on domestic prices upon revocation of the order. Although there is little usable price comparison data for Brazilian imports in this review, the minimal volumes of these imports that would be present in the market upon revocation of the order are unlikely to have a discernible effect on domestic prices within the reasonably foreseeable future.

For the foregoing reasons, I find that the subject imports from Brazil are unlikely to have a discernible adverse impact on the domestic industry upon revocation of the order. I have, therefore, not cumulated the subject imports from Brazil with imports from the other subject countries for purposes of my analysis in these reviews.[214]

B. Reasonable Overlap of Competition With Respect to France and India

I have chosen to exercise my discretion to cumulate the subject imports of SSWR from France and India for purposes of my analysis in these reviews. The record indicates that there is likely to be a reasonable but limited overlap of competition among the French and Indian imports upon revocation of the orders. In particular, the record indicates that the French, Indian and domestic merchandise are viewed by market participants as interchangeable in their end uses and that most purchasers find the subject imports to be similar to the domestic product with regard to their specific requirements.[215] Moreover, the record indicates that the French, Indian and domestic merchandise is sold primarily to end users and that the market for SSWR is a nationwide market.[216] Thus, I find that the record contains sufficient evidence of likely competitive overlap between the domestic and subject merchandise to warrant cumulation.

Nonetheless, I would note that the record indicates that there are significant limitations on the degree of possible overlap of competition between the French, Indian and domestic merchandise. First, although domestic producers, importers and purchasers reported that the French, Indian and domestic

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[211] American Embassy Telegram, dated May 17, 2000.

[212] The reported capacity for two of the three Brazilian producers in 1992 was approximately *** short tons. CR at IV-5, n. 3, PR at IV-3, n. 3.

[213] CR at IV-5, PR at IV-4.

[214] In accordance with the statute, I have also considered whether imports from France and India would be likely to have a discernible adverse impact on the industry upon revocation of the orders. I find that both countries have enough available capacity and are sufficiently focused on export operations to indicate that they might export merchandise to the United States upon revocation of the orders in a manner that might have a discernible impact on the industry.

[215] CR at II-8, PR at II-5-6.

[216] CR and PR at II-1.

merchandise are viewed as interchangeable, the record also indicates that the Indian merchandise is considered to be inferior to both the domestic and French merchandise in terms of quality, availability, product range and reliability.[217] Accordingly, the staff has concluded[218] that the Indian imports have a relatively low level of substitutability with the domestic merchandise. Similarly, while the record indicates that there is a higher degree of substitutability between the domestic and French merchandise than between the Indian and the domestic merchandise, the French product was reported to be inferior to the domestic merchandise with respect to packaging, consistency and transportation costs, all of which moderates the substitutability of the French and domestic products. Finally, the domestic producers captively consume *** of their SSWR production, which further limits the level of substitutability between the subject French and Indian imports and the domestic merchandise. Given this, the record strongly suggests that the actual degree of competitive overlap between the French, Indian and domestic merchandise is likely to be limited.

Nonetheless, the record suggests that there is a sufficient degree of likely competitive overlap between these two countries and the domestic merchandise to warrant their cumulation. The record indicates that the imports and the domestic merchandise are somewhat interchangeable, that they are sold in similar channels of trade, and that they are likely to be sold throughout the nation upon revocation of the order. Accordingly, I have chosen to exercise my discretion to cumulate the subject imports from France and India.[219]

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[220] The SSWR market in the United States is characterized by the following conditions of competition:

First, aggregate demand for SSWR depends primarily on the level of demand for the intermediate products in which it is used, such as stainless steel wire, stainless steel bar and stainless steel fasteners. Demand for these products is further dependent on overall demand in end use industries that require the corrosion-resistant properties of SSWR, such as the automotive, medical instruments and general manufacturing industries.[221] During the period of review, aggregate consumption declined from *** short tons in 1997 to *** short tons in 1999.[222] Open market consumption declined as well, from *** short tons in 1997 to *** short tons in 1999.[223]

Nonetheless, demand for SSWR appears to have increased since the original period of investigation, primarily due to overall growth in the U.S. economy and the development of new applications

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[217] CR at II-8, PR at II-5-6.

[218] The staff found that the elasticity of substitution between the Indian and domestic merchandise was within the range of 1 to 3, which is relatively low. CR at II-10, PR at II-7.

[219] In this regard, I would note that a number of considerations would have justified a decision not to cumulate the French and Indian imports in this proceeding. Unlike the Indian imports, imports from France have remained in the market in reasonably substantial volumes since issuance of the order. Moreover, France has a *** capacity utilization rate than the Indian producers. The French producer is generally operating at rates in excess of *** percent, while the Indian producers have operated at *** capacity utilization rates, ranging from *** percent, with their most recent rates being *** percent. Finally, the average unit values of SSWR from France are much higher than those for SSWR from India, which indicates that there are product mix and quality differences between merchandise from the two countries. However, for the reasons described below, a decision not to cumulate the two countries would have had no impact on my ultimate determination in this case.

[220] 19 U.S.C. § 1675a(a)(4).

[221] See CR at I-14-15 & II-4, PR at I-12-13 & II-3.

[222] CR and PR at Table I-2.

[223] CR and PR at Table I-5.

for SSWR products.[224] For example, as evidenced in the 1998 antidumping investigations involving SSWR from Germany, Italy, Japan, Korea, Spain, and Taiwan,[225] apparent consumption of SSWR increased significantly percent between 1995 and 1997. Moreover, market participants report that demand for SSWR has grown by about 5 to 7 percent per year during the past several years and that demand is expected to grow at rate of 3 to 5 percent annually for the foreseeable future.[226]

Demand for SSWR in the European market is expected to grow in the reasonably foreseeable future as well. The French producer reports that demand in the European market is expected to grow by an average of *** percent per year through 2002.[227]

Second, the domestic industry has become highly concentrated since the period of the original investigations in 1992. In 1992, there were six domestic producers of SSWR. In 1998, the number of industry members had been reduced to four. There are currently essentially two producers of SSWR: Carpenter/Talley and Empire/AL Tech. Carpenter, which accounted for *** percent of domestic production in 1999, acquired Talley in 1998. Talley, which continues to operate as a separate sales entity, accounted for *** percent of domestic production in 1999.[228] Accordingly, as a combined entity, Carpenter/Talley accounted for *** percent of domestic production in 1999.[229] The other domestic producer, AL Tech, was acquired out of bankruptcy by Empire in 1999. Empire/AL Tech accounted for *** percent of domestic production in 1999.[230]

