

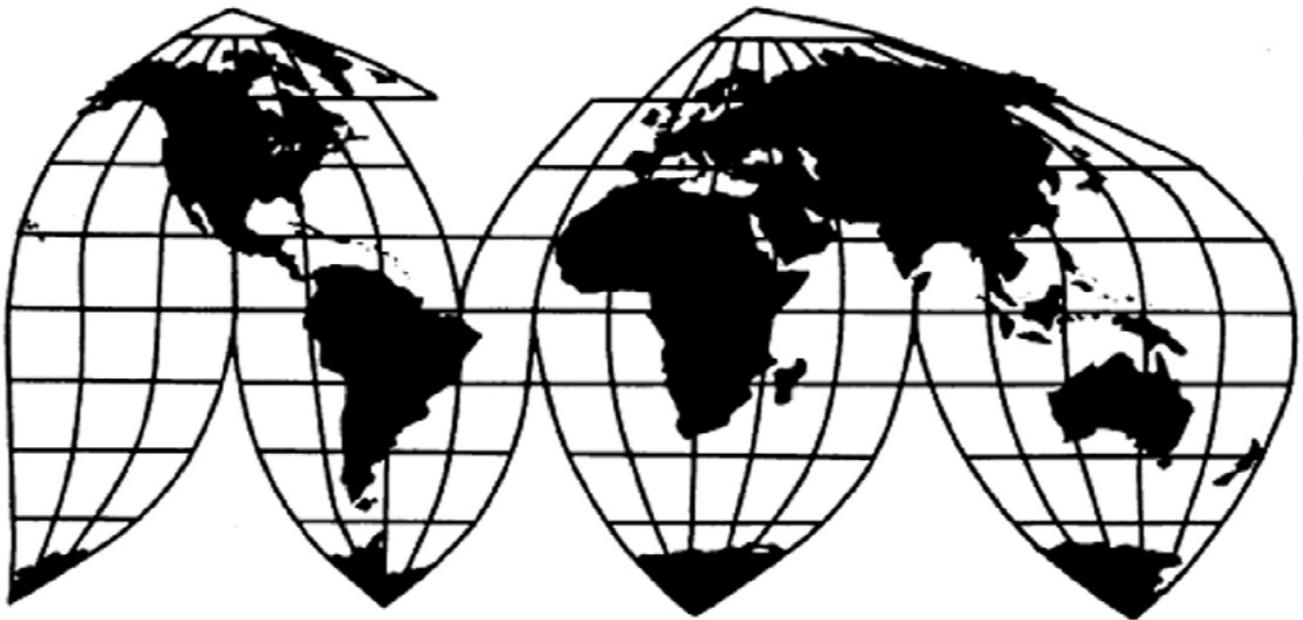
# Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago

Investigation No. 731-TA-961 (Final)(Second Remand)

Publication 4170

June 2010

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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# **U.S. International Trade Commission**

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this publication. Such deletions are indicated by asterisks.



## VIEWS OF THE COMMISSION

On March 29, 2010, the United States Court of International Trade issued an order directing the Commission to conduct a second remand proceeding in the original final phase antidumping investigation involving carbon and certain alloy steel wire rod (“wire rod”) from Trinidad and Tobago.<sup>1</sup> The remand is necessitated by the September 2008 Federal Circuit decision in the *Mittal Steel Point Lisas* litigation (“*Mittal Steel*”) vacating the Commission’s determination on first remand.<sup>2</sup> In this second remand proceeding, we determine that an industry in the United States is materially injured by reason of imports of wire rod from Trinidad and Tobago that are sold in the United States at less than fair value (“LTFV”).<sup>3</sup>

### I. BACKGROUND

In October 2002, the Commission determined that a domestic industry was materially injured by reason of imports of wire rod from Trinidad and Tobago that were sold in the United States at LTFV.<sup>4</sup> Caribbean Ispat Ltd., a Trinidadian producer and exporter of wire rod subsequently renamed Mittal Steel Point Lisas Ltd. and now known as Arcelor Mittal Point Lisas Ltd., (“AMPL”), initiated a judicial action to review the Commission’s determination. The Court of International Trade affirmed the Commission’s determination.<sup>5</sup> The Federal Circuit, however, vacated and remanded in *Caribbean Ispat*.<sup>6</sup> It ruled: (1) that the Commission acted contrary to law by failing to consider in its causation analysis concerning subject imports from Trinidad and Tobago the impact of imports from other subject countries which the Commission was statutorily precluded from cumulating with the Trinidadian imports in light of the Caribbean Basin Economic Recovery Act (“CBERA”), and (2) that the Commission’s causation analysis did not satisfy the requirements in *Bratsk Aluminum Smelter v. United States*<sup>7</sup> applicable when “commodity products” are at issue and price-competitive nonsubject imports are present in the market. The Federal Circuit remanded the matter for further consideration in light of its opinion. Accordingly, the Court of International Trade remanded the matter to the Commission.

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<sup>1</sup> *Mittal Steel Point Lisas Ltd. v. United States*, Slip Op. 10-32 (Ct. Int’l Trade March 29, 2010).

<sup>2</sup> *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867 (Fed. Cir. 2008).

<sup>3</sup> Chairman Deanna Tanner Okun, Commissioner Daniel R. Pearson, and Commissioner Dean A. Pinkert determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of wire rod from Trinidad and Tobago sold in the United States at LTFV. See Dissenting Views of Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson; Dissenting Views of Commissioner Dean A. Pinkert. They join sections I and II of this opinion, except as indicated.

<sup>4</sup> *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine*, Inv. Nos. 701-TA-417-421, 731-TA-953, 954, 956-959, 961, and 962 (Final), USITC Pub. 3546 at 36-38 (Oct. 2002) (“*Original Determination*”). For purposes of the determination on subject imports from Trinidad and Tobago, imports from Trinidad and Tobago were not eligible for cumulation with those from any other subject country under the cumulation exception applicable to beneficiary countries under the Caribbean Basin Economic Recovery Act. See 19 U.S.C. § 1677(7)(G)(ii)(III). Commissioner Okun reached a negative determination with respect to subject imports from Trinidad and Tobago.