Third, as in the 1998 investigations, the domestic industry continues to captively consume *** of its SSWR production.[231] The industry uses *** of the captively consumed merchandise to produce stainless steel small diameter bar and the remainder to produce stainless steel wire.[232] As the Commission has recognized on previous occasions, the subject imports do not compete with captive production of domestic merchandise in the same way that they compete with domestic production sold in the merchant market. While the subject imports may arguably have some indirect effect on captive domestic production as a result of downstream competition (i.e., through indirect competition in the wire and bar markets), the record in these reviews indicates that there is little actual price or volume competition between the subject imports and captive domestic production in the SSWR marketplace. Accordingly, any competitive price or volume effects between the subject imports and captive domestic consumption is attenuated, at best.[233]

Fourth, the industry's overall capacity levels have grown during the period of review. The industry's capacity has increased from *** short tons in 1997 and 1998 to *** short tons in 1999.[234] The increase in the industry's production capacity is due primarily to a reported increase in the capacity of Talley's rolling mill, which was intended to double its hot-rolling capacity from 40 thousand short tons to 78.5 thousand short tons.[235] The domestic industry's capacity utilization rate declined from *** percent in

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[224] CR at II-2, PR at II-1.

[225] Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126 (September 1998).

[226] CR at II-4-5, PR at II-3.

[227] CR at II-5, PR at II-4.

[228] CR at I-17, PR at I-14.

[229] CR at I-17, PR at I-14.

[230] The fourth producer in existence in 1998, Republic, shut down its SSWR operations in the fall of 1998. CR at I-17, PR at I-14.

[231] CR and PR at Table I-4.

[232] CR at III-2, PR at III-1.

[233] I note that the Commission has consistently stated that the captive production provision does not apply to sunset reviews. See, e.g., Sebacic Acid from China, 731-TA-653 (Review), USITC Pub. 3189 (May 1999) at 7, n.26.

[234] CR and PR at Table III-1.

[235] CR at III-2, PR at III-1.

1997 to *** percent in 1998 to *** percent in 1999 but recovered to *** percent in interim 2000, despite the increase in capacity in 1999 and interim 2000.[236]

Fifth, although the record indicates that price is an important factor in the purchasing decision for most purchasers, the record indicates that price is not the most important factor in the purchase decision. The large majority of purchasers rated quality as being the most important factor in the purchase decision, while most purchasers rated price as being the second most important factor.[237]

Sixth, the degree of substitutability between the domestic and subject merchandise is dependent upon their comparative quality, price and availability levels. The substitutability of the subject imports varies, with India having a low elasticity of substitution (ranging from 1 to 3) while the imports from France have a more moderate level of substitutability with the domestic merchandise (with their elasticity of substitution ranging from 3 to 6).[238] Generally, the French imports are rated as being comparable with the domestic merchandise with respect to most non-price considerations while the Indian product is viewed by a significant number of producers, importers and purchasers as being inferior to the domestic product in terms of quality, availability, product range and reliability.[239]

Seventh, according to the Wire Producers Association, the domestic producers continue to be reluctant to make sufficient amounts of SSWR available to competing wire producers. In its brief, the Association stated that a significant number of large wire producers report that Carpenter/Talley has not been interested in quoting market prices for SSWR.[240]

Eighth, there is a very substantial volume of non-subject sources in the SSWR market. Non-subject imports occupied between *** and *** percent of the total SSWR market and between *** and *** percent of the open market during the period of review.[241] Moreover, approximately 86 percent of the non-subject volumes in 1999 were imports of merchandise subject to the 1998 antidumping orders. The subject and non-subject merchandise are generally viewed as interchangeable.[242]

I find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide a reasonable basis on which to assess the likely effects of revocation within the reasonably foreseeable future.

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[236] CR and PR at Table III-1.

[237] CR and PR at Table II-2.

[238] CR at II-10, PR at II-7.

[239] CR at II-8, PR at II-5-6.

[240] Association Posthearing Brief at Exhibit 10.

[241] CR and PR at Tables I-2 & I-5.

[242] CR at II-9, PR at II-6.

C. REVOCATION OF THE ANTIDUMPING DUTY ORDERS COVERING IMPORTS OF STAINLESS STEEL WIRE ROD FROM FRANCE AND INDIA IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[243]

1. Likely Volume of the Cumulated Imports from France and India

In evaluating the likely volume of imports of subject merchandise if an antidumping order is revoked, the statute directs the Commission to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[244] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[245]

In the original investigations, the Commission observed that the market share of cumulated imports was increasing while the domestic producers' market share was declining.[246] The domestic producers' market share fell from 79.4 percent in 1990 to 68.0 percent in 1992 in terms of quantity, and from 81.0 percent in 1990 to 73.1 percent in 1992 in value terms.[247] The Commission found that the loss of market share by the domestic producers coincided with the gain in share by the subject imports.[248]

Nonetheless, I find that the volume of the cumulated subject imports from France and India is not likely to be significant if the French and Indian orders are revoked. First, with respect to France, the record indicates that there is an extremely limited amount of unused capacity in France that could be used to increase the French producer's exports to the United States. The record indicates that the sole French producer of SSWR has operated at high capacity utilization rates throughout the period of review, with its most recent capacity utilization rates being *** percent in 1999 and *** percent in 2000.[249] Because the record of these reviews indicates that the French producer's capacity utilization rates indicate that it is

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[243] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce assigned likely margins for manufacturers in Brazil that range from 24.63 percent to 26.50 percent. 65 Fed. Reg. 5319, 5322 (Feb. 3, 2000). The likely margin of dumping for all producers in France is 24.51 percent. 65 Fed. Reg. 8121 (Feb. 17, 2000). All producers in India were assigned a likely margin of dumping of 48.80 percent. 65 Fed. Reg. 5315, 5317 (Feb. 3, 2000). The likely subsidization margin for one producer in Spain is 0.19 percent and 0 percent for the other producer. 65 Fed. Reg. 6167, 6171 (Feb. 8, 2000).

[244] 19 U.S.C. § 1675a(a)(2).