<sup>5</sup> *Caribbean Ispat Ltd. v. United States*, 366 F. Supp.2d 1300 (Ct. Int’l Trade 2005).

<sup>6</sup> *Caribbean Ispat Ltd. v. United States*, 450 F.3d 1336 (Fed. Cir. 2006).

<sup>7</sup> 444 F.3d 1369 (Fed. Cir. 2006).

In January 2007, the Commission reached a negative determination on remand by a vote of 3-2.<sup>8</sup> The Commission opinion was joined by Commissioners Aranoff and Hillman. They reached a negative determination solely by application of the “replacement/benefit” analysis they perceived was mandated by the Federal Circuit opinions in *Bratsk* and *Caribbean Ispat*. Commissioner Okun reissued the negative determination she made during the original investigation. Commissioners Koplan and Lane found that because wire rod was not a commodity product, application of the “replacement/benefit” analysis was unnecessary; they reached an affirmative determination. Commissioner Pearson did not participate.<sup>9</sup>

The Court of International Trade affirmed the remand determination.<sup>10</sup> The Federal Circuit again vacated and remanded in a decision issued in September 2008.<sup>11</sup> In *Mittal Steel*, the Federal Circuit found three deficiencies in the Commission opinion on remand. These concerned: (1) the Commission’s construction and application of the causation standard articulated in *Bratsk* and *Caribbean Ispat* with respect to its analysis of current material injury; (2) the Commission’s analysis of whether wire rod was a “commodity product;” and (3) the Commission’s construction and application of the causation standard with respect to its analysis of threat of material injury. On March 29, 2010, the Court of International Trade issued an order directing the Commission to comply with the Federal Circuit’s opinion.

The Commission published a notice in the *Federal Register* instituting remand proceedings. While the Commission did not reopen the record, it invited parties to file comments.<sup>12</sup> Gerdau Ameristeel Corp. (“Gerdau”), a successor to one of the petitioning companies, and AMPL filed comments.<sup>13</sup>

The litigation pertaining to the Commission’s determination on wire rod from Trinidad and Tobago has not concerned the Commission’s findings, analysis, or conclusions concerning the issues of domestic like product, domestic industry, negligibility, cumulation, and conditions of competition.<sup>14</sup> All Commissioners adopt or reaffirm these findings for purposes of this second remand determination.<sup>15</sup> In particular, the discussion of conditions of competition in the original determination and the first remand

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<sup>8</sup> *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, Inv. No. 731-TA-961 (Final) (Remand), USITC Pub. 3903 at 1 (Jan. 2007) (“*First Remand Determination*”).

<sup>9</sup> Commissioners Aranoff, Lane, and Pearson had not participated in the original investigation.

<sup>10</sup> *Mittal Steel Point Lisas Ltd. v. United States*, 495 F. Supp.2d 1374 (Ct. Int’l Trade 2007).

<sup>11</sup> *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867 (Fed. Cir. 2008).

<sup>12</sup> 75 Fed. Reg. 21658 (Apr. 26, 2010).

<sup>13</sup> AMPL did not address the *Mittal* decision or provide substantive comments but merely referred to its comments in the first remand.

<sup>14</sup> See *Original Determination*, USITC Pub. 3546 at 6-12 (domestic like product), 13-15 (domestic industry), 16 (finding subject imports from Trinidad and Tobago not negligible), 18 (finding that, for determination on Trinidad and Tobago, those imports must be considered separately because of CBERA exception to cumulation), 23-26 (conditions of competition).

<sup>15</sup> Chairman Okun reaffirms the findings she made on these issues in the original determination. Commissioner Aranoff and Commissioner Lane adopted these findings in the first remand determination, and do so again here, as elaborated upon or incorporated in this second remand determination. Commissioner Pearson, Commissioner Williamson, and Commissioner Pinkert either were not members of the Commission at the time of the prior determinations, or did not participate in those determinations. They also adopt the findings on these issues from the original determination, as elaborated upon or incorporated in this second remand determination.

determination provide essential context to the discussion in part III of the views and should be read together to understand fully the Commission’s analysis.<sup>16 17</sup>

## II. LEGAL STANDARD

In antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.<sup>18</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>19</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>20</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>21</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>22</sup>

Although the statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” unfairly traded imports,<sup>23</sup> it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.<sup>24</sup> In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.<sup>25</sup>

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<sup>16</sup> Chairman Okun and Commissioner Pearson rely on the discussion of conditions of competition in the original determination and do not join Part III of these views. *See* their dissenting opinion.

<sup>17</sup> Commissioner Pinkert relies on the discussion of conditions of competition in the original determination and does not join Part III of these views.

<sup>18</sup> 19 U.S.C. §§ 1671d(b)(1)(A), 1673d(b)(1)(A).

<sup>19</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each {such} factor ... {a}nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

<sup>20</sup> 19 U.S.C. § 1677(7)(A).

<sup>21</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>22</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>23</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

<sup>24</sup> *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), *aff’d* 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

<sup>25</sup> The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). The *Mittal Steel* decision further ratified this. There the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. (continued...))

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.<sup>26</sup> In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.<sup>27</sup> Nor does the “by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.<sup>28</sup> It is clear that the existence of injury caused by other factors does not compel a negative determination.<sup>29</sup>

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission

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<sup>25</sup>(...continued)

Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” 345 F.3d at 1384. See also *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

<sup>26</sup> Statement of Administrative Action (“SAA”) on Uruguay Round Agreements Act (“URAA”), H.R. Rep. 103-316, Vol. I at 851-52 (1994) (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord *Mittal Steel*, 542 F.3d at 877.