[245] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[246] USITC Pub. 2721 at I-21; USITC Pub. 2704 at I-17. In the original investigations, the Commission analyzed the cumulated volume of imports from Brazil, France and India. Imports from Brazil and India alone increased their share of the U.S. market from 1.8 percent in 1990 to 2.7 percent in 1991 and 5.9 percent in 1992. CR and PR at Table I-2. In terms of value, the share increased from 1.4 percent in 1990 to 2.0 percent in 1991 and 4.1 percent in 1992.

[247] CR and PR at Table I-2.

[248] USITC Pub. 2721 at I-21; USITC Pub. 2704 at I-18.

[249] CR and PR at Table IV-3.

effectively operating at full capacity, I find that it is unlikely that the French would be able to ship significant additional volumes of merchandise to the United States upon revocation of the order.

In addition, the record indicates that the sole French producer of SSWR has internally transferred *** to *** percent of its production to related downstream production facilities during the period of review. Because the record indicates that the French producer earns a larger return on its downstream products than on its production of SSWR,[250] it is unlikely that the French producer would have an incentive to shift production to SSWR from its downstream operations. Moreover, although the French producer is somewhat export-oriented (with *** percent of shipments being export shipments in 1999),[251] the record indicates that it ships nearly eighty percent of those exports to the European market.[252] Because demand in the European market is projected to increase by six percent annually for the reasonably foreseeable future,[253] I find it to be highly unlikely that the French producer would divert significant volumes of merchandise from its existing customers in the European market simply to take advantage of the revocation of the antidumping order.

Finally, I note that there are no reported trade barriers or antidumping orders against French imports in other countries and that French inventories remain minimal in comparison to the total U.S. market.[254] Given all of the foregoing, I find it highly unlikely that the French producers will ship more than minimal amounts of SSWR to the United States within the reasonably foreseeable future upon revocation of the order.

With respect to India, I also find that the Indian producers are unlikely to ship more than minimal additional volumes of merchandise to the United States upon revocation of the Indian order. First, the Indian producers have historically occupied small shares of the domestic SSWR market. During the original period of investigation, the market share of the subject Indian imports ranged between 0.1 and 3.3 percent.[255] During the period of review, the market share of the Indian imports has stayed at similarly small levels, ranging between *** and *** percent during the years from 1997 to 2000.[256] These historically small market share levels suggest that it is unlikely that the Indian producers will increase their exports to the United States significantly upon revocation of the order.

In addition, the Indian producers appear to have a limited amount of capacity available to increase their shipments to the United States.[257] The Indian producers' total capacity was *** short tons in 1999,[258] which compares with an aggregate domestic consumption of *** short tons in 1999.[259] Moreover, the Indian producers have been operating at *** capacity utilization levels utilization levels in 1999 and interim 2000.[260] Given their current capacity utilization rates and the fact that the record suggests that a capacity utilization rate of approximately *** percent is effectively close to full capacity utilization, the record suggests that the Indian producers simply do not have enough available capacity to export a significant amount of additional SSWR imports to the United States upon revocation of the order.[261] Also, given that

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[250] French Respondent's Posthearing Brief at Appendix A, pp. 6-11.

[251] CR and PR at Table IV-3.

[252] CR at IV-9, PR at IV-5-6.

[253] French Respondents' Posthearing Brief at Appendix A, p. 22.

[254] CR and PR at Tables I-2, IV-2 & IV-3.

[255] CR and PR at Table I-2.

[256] CR and PR at Table I-2.

[257] CR and PR at Table IV-4, CR at IV-10-14, PR at IV-6-7.

[258] CR and PR at Table IV-4.

[259] CR and PR at Table I-2.

[260] The Indian producers were operating at a capacity utilization rate of *** percent in 1999 and *** percent in interim 2000.

[261] For example, if the Indian producers had used all of their available capacity to ship SSWR to the United States during 1999 (assuming that *** percent utilization is effectively full capacity use), the possible volume of (continued...)

the Indian producers have generally shipped more than *** percent of their total shipments to their home market (including production that is internally consumed) during the period of review,[262] I find that, on the whole, the record suggests that the Indian producers are unlikely to use a major part of their available capacity to increase their exports to the United States.[263] Finally, the inventory levels of the Indian producers are relatively *** when compared to total domestic consumption in 1999.[264] Given the historically small market shares of the Indian producers, their historic focus on their home market and their relatively small amount of available capacity, I find that it is unlikely that the volume of the Indian imports will increase significantly upon revocation of the Indian order.

In addition, even if the French and Indian producers shipped some additional SSWR merchandise to the United States, certain conditions of competition in this marketplace make it unlikely that the increase in volume would have a significant impact on the industry. First, although apparent U.S. consumption declined somewhat during the period of review,[265] nearly all market participants project that demand for SSWR will continue to grow by three to five percent within the reasonably foreseeable future.[266] Since any possible increase in the volume of the subject French and Indian imports will be absorbed in part by this demand increase, the expected growth in the SSWR market will serve to minimize the possible impact of any subject import increases during the foreseeable future. Second, since the orders were imposed in 1993 and 1994, non-subject imports have increased their share of the open market for SSWR, occupying between *** and *** percent of that market throughout the period of review.[267] Given that the record indicates that there is a reasonable degree of substitutability between the subject and non-subject merchandise,[268] any increase in the subject imports will supplant other imports of SSWR in the open market to a significant degree, thus further mitigating any possible adverse volume effect of revocation upon the industry.

Accordingly, I find that the volume of the cumulated subject imports from France and India are not likely to be significant upon revocation of the orders.

2. Likely Price Effects of the Cumulated Imports from France and India

In evaluating the likely price effects of subject imports if the antidumping duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with the domestic like product, and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of the domestic like product.[269]

In the original investigations, the Commission noted that domestic prices exhibited downward trends during the period, despite an increase in domestic consumption of 11.5 percent between 1990 and

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[261] (...continued)
imports that could be produced using that capacity would have been equivalent to *** percent of the market.

[262] CR and PR at Table IV-4.

[263] In fact, although one Indian producer, ***, has announced that it intends to increase its focus on export activities in the future, I note that the record also indicates that the producer has stated that it plans to develop new markets in Latin America, South Africa and the Middle East, not the United States. CR at IV-12, PR at IV-6.

[264] See CR and PR at Tables I-2, IV-2 & IV-4.

[265] CR and PR at Table I-2.

[266] CR at II-4-5, PR at II-3.

[267] CR and PR at Table I-5.

[268] CR at II-9, PR at II-6.

[269] 19 U.S.C. § 1675a(a)(3). The SAA states that "***onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

1992.[270] The Commission also noted that the domestic price of the most common grade of SSWR, AISI grade 304, declined by nearly 15 percent during the period of investigation.[271] The Commission also found that prices for imports from France declined by an even greater percentage during the period of investigation while prices for imports from India declined steadily and were consistently below domestic prices.[272]

Nonetheless, I find that the cumulated subject imports from France and India are not likely to have significant adverse effects on domestic prices if the orders are revoked As I discussed above, the record indicates that it is unlikely that there will be a significant increase in the volumes of the cumulated subject imports upon revocation of the orders. Moreover, nothing in the record suggests that, at their current volume levels, the subject imports would change their pricing practices in a way that would have a significant negative impact on the industry. In fact, given that demand is expected to increase moderately, I believe that the small additional volumes of subject French and Indian imports that might enter the market upon revocation of the orders are unlikely to exert any price pressure on the domestic industry. Accordingly, I find that it is unlikely that the subject imports will have a significant adverse impact on domestic prices upon revocation of the orders.

Moreover, the record of these reviews indicates that the large majority of purchasers rated quality as the most important factor in the purchase decision, with price being rated the second most important factor in the purchase decision.[273] As a result, while price is clearly an important factor in the SSWR purchase decision, I believe that the record indicates that the SSWR market is not necessarily a price-sensitive market and that quality concerns can drive the purchase decision in many instances. In light of the fact that the Indian imports are perceived to be of lower quality than the domestic merchandise,[274] I find that it is unlikely that the Indian imports would be able to have a significant adverse effect on domestic prices upon revocation of the order. Also, while the French products are clearly comparable to the domestic merchandise with respect to quality, the record also indicates that the French imports have been priced significantly higher than the domestic merchandise during the period of review,[275] despite the fact that the sole French producer's imports have been subject to relatively low dumping deposits throughout the period of review.[276] In light of the existing lack of adverse price competition from the French imports in the face of low dumping margins, I believe that the record also indicates that the French imports are unlikely to have significant adverse effects on domestic prices upon revocation of the orders.

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[270] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[271] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[272] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[273] CR and PR at Table II-2.

[274] CR at II-8, PR at II-5-6.

[275] During the period of review, for example, the French imports generally oversold the domestic merchandise on the price comparison product that has the largest volume of sales of French imports (i.e., comparison product No. 4). CR and PR at Table V-4. Similarly, the average unit values of the French imports were consistently higher than the average unit values of the domestic merchandise during the period of review. CR and PR at Table I-2.

[276] The French producer Ugine-Savoie has been subject to a cash deposit rate of less than 7.3 percent since February 1997. CR at I-11, PR at I-10.

3. *Likely Impact of the Cumulated Imports from France and India*

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[277] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[278]

In the original investigations, the Commission found that the industry was experiencing declining production levels despite increases in apparent consumption.[279] The industry's capacity utilization was below 50 percent.[280] The Commission noted that the industry reported positive operating income in 1990 and 1991, but significant losses in 1992[281] and that their capital expenditures declined significantly late in the period as well.[282] The Commission concluded that the lower prices of the subject imports enabled them to increase market share in an expanding market at the expense of the domestic producers, leading to declines in domestic prices, domestic market share, production, shipments and profitability.[283]

I find that the U.S. industry is not currently in a vulnerable state. Despite the continued presence of imports in the market since 1992, the industry's condition is strong and continues to improve in ways that are unrelated to the order. First, with the acquisition of Talley by Carpenter in 1998, the industry has become significantly concentrated, with the combined operations of Carpenter and Talley now accounting for more than *** percent of domestic production. Because Carpenter was the dominant domestic producer even prior to the acquisition and was *** throughout the period of review,[284] I believe that the combination of Carpenter and Talley will allow them to achieve efficiencies of operation that will result in a significantly healthier combined entity. In fact, in interim 2000, the profitability levels of both Carpenter and Talley improved *** over their 1999 levels.[285]

Secondly, even apart from Carpenter and Talley's consolidation, the industry retains a strong share of the SSWR market, with its market share remaining generally at or around the *** percent level throughout the period of review.[286] The overall profitability levels of the industry remain reasonably strong, with their operating income rates improving *** in interim 2000 after a temporary downturn in 1999.[287] Moreover, with the exception of 1998 (when their capacity utilization rate temporarily dropped to

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[277] 19 U.S.C. § 1675a(a)(4).

[278] 19 U.S.C. § 1675a(a)(4).

[279] USITC Pub. 2704 at I-12; USITC Pub. 2721 at I-13.

[280] USITC Pub. 2704 at I-12; USITC Pub. 2721 at I-13; *see also* CR and PR at Table I-2.

[281] USITC Pub. 2704 at I-13; USITC Pub. 2721 at I-15; *see also* CR and PR at Table I-2.

[282] USITC Pub. 2704 at I-13; USITC Pub. 2721 at I-15.

[283] USITC Pub. 2704 at I-18-19; USITC Pub. 2721 at I-23.

[284] INV-X-140 and PR at Table E-8.

[285] INV-X-140 and PR at Table E-8. When analyzing the condition of the industry, I have relied on the data and financial reporting methodology used by *** in this proceeding. See INV-X-140 at Verification Report and Table E-8. However, I note that the producer used a different financial reporting methodology in the 1998 SSWR investigation. Id. ***'s use of different reporting methodologies in these proceedings has resulted in a *** disparity between the financial results reported by the company in the two cases. In particular, ***.

[286] CR and PR at Table I-2.

[287] INV-X-140 at Table E-8. The industry's operating income rates were *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in the first quarter of 2000. These results have been significantly (continued...)

*** percent), the industry's capacity utilization rates have remained relatively high, ranging between *** percent and *** percent through most of the period of review.[288] These capacity utilization rates are *** higher than the industry's capacity utilization rates during the 1992 investigation.[289] Further, the industry's shipments and net sales levels have generally been higher throughout the period of review than they were during the original investigations.[290]

Finally, two conditions of competition effectively insulate the industry as a whole from import competition. As I have previously noted, the industry is significantly insulated from any possible impact from subject imports because it captively consumes nearly *** of its SSWR production in the production of downstream products.[291] Second, the industry is insulated from significant adverse price competition from most non-subject imports because of the imposition of antidumping orders on the six largest non-subject countries in 1998. These orders protect the industry from competition with nearly 87 percent of non-subject imports, which now occupy more than *** percent of the open market. Given the foregoing, the record clearly indicates that the industry is not currently vulnerable to the possible impact of the subject imports from France and India.