<sup>27</sup> SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); *Taiwan Semiconductor Industry Ass’n v. USITC*, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also *Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’ then there is nothing to further examine regarding attribution to injury”), citing *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

<sup>28</sup> S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

<sup>29</sup> See *Nippon Steel Corp.*, 345 F.3d at 1381 (“an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

“ensure{s} that it is not attributing injury from other sources to the subject imports.”<sup>30 31</sup> Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”<sup>32</sup>

In *Mittal Steel*, as in *Gerald Metals* and *Bratsk*, the Federal Circuit focused on the presence in the market of significant volumes of price-competitive imports from nonsubject sources as the relevant “other factor.”<sup>33</sup> The Commission initially interpreted the Federal Circuit’s guidance in *Bratsk* as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject imports.<sup>34</sup> The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago* case that underlies the *Mittal Steel* litigation.

*Mittal Steel* clarifies that the Commission’s interpretation of *Bratsk* was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.<sup>35</sup> Accordingly, in our determinations since

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<sup>30</sup> *Mittal Steel*, 542 F.3d at 877-78; see also *id.* at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination . . . {and has} broad discretion with respect to its choice of methodology.”) citing *United States Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

<sup>31</sup> Commissioner Pinkert does not join this paragraph or the remainder of this opinion. As explained in his dissent, he has made a negative determination. See Dissenting Views of Commissioner Dean A. Pinkert.

Commissioner Pinkert points out that the Federal Circuit, in *Bratsk*, 444 F.3d 1369, and *Mittal*, held that the Commission is required, in certain circumstances when considering present material injury, to undertake a particular kind of analysis of nonsubject imports, albeit without reliance on presumptions or rigid formulas. *Mittal* explains as follows:

What *Bratsk* held is that “where commodity products are at issue and fairly traded, price-competitive, nonsubject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether nonsubject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, *Bratsk* requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor. 542 F.3d at 878.

<sup>32</sup> *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also *Mittal Steel*, 542 F.3d at 879 (“*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

<sup>33</sup> Undisturbed findings in *Caribbean Ispat* made clear that, for purposes of this investigation, “nonsubject” imports meant not merely those imports not subject to investigation, but also encompassed dumped and subsidized imports simultaneously subject to investigation but not eligible for cumulation with subject imports from Trinidad and Tobago because of CBERA. See *Caribbean Ispat*, 450 F.3d at 1339-41.

<sup>34</sup> *Mittal Steel*, 542 F.3d at 875-79.

<sup>35</sup> *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 875-79 & n.2 (recognizing the (continued...))

spring 2009, we have not considered ourselves required to apply the replacement/benefit test that was included in Commission opinions immediately subsequent to *Bratsk*.<sup>36</sup> For that reason, we do not apply such an analysis here.

Instead, we construe the progression of *Gerald Metals*, *Bratsk*, and *Mittal Steel* to clarify that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.<sup>37 38</sup> In this instance, that analysis occurs in numerous places throughout part III of the opinion.

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.<sup>39 40</sup>

### **III. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO**

#### **A. Volume of Subject Imports**

Section 771(7)(C)(I) of the Tariff Act of 1930, as amended (“the Act”) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that

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<sup>35</sup>(...continued)

Commission's alternative interpretation of *Bratsk* as a reminder to conduct a non-attribution analysis).

<sup>36</sup> See, e.g., *Welded Stainless Steel Pressure Pipe from China*, Inv. Nos. 701-TA-454, 731-TA-1144 (Final), USITC Pub. 4064 at 14 (March 2009). But see footnote 31 with respect to Commissioner Pinkert's causation analysis.

<sup>37</sup> Commissioner Lane also refers to her dissenting views in *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of *Mittal Steel*.

<sup>38</sup> To that end, after the Federal Circuit issued its decision in *Bratsk*, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission's causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. We did not make such requests in the original investigation that gave rise to this remand (which preceded *Bratsk*) and were unable to do so in the first remand proceeding because of insufficient time. See *First Remand Determination*, USITC Pub. 3903 at 2-3. Because the record of this investigation contains extensive information about the industries in the other countries subject to investigation, as well as public information about industries in nonsubject countries, we did not reopen the record in this second remand proceeding.

<sup>39</sup> *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp.*, 458 F.3d at 1350, citing *U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

<sup>40</sup> Chairman Okun and Commissioner Pearson have made negative determinations and do not join the remainder of this opinion. See their dissenting views.

volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>41</sup>

Throughout the period of investigation, Trinidad and Tobago was the second or third largest source, measured by quantity, of subject wire rod imports into the U.S. market.<sup>42</sup> The volume and market share of subject imports from Trinidad and Tobago increased from 1999 to 2001, even though total apparent U.S. consumption was declining.<sup>43</sup> The volume of subject imports from Trinidad and Tobago increased from 341,815 short tons in 1999 to 355,089 short tons in 2001, after declining to 287,507 short tons in 2000.<sup>44</sup> The share of the volume of the U.S. market held by subject imports from Trinidad and Tobago increased from \*\*\* percent in 1999 to \*\*\* percent in 2001, after decreasing to \*\*\* percent in 2000.<sup>45</sup> Relative to total domestic producers’ U.S. shipments of wire rod, the volume of subject imports from Trinidad and Tobago increased from \*\*\* percent in 1999 to \*\*\* percent in 2001, notwithstanding a decline in 2000.<sup>46</sup> The data pertaining to subject imports from Trinidad and Tobago are sufficient by themselves to support a finding that the volume of these subject imports, and the increase in that volume, is significant.<sup>47</sup>

Moreover, the record establishes that, while the total volume of imports from Trinidad and Tobago was smaller in absolute terms than that of either the cumulated non-Trinidadian subject imports or the nonsubject imports, imports from Trinidad and Tobago increased at a greater rate than the other imports from 2000 to 2001.<sup>48</sup> With respect to countries whose exports focused on lower priced industrial-grade wire rod, the relationship between relatively low prices and volume trends was mixed, with exports from

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<sup>41</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>42</sup> INV-DD-173, Table C-2 (Dec. 29, 2006).

<sup>43</sup> For the reasons stated in the original determination, we have reduced the weight accorded to interim 2002 data for purposes of our analysis of material injury by reason of subject imports from Trinidad and Tobago. 19 U.S.C. § 1677(7)(I); see *Original Determination*, USITC Pub. 3546 at 27 n.167, 36 n.230. We note, however, that the volume of subject imports from Trinidad and Tobago was significantly higher in interim (January-March) 2002, 89,857 short tons, than in interim 2001, 60,992 short tons. INV-Z-156, Table C-2 (Sept. 19, 2002).

<sup>44</sup> INV-Z-156, Table C-2.

<sup>45</sup> INV-Z-156, Table C-2. Although we give less weight to the interim data due to the pendency of the investigation, we note that the market share was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002. *Id.*

<sup>46</sup> The ratio of subject import volume from Trinidad and Tobago to domestic production declined from \*\*\* percent in 1999 to \*\*\* percent in 2000 and then increased to \*\*\* percent in 2001. It was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002. See INV-Z-156, Table C-2.

<sup>47</sup> It is well-established that the Commission has broad discretion in evaluating the significance of import volumes. See *Torrington Co. v. United States*, 790 F. Supp. 1161, 1172-73 (Ct. Int’l Trade 1992) (noting the statute does not specify how volume is to be evaluated and Commission discretion in investigative methodology).

<sup>48</sup> From 2000 to 2001, the volume of subject imports from Trinidad and Tobago increased by 67,582 short tons, or by 23.5 percent. By contrast, during the same period, all non-Trinidadian imports increased by only 0.4 percent, or 11,552 short tons. This increase was entirely attributable to the \*\*\* additional short tons of cumulated subject imports from sources other than Trinidad and Tobago; still, this increase was only \*\*\* percent. Imports from all other sources actually declined. INV-EE-002, Table C-2b (Jan. 3, 2007).

We have placed greatest weight on changes that occurred between the last two years of the period of investigation, because that period was more recent. Additionally, this is the period during which apparent consumption in the United States declined and the domestic industry began to experience a significant decline in trade and financial indicators. Consequently, it is only logical to look to this period to assess whether there is a causal connection between injury and the subject imports or some other factor.

some non-Trinidadian subject sources of relatively low-priced wire rod, such as Indonesia and Ukraine, dropping significantly from 2000 to 2001, when the import volumes of relatively more expensive subject imports from Trinidad and Tobago surged.<sup>49</sup> Similarly, import volumes from some relatively low-priced non-subject countries such as Egypt and Venezuela also dropped from 2000 to 2001, despite reported unit values that were relatively lower than those from Trinidad and Tobago.<sup>50</sup> From 2000 to 2001, the period in which we find that the domestic industry was injured most acutely, the overall import volumes of non-Trinidadian subject imports and nonsubject imports were relatively stable.<sup>51</sup> It was during this key period for the domestic industry, however, that import volumes from Trinidad and Tobago increased very substantially.<sup>52</sup>

Unlike shipments from other relatively large sources of supply such as Canada and Germany, which were typically more concentrated in higher value wire rod, the subject imports from Trinidad and Tobago were concentrated in the low/medium-low carbon industrial standard-grade wire rod where most domestic production was concentrated.<sup>53</sup> About \*\*\* percent of U.S. shipments of subject imports from Trinidad and Tobago from 1999 to 2001 were of this type.<sup>54</sup> We find that the concentration of imports from Trinidad and Tobago of wire rod in this portion of the market contributes to the significance of the volume of these subject imports, given their direct competition with the domestic like product as overall U.S. shipments decreased sharply from 2000 to 2001 and domestic producers lost market share.<sup>55</sup>

For all these reasons, we find that the volume of subject imports, both absolutely and relative to domestic production and consumption in the United States, is significant.

## **B. Price Effects of Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>56</sup>

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<sup>49</sup> INV-EE-002 at Table C-2b. Subject imports from another relatively low-priced source, Moldova, also declined from 2000 to 2001. *Id.*

<sup>50</sup> INV-EE-002 at Table C-2b.

<sup>51</sup> INV-EE-002 at Table C-2b.

<sup>52</sup> INV-EE-002 at Table C-2b.

<sup>53</sup> INV-Z-156, Tables D-1 and D-2 (Sept. 19, 2002); *see also* INV-DD-143 at I-28. For the U.S. industry, low/medium-low carbon industrial standard-grade wire rod accounted for \*\*\* percent of reported shipments in 2001. INV-Z-156, Table D-1. This category accounted for \*\*\* percent of total reported U.S. shipments of subject imports from Trinidad and Tobago in 2001, \*\*\* percent for Canada, and \*\*\* percent for Germany. INV-Z-156, Table D-2. Thus, most countries provide a full range of wire rod, but concentrations vary.

<sup>54</sup> INV-Z-156 at I-7, Tables D-1 and D-2. This category's share of U.S. shipments of imports from Trinidad and Tobago was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002. *Id.*

<sup>55</sup> INV-EE-002, Table C-2b.

<sup>56</sup> 19 U.S.C. § 1677(7)(C)(ii).

As previously discussed, during the period of investigation, most subject imports from Trinidad and Tobago were concentrated in the low/medium-low carbon industrial standard-grade wire rod category. These products are relatively unspecialized, sold largely on the basis of price, and are available from many sources. The market for these products is very price sensitive.<sup>57</sup> Subject imports from Trinidad and Tobago are highly substitutable with the domestic product in that category, which accentuates the price competition between subject imports from Trinidad and Tobago and the domestic like product.