As I discussed above, the record of these reviews indicates that the subject imports from France and India are not likely to have significant adverse volume and price effects on the domestic industry within the reasonably foreseeable future if the orders were revoked. Accordingly, I also find that the cumulated subject imports would not be likely to have a significant impact on the domestic industry's cash flow, inventories, employment, wages, growth, ability to raise capital, investment or development efforts within a reasonably foreseeable time if the orders were revoked. Further, I find that revocation of the orders would not be likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time.

Accordingly, I find that revocation of the antidumping orders covering SSWR from France and India is not likely to have a significant impact on the domestic industry. I therefore determine that revocation of the antidumping duty orders covering these imports would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

D. REVOCATION OF THE COUNTERVAILING DUTY ORDER COVERING STAINLESS STEEL WIRE ROD FROM SPAIN IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I determined that the subject imports from Spain would not be likely to have a discernible adverse impact on the domestic industry if the Spanish countervailing duty order were revoked. Accordingly, I have not cumulated the subject imports from Spain with the other subject imports for purposes of my sunset analysis. In addition, for the reasons outlined previously, I find that the subject imports from Spain are not likely to have significant adverse volume or price effects on the domestic industry upon revocation of the order. Accordingly, I find that revocation of the order on the subject

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[287] (...continued)
affected by the ***. In this regard, I note that *** earned *** profitability levels throughout the period, with *** earning an operating income rate of *** percent in 1997, *** percent in 1998, *** percent in 1999 and *** percent in first quarter 2000.

[288] CR and PR at Table I-2.

[289] CR and PR at Table I-2. The industry's capacity utilization rates during the original period of investigation in the 1992 investigation ranged from 35.6 to 36.3 percent. Id.

[290] CR and PR at Table I-2.

[291] CR at III-2, PR at III-1.

imports from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[292]

E. REVOCATION OF THE ANTIDUMPING DUTY ORDER COVERING STAINLESS STEEL WIRE ROD FROM BRAZIL IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

As discussed above, I determined that the subject imports from Brazil are not likely to have a discernible adverse impact on the domestic industry if the antidumping duty order covering these imports were revoked. Accordingly, I have not cumulated the subject imports from Brazil with the other subject imports for purposes of my sunset analysis. In addition, for the reasons I outlined previously, I find that the subject imports from Brazil are not likely to have significant adverse volume or price effects on the domestic industry after revocation of the order. Accordingly, I find that revocation of the order on the subject imports from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[293]

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[292] As discussed above, I find that the domestic industry is currently not vulnerable to imports. I have further taken into account the Commission's findings in its original determination in my analysis. I note that the record indicates that there is a possibility that the Spanish producers would be able to engage in some product shifting in their facilities but the record contains little evidence indicating that it is likely they would so in response to revocation of the order. I further note that there are no antidumping or countervailing duty orders in third country markets covering Spanish SSWR and that the inventory levels of the Spanish imports are small in comparison to total U.S. consumption.

[293] As discussed above, I find that the domestic industry is currently not vulnerable to imports. I have further taken into account the Commission's findings in its original determination in my analysis. I note that the record indicates that there is at best a limited possibility that the Brazilian imports would be able to engage in some product shifting in their facilities. I further note that there are no antidumping or countervailing duty orders in third country markets covering Brazilian SSWR.

Additional and Dissenting Views of Chairman Stephen Koplan and Vice Chairman Deanna Tanner Okun in Stainless Steel Wire Rod From Brazil, France, India, And Spain, Invs. Nos. 701-TA-178 and 731-TA-636-638 (Review)

Introduction

Based on the record in these five-year reviews, we determine that revocation of the antidumping duty orders covering imports of stainless steel wire rod (SSWR) from Brazil and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We determine, however, that revocation of the antidumping duty order covering imports of SSWR from France and the countervailing duty order covering imports of SSWR from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, we respectfully dissent from the Commission's determination with respect to subject imports from France. While we join the Commission's determinations with respect to background, legal standards, like product, the domestic industry, cumulation, conditions of competition, and imports of the subject merchandise from Brazil, India, and Spain, we write to explain why revocation of the antidumping duty order covering imports of SSWR from France would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Revocation of the Antidumping Duty Order on Imports of SSWR from France Would Not Be Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

I. Conditions of Competition

As noted above, we concur with the discussion of certain important conditions of competition presented in the views of the Commission majority. Before discussing the likely volume, price effects, and impact of imports of the subject merchandise from France, however, we reiterate and expand upon the relevant conditions of competition affecting subject imports and the domestic industry.

U.S. demand for SSWR has increased markedly since the early 1980s, rising through the early 1990s and into the late 1990s. Market participants indicate that demand has grown by five to seven percent annually over the past several years, reflecting a shift from carbon and non-stainless alloy steel wire rod to SSWR. Further, demand is expected to continue to increase by three to five percent annually due to the growth of the economy in general and the automotive sector in particular.[294] [295]

In the early 1990s, the domestic industry consisted of seven producers of SSWR. By 1997, consolidation within the industry reduced that number to four: Carpenter; Talley; AL Tech; and Republic. In early 1998, Carpenter purchased Talley, further solidifying its dominant position in the domestic industry. Subsequently, in late 1998, Republic closed its SSWR production facilities. In late 1999, AL Tech was sold to settle bankruptcy claims and Empire Specialty Steel was formed through the purchase of some of the AL Tech assets. At present, the domestic industry consists of Carpenter and Talley

[294] CR at II-4-5, PR at II-3.

[295] Apparent U.S. consumption appears at Table I-2, CR at I-4-7, PR at I-3-6. Apparent U.S. consumption was lower in 1998 and 1999 than in 1997. However, these data reflect an increase in nonsubject imports in 1997 and subsequent inventory adjustments. AWPA purchasers were "proactive in securing adequate supplies of rod" following the August 1997 filing of trade cases on SSWR. AWPA purchasers also noted the collapse in demand in Asia (due to the Asian financial crisis) and the reduction of supply alternatives in the United States as a result of corporate consolidation. AWPA Posthearing Brief at exh. 12.