Subject imports from Trinidad and Tobago undersold comparable U.S. products in 70.8 percent of quarterly comparisons from 1999 to 2001.<sup>58</sup> For Products 1 and 2, both of which were grades of industrial quality wire rod, subject imports from Trinidad and Tobago undersold the domestic industry in 22 out of 26 price comparisons (84.6 percent) by margins that ranged up to 11.0 percent.<sup>59</sup> Price comparisons between imports from Trinidad and Tobago and the domestic product for Products 1 and 2 represent the greatest quantity of merchandise for which the Commission obtained pricing data. In addition, eight purchasers rated the U.S. product inferior (higher) in price to subject imports from Trinidad and Tobago, and only one purchaser ranked the domestic product superior (lower) in price to subject imports from Trinidad and Tobago.<sup>60</sup> In light of the importance of price in purchasing decisions, and the significant and increasing volume of subject imports from Trinidad and Tobago from 1999 to 2001, we find the underselling indicated by the pricing data, and corroborated by the other information in the record, to be significant.

We further find that the domestic industry suffered from a significant cost-price squeeze during the period of investigation. The domestic industry's unit cost of goods sold ("COGS") increased during the period.<sup>61</sup> However, the domestic industry could not raise its prices sufficiently to recover its increased costs. Consequently, COGS as a share of net sales steadily increased from \*\*\* percent in 1999 to \*\*\* percent in 2000 and to \*\*\* percent in 2001.<sup>62</sup> This cost/price squeeze was exacerbated by the large fixed costs in the industry,<sup>63</sup> the price-based nature of the competition, the decreasing demand in the domestic industry's market, and the falling rate of its capacity utilization.<sup>64</sup>

The adverse price effects of subject imports from Trinidad and Tobago are underscored by the ability of those imports to increase their already significant U.S. market share from 1999 to 2001 at the expense of the domestic industry, despite the significant presence of other low-priced subject and nonsubject merchandise in the market. The sharp growth of Trinidad and Tobago's subject import volumes, even as apparent domestic consumption declined, exacerbated the cost-price squeeze by

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<sup>57</sup> See *Original Determination*, USITC Pub. 3546 at 28. We note that the other significant category of wire rod imports from Trinidad and Tobago, which comprised \*\*\* percent of its U.S. shipments in 2001, is the high/medium-high carbon industrial standard-grade wire rod category, which is also supplied by many domestic and import suppliers. INV-Z-156, Tables D-1 and D-2.

<sup>58</sup> INV-Z-156, Tables V-3-6, V-9. For the entire period for which pricing data was collected, including interim 2002, there was underselling in 69.2 percent of all quarterly comparisons. *Original Determination*, USITC Pub. 3546, Table V-10.

<sup>59</sup> INV-Z-156, Tables V-3-V-4.

<sup>60</sup> *Original Determination*, USITC Pub. 3546, Table II-11.

<sup>61</sup> INV-Z-162, Table C-2a; see also *Original Determination*, USITC Pub. 3546, Table VI-3.

<sup>62</sup> INV-Z-162, Table C-2a.

<sup>63</sup> *Original Determination*, USITC Pub. 3546, Table VI-5 (original cost of productive facilities for U.S. producers valued at \$1.6 billion in 2001).

<sup>64</sup> INV-Z-162, Table C-2a.

displacing domestic products, particularly during 2001, as lower priced imports from Trinidad and Tobago increased in volume by 67,582 short tons, or 23.5 percent, and gained market share at the expense of the domestic industry.<sup>65</sup> The loss of shipment volume led to even higher per-unit costs for the domestic producers, due to the high fixed-cost nature of wire rod production.

We further find that subject imports from Trinidad and Tobago have suppressed prices for the domestic like product to a significant degree. Pricing data collected in this investigation showed stagnant prices or, at best, small increases in prices between 1999 and 2000 for the specific products for which data were collected.<sup>66</sup> As noted above, subject imports undersold the domestic product in a large majority of comparisons over this entire period. We therefore find that pricing pressure from the readily available and increasing volume of lower priced subject imports from Trinidad and Tobago prevented the domestic industry from raising prices when its costs increased,<sup>67</sup> particularly in the price-sensitive low and medium-low carbon industrial quality wire rod category. Had the domestic industry attempted to increase prices to cover its costs, it would instead have lost further market share and revenues.

The price suppression that took place from 1999 to 2001 cannot be solely, or even largely, attributed to the combined non-Trinidadian subject and nonsubject imports. Pricing of non-Trinidadian cumulated subject imports of industrial-grade wire rod (pricing products 1 and 2) vis a vis subject imports from Trinidad and Tobago was mixed; there were more comparisons where the Trinidadian imports were priced higher than imports from other cumulated subject sources than where they were priced lower.<sup>68</sup> Nevertheless, as previously discussed, from 2000 to 2001, subject imports from Trinidad and Tobago increased their presence in the U.S. market at a substantially greater rate than the other imports. Subject imports from Trinidad and Tobago increased by 67,582 short tons, or 23.5 percent, while all non-Trinidadian imports increased by only 11,552 short tons, or 0.4 percent.<sup>69</sup> The average unit values of nonsubject imports were, on average, \*\*\* higher than those from Trinidad and Tobago throughout the period.<sup>70</sup> In light of the significant volume of subject imports from Trinidad and Tobago, their greater rate

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<sup>65</sup> INV-EE-002, Table C-2b.

<sup>66</sup> INV-Z-156, Tables V-3-V-9.

<sup>67</sup> INV-Z-162, Table C-2a.

<sup>68</sup> INV-Z-156, Tables V-3-4.

<sup>69</sup> INV-EE-002, Table C-2b.

<sup>70</sup> INV-EE-002 at Table C-2a. The Commission's preference is to rely on actual prices rather than average unit values ("AUVs"), which can mask differences in, and changes in, product mix. For example, the product-specific pricing data show underselling by Germany in 23 of 35 comparisons, and by Canada in 24 of 78 comparisons. *Original Determination*, USITC Pub. 3546, Table V-10. The AUVs for these countries, however, were above those for the domestic producers' shipments, demonstrating the problem with using AUVs as a proxy for price. See INV-EE-002, Table C-2a.

Nevertheless, for these remand proceedings, the AUV data constitute the most reliable facts available with respect to pricing of nonsubject imports. The Commission did not collect pricing data on nonsubject imports in the original investigations, and was precluded from doing so in the first remand proceedings because of insufficient time. See *First Remand Determination*, USITC Pub. 3903 at 2-3. In this second remand, the Commission did not believe it would be fruitful to issue new questionnaires seeking pricing data for a period that occurred eight to eleven years ago. Consequently, because more specific pricing data are not available, the Commission has relied on AUVs as the facts available concerning pricing of nonsubject imports.

The record also contains actual pricing data with respect to small quantities of wire rod imports from Germany, Egypt, Venezuela, and South Africa, which were each subject to investigation but found by the Commission to be negligible (Egypt, Venezuela, and South Africa in the preliminary determinations, and Germany

(continued...)

of increase than other imports between 2000 and 2001, and the impact of these imports on the domestic industry's production volume and market share, we conclude that the subject imports from Trinidad and Tobago contributed in more than a minimal or tangential manner to the domestic industry's inability to raise prices commensurately with increased costs.

We therefore find that there has been significant price underselling by subject imports from Trinidad and Tobago as compared with the price of domestic like product, and that the effect of the subject imports was to prevent price increases which otherwise would have occurred to a significant degree.

### **C. Impact of the Subject Imports**<sup>71</sup>

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."<sup>72</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>73</sup>

From 1999 to 2001, the capacity of the domestic industry followed the same trend as apparent U.S. consumption, increasing by a \*\*\* amount between 1999 and 2000, with a \*\*\* decline from 2000 to 2001.<sup>74</sup> Nevertheless, capacity utilization declined throughout this period, with the \*\*\* decline occurring from 2000 to 2001.<sup>75</sup>

The domestic industry's U.S. shipments declined \*\*\* from 1999 to 2000, but fell \*\*\* from 2000 to 2001.<sup>76</sup> Indeed, the \*\*\* percent decline in the quantity of U.S. shipments from 2000 to 2001 exceeded the \*\*\* percent decline in apparent U.S. consumption. As a result, the domestic industry's share of apparent U.S. consumption, which slipped from \*\*\* percent in 1999 to \*\*\* percent in 2000, fell \*\*\* to

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<sup>70</sup>(...continued)

in the final determinations), and from Turkey, which was terminated from the final phase investigations due to the Department of Commerce's negative subsidy determination. Imports from these countries, however, in the aggregate accounted for less than \*\*\* percent of all nonsubject imports, and pricing data from them cannot be extrapolated to nonsubject imports as a whole.

<sup>71</sup> In its final dumping determination concerning Trinidad and Tobago, Commerce found dumping margins of 11.40 percent for Caribbean Ispat Ltd. and all others. 67 Fed. Reg. 55788 (Aug. 30, 2002).

<sup>72</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.")

<sup>73</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>74</sup> Domestic producers' capacity was \*\*\* short tons in 1999, \*\*\* short tons in 2000, and \*\*\* short tons in 2001. INV-DD-173, Table C-2a.

<sup>75</sup> Capacity utilization was \*\*\* percent in 1999, \*\*\* percent in 2000, and \*\*\* percent in 2001. INV-DD-173, Table C-2a.

<sup>76</sup> The domestic industry's U.S. shipments declined from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, and declined further to \*\*\* short tons in 2001. Export shipments increased from 1999 to 2001, but were \*\*\* in relation to U.S. shipments. Inventory levels increased from 1999 to 2000 and declined from 2000 to 2001 in absolute terms, but the ratio of inventories to shipments was the same in 2001 as it was in 1999. INV-DD-173, Table C-2a.

\*\*\* percent in 2001. One reason for the domestic industry's marked decline in shipments and market share for 2000 to 2001 were subject imports from Trinidad and Tobago, which increased in absolute terms during this period despite the decline in apparent U.S. consumption, while gaining \*\*\* percentage points of market share.<sup>77</sup>

Employment-related indicators such as number of production and related workers, hours worked, and wages paid showed relatively modest fluctuations between 1999 and 2000. These indicators then all declined markedly from 2000 to 2001.<sup>78</sup>

The combination of low and declining capacity utilization, declining sales volumes, and price levels that were suppressed to a significant degree led to progressively worse operating results for the domestic industry. The industry's operating losses grew from \*\*\* in 1999 to \*\*\* in 2000, and then to \*\*\* in 2001.<sup>79</sup> The industry's operating income margin (operating income as a share of sales) fell from negative \*\*\* in 1999 to negative \*\*\* in 2000 and to negative \*\*\* in 2001.<sup>80</sup> Industry capital expenditures reported in the questionnaires increased somewhat from 1999 to 2000, then fell by \*\*\* in 2001.<sup>81</sup>

Thus, from 1999 to 2001 the domestic industry experienced growing operating losses, decreased production, shipments, capacity and capacity utilization, declining employment indicators, increasing costs, and suppressed prices. The subject producer in Trinidad and Tobago, the second or third most significant subject import supplier throughout the period of investigation, shipped increasing volumes of subject imports that undersold the domestic like product in a majority of comparisons and gained market share at the expense of the domestic industry. Between 2000 and 2001, when the domestic industry was experiencing its sharpest declines in shipments and profitability and was at its most vulnerable, subject imports from Trinidad and Tobago significantly increased in both absolute and relative terms, while regularly underselling the domestic like product.