(accounting for *** percent of U.S. production) and Empire Specialty Steel (accounting for *** percent of U.S. production).[296]

Manufacturers of SSWR can and do produce other products (e.g., stainless steel bar and wire) using the same equipment employed in making SSWR.[297] In the early 1990s, the domestic industry consumed about two-thirds of its production of SSWR internally.[298] Over the period examined in these reviews, the domestic industry's captive consumption has remained at *** high levels, averaging about *** percent and reaching *** percent in the first quarter of 2000.[299] Thus, while U.S. producers compete directly with their U.S. customers in downstream markets, the extent of competition between the domestic like product and imports of the subject merchandise is somewhat limited, given the domestic producers' large volume of internal consumption.

U.S. capacity utilization fluctuated over the period examined in these reviews, reaching an historic high in 1997, declining in 1998 and 1999 in the face of lower levels of apparent U.S. consumption and increases in U.S. capacity, then rebounding in the first quarter of 2000.[300] In 1999, U.S. producers briefly had sufficient capacity to ***, unlike 1997, 1998, and the first quarter of 2000. In actuality, over the period examined in these reviews, U.S. producers have supplied only about *** of apparent U.S. consumption, while most of the rest has been supplied by nonsubject countries.

We have taken into account the issuance of antidumping duty orders against SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan in late 1998, and the potential effect of such orders on imports from those countries. Despite these orders, however, nonsubject imports (including those from the countries subject to the 1998 orders) remain a substantial source of supply of SSWR.[301]

Manufacturers produce SSWR in a wide variety of sizes and grades, typically in accordance with customer requirements.[302] Purchasers identified consistency/quality as the primary factor used in purchasing decisions, followed by price and availability.[303] While imports of French SSWR are of comparable quality with the U.S. product and have been concentrated in specialty grades, imports of SSWR from Brazil and India have been more prone to quality problems and have not been concentrated in specialty grades.[304]

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

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[296] CR at I-17-18, PR at I-14. A 25,000 tons-per-year processing facility at Charter Steel's stainless and specialty steel mill in Fond du Lac, WI, is expected to be operational by the second quarter of 2001.

[297] Hearing transcript at 96 (testimony of Mr. McElwee); Domestic Parties' Prehearing Brief at 39.

[298] USITC Pub. 2721 at I-13; USITC Pub. 2704 at I-12.

[299] Table III-2, CR at III-3, PR at III-2.

[300] Table I-2, CR at I-4-7, PR at I-3-6. The domestic industry's capacity utilization remained *** above the levels reported in the early 1990s throughout the period examined in these reviews. *Id.*

[301] Table I-2, CR at I-4-7, PR at I-3-6.

[302] CR at I-15, PR at I-12.

[303] Table II-2, CR at II-7, PR at II-5.

[304] CR at II-7-8, PR at II-5-6; Original Report at I-8, I-43, and I-50-51; and French Respondents' Posthearing Brief, Attachment A at 20.

II. Likely Volume, Price Effects, and Impact of Subject Imports from France

A. Likely Volume of Subject Imports from France

The Commission noted in its original determination that in 1991-92, when subject imports experienced their greatest increase, domestic producers experienced the greatest decline in shipments. In light of the market share held by the subject imports, their rapid increase in volume, and their increase in market share at the expense of domestic shipments, the Commission found the volume of cumulated imports, and the increase in that volume, to be significant.[305] [306]

The issuance of the antidumping duty order on SSWR from France did not result in a significant shift in the volume of subject imports from France, and has not otherwise had a significant restraining effect on subject imports. Between 1979 and 1981, prior to the period examined in the original investigations, the quantity of imports of SSWR from France ranged between 3,230 short tons and 5,477 short tons.[307] During the period examined in the Commission's original investigations, the quantity of imports of SSWR from France was 4,547 short tons in 1990, 5,564 short tons in 1991, and 11,137 short tons in 1992. Importantly, the growth and level of imports of SSWR from France in 1992 coincided with the termination of the VRA that had been in place on stainless steel and mirrored the increase in imports from all sources in that year.[308]

Since the period examined in the original investigations, the annual quantity of imports of SSWR from France has continued to fluctuate in a range between 3,000 and 7,000 short tons. During the period examined in these reviews, the quantity of imports of SSWR from France increased from 3,153 short tons in 1997 to 6,643 short tons in 1999.[309] [310]

The share of the U.S. market held by imports of SSWR from France ranged from 6.3 percent to 10.8 percent between 1979 and 1981. During the period examined in the original investigations, the share of the U.S. market held by imports of SSWR from France ranged from 3.9 percent to 8.5 percent between 1990 and 1992. During the period examined in these reviews, the share of the U.S. market held by imports of SSWR from France ranged from *** percent to *** percent between 1997 and 1999.[311]

French manufacturer/exporter Ugine-Savoie Imphy (U-SI) reported that capacity increased by *** percent from 1997 to 1999. U-SI projects an increase in its *** capacity of *** percent in 2000 and

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[305] The cumulated quantity of imports from Brazil, France, and India increased from 6,701 short tons in 1990 to 8,966 short tons in 1991, and to 18,849 short tons in 1992. The share of the U.S. market held by SSWR from Brazil, France, and India rose from 5.7 percent in 1990 to 7.2 percent in 1991 and to 14.3 percent in 1992.

[306] USITC Pub. 2721 at I-21; USITC Pub. 2704 at I-18.

[307] Table I-2, CR at I-4-7, PR at I-3-6.

[308] Hearing transcript at 167 (testimony of Mr. Rosen) and Table I-2, CR at I-4-7, PR at I-3-6.

[309] French Respondents' Posthearing Brief, Attachment A at 26; Table I-2, CR at I-4-7, PR at I-3-6.

[310] We note the distinct difference of the effect of the orders on the volume of imports of the subject merchandise from France, on the one hand, and from Brazil and India on the other. While the quantity and market share of imports from Brazil, France, and India have declined since the peak years examined during the original investigations, the market share of French SSWR is comparable to that in 1991, the penultimate year of the original investigations. Imports of Brazilian SSWR have been absent from the U.S. market, as have Indian imports (in any commercial sense), at least until 1999.

[311] Table I-2, CR at I-4-7, PR at I-3-6.

2001.[312] Available capacity in France, however, was extremely limited throughout the period examined in these reviews, as French capacity utilization consistently hovered around *** percent during 1997-99, then spiked to nearly *** percent in the first quarter of 2000, despite an increase in overall *** capacity.[313] Moreover, it is clear that U-SI's internal consumption for the production of value-added downstream products as well as its shipments to other markets, especially Europe, have remained strong and continue to grow.[314] Accordingly, we find that there is virtually no existing unused production capacity in France, and that any likely increase in production capacity is consistent with overall increases in demand in Europe, France's primary and natural market for SSWR.

U-SI's inventory levels remained low throughout the period examined in these reviews, falling from *** short tons in December 1997 to *** short tons in December 1999, and to *** short tons in March 2000. By late 1999 and early 2000, U-SI's inventory levels were equivalent to less than *** percent of its total annual shipments. Likewise, inventory levels of French SSWR held in the United States were *** short tons in December 1999 and *** short tons in March 2000.[315] Accordingly we do not find existing inventories of the subject merchandise, or likely increases in inventories, to be significant.

The record does not indicate any barriers to the importation of the subject merchandise from France into countries other than the United States. To the contrary, French SSWR receives preferential tariff treatment within the European Union, and therefore does not face either normal duties or (as in the case of India) additional countervailing duties.[316]

We have also examined the potential for product-shifting, since the production facilities in France, which can be used to produce the subject merchandise, are currently also being used to produce ***, as well as value-added downstream products. We do not find product-shifting to be likely, in light of the priority that U-SI places on production of its profitable, value-added products[317] and the access that it has to European and U.S. markets for such downstream products such as stainless steel bar.[318]

Based on the foregoing, we do not find it likely that U-SI, upon revocation of the order, would increase exports to the U.S. market significantly, or that the import volume would rise significantly if the antidumping duty order were removed.[319] Consequently, based on the record in these reviews, we conclude

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[312] Table IV-3, CR at IV-8, PR at IV-5; CR at IV-9, PR at IV-5. We note that this increase in overall capacity is consistent with growth trends in U-SI's primary market, the European Union. French Respondents' Posthearing Brief, Attachment A at 26.

[313] Table IV-3, CR at IV-8, PR at IV-5.

[314] Table IV-3, CR at IV-8, PR at IV-5. Internal consumption increased from *** short tons in 1997 to *** short tons in 1999, and from *** short tons in the first quarter of 1999 to *** short tons in the first quarter of 2000. Exports to "other (non-U.S.) markets" remained stable between 1997 and 1999 at approximately *** short tons, but increased from *** short tons in the first quarter of 1999 to *** short tons in the first quarter of 2000.

[315] Tables IV-2 and IV-3, CR at IV-4 and IV-8, PR at IV-3 and IV-5.

[316] Posthearing Brief of the Domestic Interested Parties at 8-9.

[317] *** are U-SI's top three priorities. CR at IV-9, PR at IV-5. Both stainless steel bar and, to a lesser extent, stainless steel wire are profitable items for U-SI. *See* U-SI Posthearing Brief, exhibit 1, reporting profitability levels of *** percent for stainless steel bar and *** percent for stainless steel wire.

[318] Unlike stainless steel bar from Brazil and India, stainless steel bar from France faces no antidumping duty orders in the United States. *See* Stainless Steel Bar from Brazil, India, Japan, and Spain, Invs. Nos. 731-TA-678, 679, 681, and 682 (Final); USITC Pub. No. 2856 (Feb. 1995).

[319] *See* SAA at 890. We have considered the possibility that the imposition of the 1998 antidumping duty orders on imports of SSWR from six countries would result in a shift in exports from those countries away from the U.S.
(continued...)

that the likely volume of imports of the subject merchandise from France would not be significant within a reasonably foreseeable time if the antidumping duty order were revoked, either in absolute terms or relative to production or consumption in the United States.

B. Likely Price Effects of Subject Imports from France

During the original investigations, the Commission concluded that, while SSWR is characterized by some degree of product differentiation, the record provided evidence of price-based competition between the subject imports and the domestic like product in certain market segments. The Commission noted that, despite rising costs and an increase in domestic consumption between 1990 and 1992, domestic producers' prices trended downward over the period examined, while importers' prices fell further and faster.[320] The Commission found that the cumulated subject imports undersold the domestic product in 66 percent of the producer/importer comparisons and in 78 percent of the purchaser comparisons.[321]

As we have discussed in the conditions of competition, the record in these reviews indicates SSWR is sold in a wide variety of sizes and grades, including specialty and non-specialty grades, typically in accordance with customer requirements. Moreover, purchasers consider consistency/quality to be the primary factor used in purchasing decisions, followed by price and availability.[322] However, many purchasers also reported that purchasing decisions were usually based on price.[323]

There is general agreement among the parties that SSWR prices in the U.S. market are generally high relative to world prices.[324] However, the French product has been and continues to be generally priced at the same or higher levels than the domestic product. In the early 1990s, SSWR from France was frequently priced at the same or higher levels than the comparable domestic like product.[325] During the late 1990s and into the year 2000, SSWR from France was priced higher than the domestic like product in 62 percent of the producer/importer comparisons. Moreover, for grade AISI 302 HQ wire (the only product for which there was substantial direct competition between the domestic like product and imports of the

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[319] (...continued)
market, creating an opportunity for U-SI to increase its exports to the United States. The information on the record, however, indicates that U-SI's primary marketing focus is, and will continue to remain, the European market. In addition, it appears likely that the growth in demand in Europe will absorb any additional volume made available by U-SI or its European competitors now under order in the United States. We have also considered whether price differentials between the U.S. market and other major markets might induce U-SI to shift a significant volume of imports of French SSWR to the United States. We believe that generalizations regarding price differentials in the U.S. market and in U-SI's larger markets tend to be overstated because of cost differentials, primarily freight and duties.

[320] USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[321] The Commission concluded that, regardless of whether nonsubject imports were also selling for low prices, the low and falling prices of cumulated imports at a time when demand was rising; when subject import market shares were rising; and the domestic industry's market share was falling, clearly contributed to the significant declines in the domestic prices. USITC Pub. 2721 at I-22; USITC Pub. 2704 at I-18.

[322] Table II-2, CR at II-7, PR at II-5.

[323] CR at II-2 and II-7, PR at II-1 and II-5.

[324] *See, e.g.,* Hearing transcript at 179 (testimony of Mr. O'Donnell).