Consistent with the instructions of the Federal Circuit in *Mittal Steel*, we have considered the role of those imports not from Trinidad and Tobago in contributing to the domestic industry's difficulties.<sup>82</sup> In our original determinations concerning imports from other subject sources, we found that these imports – when cumulated with imports from Trinidad and Tobago – had a material adverse impact on the domestic industry.<sup>83</sup> The record indicates, however, that the increased volumes of unfairly traded subject imports

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<sup>77</sup> INV-DD-173, Table C-2a.

<sup>78</sup> The number of production and related workers declined from \*\*\* in 1999 to \*\*\* in 2000, and then to \*\*\* in 2001. Hours worked increased from \*\*\* in 1999 to \*\*\* in 2000, and then declined to \*\*\* in 2001. Wages paid increased from \*\*\* in 1999 to \*\*\* in 2000, and then declined to \*\*\* in 2001. INV-DD-173, Table C-2a.

<sup>79</sup> INV-DD-173, Table C-2a. Although we give less weight to these data due to the pendency of the investigation, we note that in interim 2002, the domestic industry experienced an operating income of \*\*\* as compared to an operating loss of \*\*\* in interim 2001. INV-Z-156, Table C-2.

<sup>80</sup> INV-DD-173, Table C-2a.

<sup>81</sup> INV-DD-173, Table C-2a.

<sup>82</sup> Commissioner Aranoff observes that she reached a negative determination in the first remand solely by application of the “replacement/benefit” analysis she believed the Federal Circuit had mandated under *Caribbean Ispat. First Remand Determination*, USITC Pub. 3903 at 22. As indicated in section II, the Federal Circuit's decision in *Mittal Steel* indicates that the statute does not require a rigid “replacement/benefit” analysis; instead, Commissioners may use an appropriate methodology to ensure that they are not attributing injury from other sources to the subject imports. As explained below, in this second remand Commissioner Aranoff has determined that an affirmative determination is warranted using a non-attribution methodology consistent with *Mittal Steel*.

<sup>83</sup> *Original Determination*, USITC Pub. 3546 at 30-32.

from Trinidad and Tobago had an adverse impact on the domestic industry that is not attributable to imports from other sources.

We first considered those cumulated subject imports from sources other than Trinidad and Tobago. We emphasize that the subject imports from Canada were by a wide margin the largest individual import source supplying the U.S. market during the period of investigation.<sup>84</sup> A significant proportion of these imports consisted of high-value wire rod products which did not compete directly with the subject imports from Trinidad and Tobago.<sup>85</sup> While non-Trinidadian subject imports from other countries entered the United States at prices competitive with those of the Trinidadian product, the frequency and degree of underselling by subject imports from Trinidad and Tobago was sufficient by itself to drive a significant increase in subject import volume and market share from 2000 to 2001 at the expense of the domestic industry.<sup>86</sup> In other words, notwithstanding any adverse effects from other subject imports, subject imports of Trinidad and Tobago had sufficient volume and price effects so that the adverse impact of these imports on the domestic industry was not trivial or *de minimis*.

We next considered imports from other sources. While subject imports from Trinidad and Tobago increased by 23.5 percent from 2000 to 2001, when the domestic industry was having its greatest difficulties, import quantities from sources other than cumulated subject sources or Trinidad and Tobago actually declined.<sup>87</sup> The information available to the Commission indicates that average unit values for the nonsubject imports, a proxy for pricing data under these circumstances, were \*\*\* overall than those from Trinidad and Tobago during the period of investigation. The average unit values of the nonsubject imports also \*\*\* the average unit values of domestic producers' U.S. shipments. In light of these data, the presence of some price-competitive nonsubject imports in the market during the period of investigation does not detract from our conclusion that subject imports from Trinidad and Tobago had an adverse impact on the domestic industry that was not trivial or *de minimis*.

Consequently, we find that the subject imports from Trinidad and Tobago alone were having a significant adverse impact on the domestic industry producing wire rod, based on the significant and increasing volume and market share of subject imports from Trinidad and Tobago in a shrinking market, significant price underselling and significant price suppression by these imports, and declining industry indicators from 1999 to 2001.

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of LTFV imports of wire rod from Trinidad and Tobago.

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<sup>84</sup> INV-E-002, Table C-2b.

<sup>85</sup> INV-Z-156, Table D-2.

<sup>86</sup> Moreover, the only other sources of subject imports with market share increases comparable to Trinidad and Tobago from 2000 to 2001 were Canada and Mexico. INV-EE-002, Table C-2b. However, in the industrial quality wire rod products in which Trinidadian imports were concentrated, subject imports from Trinidad and Tobago were priced lower than subject imports from Canada or Mexico in most quarterly comparisons. INV-Z-156, Tables V-3-4. Additionally, as previously discussed, much of the subject Canadian imports were concentrated in higher grades.

<sup>87</sup> INV-EE-002, Table C-2b.



**DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN  
AND COMMISSIONER DANIEL R. PEARSON  
CONCERNING SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO**

**I. INTRODUCTION**

Based on the record in this investigation, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of carbon and certain alloy steel wire rod (“wire rod”) from Trinidad and Tobago that are sold in the United States at less than fair value (“LTFV”). On March 29, 2010, the U.S. Court of International Trade ordered the Commission to conduct a remand proceeding in the original final antidumping duty investigation regarding imports of wire rod from Trinidad and Tobago,<sup>1</sup> as a result of the September 2008 Federal Circuit decision in the Mittal Steel Point Lisas litigation (“Mittal Steel”).<sup>2</sup> Chairman Okun’s views in the original investigation, as reissued by her in the first remand proceeding, are not the subject of the Court’s remand order. She incorporates in its entirety her dissenting views in the original investigation in these supplemental views.<sup>3</sup> Commissioner Pearson did not participate in the original investigation nor in the first remand proceeding. Upon consideration of the record, Commissioner Pearson adopts in their entirety the dissenting views of Chairman Okun in the original investigation, as supplemented by these views. We join the Views of the Commission on remand concerning the background of this investigation and the appropriate legal standard.<sup>4</sup>

The original investigations involved subject imports of wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine.<sup>5</sup> For purposes of the determination on subject imports from Trinidad and Tobago, imports from Trinidad and Tobago were not eligible for cumulation with those from any other subject country under the cumulation exception applicable to beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA).<sup>6</sup> Thus, in the original investigations, Chairman Okun was precluded by statute from cumulating subject imports

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<sup>1</sup> Mittal Steel Point Lisas, Ltd. v. United States, Slip Op. 10-32 (Ct. Int’t Trade March 29, 2010).