[325] Original Report at I-60 and I-63. During the period examined in the original investigations, French imports were priced at the same or higher levels than the domestic like product in 55 percent of the producer/importer comparisons and in 50 percent of the purchaser comparisons. *Id.*

subject merchandise from France), the French product was priced higher than the domestic product in all but two comparisons.[326]

Among the common SSWR products for which the Commission gathered pricing data, prices for several domestically produced products generally declined during the period examined, although others remained relatively flat. We tend to place less weight on the declining prices, however, in light of declining production and sales costs and the presence of substantial volumes of unfairly traded imports found by the Commission in late 1998 to have suppressed prices for the domestic product to a significant degree.[327]

We have considered whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of the domestic like product. We do not find that the record supports such a finding, in light of the history of French participation in the U.S. SSWR market, the fact that importers continue to sell French SSWR at prices that are frequently higher than those of comparable U.S. products, and the lack of any incentive for U-SI to depress or suppress U.S. prices. As discussed earlier, the volume of subject imports from France has tended to remain relatively stable. Moreover, because U-SI is operating at virtually peak production levels while concentrating on downstream products, European sales, and limited sales featuring specialty SSWR to the United States, the company has no motivation to price aggressively in order to gain additional U.S. sales and market share.

Consequently, on the basis of the record in these reviews, we find that revocation of the antidumping duty order on imports of SSWR from France would not be likely to lead to significant underselling by the subject imports of the domestic like product, or to significant price depression and suppression, within a reasonably foreseeable time.

C. Likely Impact of Subject Imports from France

In the original investigations, the Commission found declining production by the U.S. producers despite increases in apparent consumption. The domestic industry reported that its capacity utilization was less than 50 percent. U.S. producers reported positive operating income in 1990 and 1991, but operating losses in 1992. The domestic producers' capital expenditures declined late in the period as well.[328] The Commission concluded that the lower prices of the subject imports enabled them to increase market share in an expanding market at the expense of the domestic producers, leading to declines in domestic prices, domestic market share, production, shipments, and profitability.[329]

The evidence regarding the current state of the industry is mixed. Consistent with the general increase in demand for SSWR, capital expenditures by the domestic industry have increased markedly over the period examined in these reviews, contributing to substantial increases in U.S. producers' value of fixed

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[326] *See* CR at V-10-14 (price trends) and V-16-17 (underselling), PR at V-7 and V-9. We note that, with an antidumping duty order in place, overselling is not necessarily indicative of likely behavior, absent an order. However, we place relatively greater weight on current price comparisons between the domestic like product and imports of subject merchandise from France in light of the frequency of equivalent or higher French prices evident in the original investigations.

[327] Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. No. 3126 (Sept. 1998), at 16.

[328] USITC Pub. 2704 at I-13; USITC Pub. 2721 at I-15; *See also* Table I-2, CR at I-4-7, PR at I-3-6.

[329] USITC Pub. 2704 at I-18-19; USITC Pub. 2721 at I-23. As we noted in our discussion of likely price effects, however, imports of SSWR from France (as opposed to those from Brazil and India) were frequently priced at equivalent or higher levels than the domestic like product.

assets and in their productive capacity.[330] Volume-related indicators declined between 1997 and 1999, however, before rebounding in the first quarter of 2000. Prices generally declined, as did production and sales costs, resulting in fluctuating profitability. Operating income as a ratio to net sales was ***, but then increased to *** percent in the first quarter of 2000 compared with *** percent in the first quarter of 1999.[331]

We recognize that the domestic industry has faced some tumultuous years during the period examined in these reviews. In light of the mixed performance of U.S. producers during the period examined in these reviews, industry consolidation, and the placement of the majority of U.S. imports under antidumping duty orders,[332] however, we do not find the domestic industry to be vulnerable.

We have also considered whether any improvement in the state of the industry is related to the orders under review. The domestic industry has increased its production and U.S. shipments since the early 1990s. Moreover, it has eliminated unused capacity, resulting in substantially greater operating efficiency, as reflected in higher capacity utilization rates. Similarly, worker productivity has improved significantly since the early 1990s. However, the domestic industry has lost market share and reduced its employment levels. Moreover, comparable or even reduced average unit sales values have contributed to uneven financial performance.[333]

As discussed above, we conclude that revocation of the antidumping duty order on SSWR from France would not be likely to lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. We also find that any volume and price effects of the subject imports from France would not be likely to have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry.[334] Any minimal reduction in the industry's production, shipments, sales, market share, and revenues would not adversely impact the industry's profitability and ability to raise capital and maintain necessary capital investments.

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[330] Capital expenditures increased from *** in 1997 to *** in 1999, before returning to *** for the first quarter of 2000. Table III-11, CR at III-19, PR at III-5. The domestic industry's book value of fixed assets increased from *** in 1997 to *** in 1999, and to *** in the first quarter of 2000. *Id.* Similarly, capacity increased by *** percent between 1997 and 1999, and by *** percent in the first quarter of 2000. Table III-1, CR at III-1, PR at III-1.

[331] Table C-1, CR at C- 3-4, PR at C-3-4; CR and PR at Table E-7. For purposes of analyzing vulnerability, we have included the financial data submitted by *** using its *** report. Counsel for this company has indicated that this method of reporting financial data results in a more refined allocation of indirect costs. We note that this methodology differs substantially from that used in prior investigations. *See* CR at III-5, PR at III-3 and Domestic Interested Parties' Posthearing Brief, Exhibit 1 at 13.

[332] Stainless Steel Wire rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. No. 3126 (Sept. 1998).

[333] Table I-2, CR at I-4-7, PR at I-3-6. For our views on the financial data we used in our analysis, *see* footnote 132 in the majority views. We do not have financial performance data for the years immediately following the imposition of the orders at issue in these reviews. For this reason, and in light of the antidumping duty orders on SSWR issued in 1998, we cannot conclude whether any improvement in the industry's performance is related to the imposition of the orders at issue in these reviews.

[334] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. The likely margin of dumping for all producers in France is 24.51 percent. 65 Fed. Reg. 8121 (Feb. 17, 2000).

Accordingly, based on the record in these reviews, we conclude that, if the antidumping duty order were revoked, subject imports from France would not be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

III. Conclusion

For the foregoing reasons, based on the record in these five-year reviews, we determine that revocation of the antidumping duty orders covering imports of SSWR from Brazil and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Further, we determine that revocation of the antidumping duty order covering imports of SSWR from France and the countervailing duty order covering imports of SSWR from Spain is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.