<sup>2</sup> Mittal Steel Point Lisas, Ltd. v. United States, 542 F.3d 867 (Fed. Cir. 2008).

<sup>3</sup> Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine, Inv. Nos. 701-TA-417-421, 731-TA-953-954, 956-959, 961, and 962 (Final), USITC Pub. 3546 at 1 and 39-46 (Oct. 2002) (“Original Determination”).

<sup>4</sup> The Commission’s findings, analysis, or conclusions concerning the issues of domestic like product, domestic industry, negligibility, cumulation, and conditions of competition have not been at issue in the litigation. Chairman Okun reaffirms the findings she made on these issues in the original determination. Commissioner Pearson did not participate in the prior proceedings, but adopts the findings on these issues from the original determination. See Original Determination, USITC Pub. 3546 at 6-12 (domestic like product), 13-15 (domestic industry), 16 (finding subject imports from Trinidad and Tobago not negligible), 18 (finding that, for determination on Trinidad and Tobago, those imports must be considered separately because of CBERA exception to cumulation), 23-26 (conditions of competition).

<sup>5</sup> Original Determination, USITC Pub. 3546 at 28. The antidumping and countervailing duty investigations with regard to wire rod imports from Germany was terminated when the Commission determined in the original final phase determination that such imports were negligible. The Commission’s countervailing duty investigation with regard to wire rod imports from Turkey was terminated from the final investigation due to the Department of Commerce’s negative subsidy determination. USITC Pub. 3546 at 17 and I-1.

<sup>6</sup> See 19 U.S.C. § 1677(7)(G)(ii)(III).

from Trinidad and Tobago, which is a beneficiary country under CBERA, with any other subject imports.<sup>7</sup>

## **II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO**

### **A. Volume of Subject Imports**

Section 771(7)(C)(I) of the Tariff Act of 1930, as amended (“the Act”) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>8</sup>

As Chairman Okun found in her original determination, between 1999 and 2001 subject import volume from Trinidad and Tobago fluctuated, but increased by less than 4 percent and by less than \*\*\* as a share of the U.S. market.<sup>9</sup> In fact, imports from Trinidad and Tobago accounted for at most \*\*\* of the U.S. market during that period.<sup>10</sup> Thus, the record indicated that subject imports from Trinidad and Tobago constituted a small portion of the U.S. market and increased only modestly over the period examined, particularly, as discussed below, in comparison to the combined volume of subject imports of wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, and Ukraine, and the volume of nonsubject imports.

For all these reasons, we find that the volume of subject imports from Trinidad and Tobago, or any increases in such volume, both absolutely and relative to domestic production and consumption in the United States, is not significant.

### **B. Price Effects of Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether – (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>11</sup>

We incorporate by reference the discussion of price effects by subject imports from Trinidad and Tobago in the dissenting views of Chairman Okun in the original determination.<sup>12</sup> Subject imports from Trinidad and Tobago generally were priced higher than comparable wire rod from other subject countries

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<sup>7</sup> Original Determination, USITC Pub. 3546 at 18 and 39. Commissioner Pearson did not participate in the original wire rod investigations.

<sup>8</sup> 19 U.S.C. § 1677(7)(C)(I).

<sup>9</sup> The quantity of subject imports from Trinidad and Tobago decreased from 341,815 short tons in 1999 to 287,507 short tons in 2000, then increased to 355,089 short tons in 2001, resulting in a net increase of 3.9 percent (13,274 short tons). INV-Z-162 at Table C-2a.

<sup>10</sup> INV-Z-162 at Table C-2a.

<sup>11</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>12</sup> Original Determination, USITC Pub. 3546 at 41-43.

(as discussed below), generally increased in price in the second half of 2001,<sup>13</sup> and did not result in any confirmed instances of lost sales or lost revenues by the domestic industry.<sup>14</sup> Although subject imports from Trinidad and Tobago frequently were priced lower than comparable domestic wire rod, underselling was often by margins of less than 5 percent.<sup>15</sup> Moreover, as discussed below, in light of the large and growing presence of imports from subject countries other than Trinidad and Tobago that undersold both comparable U.S.-produced wire rod and comparable wire rod from Trinidad and Tobago, we do not find price suppressing effects of wire rod from Trinidad and Tobago to be significant.

We therefore find that there has not been significant price underselling by subject imports from Trinidad and Tobago as compared with the price of domestic like product, and that the effect of the subject imports did not depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree.

### C. Impact of Subject Imports<sup>16</sup>

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”<sup>17</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>18</sup>

Consistent with our finding that the volume and price effects of subject imports from Trinidad and Tobago are not significant, we find that such imports did not have a significant adverse impact on the domestic industry. We have considered the statutory factors included in the discussion of the impact of cumulated subject imports on the domestic industry contained in section V-D of the Views of the Commission in the original investigations.<sup>19</sup> We recognize that the condition of the domestic industry deteriorated markedly from 1999 to 2001.<sup>20</sup> The evidence, however, indicates that the significant volume

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<sup>13</sup> The record does not reflect a clear price leader in the U.S. market or any downward trend in prices for the domestic like product. INV-Z-156 at V-6 - V-8. Domestic and import prices fluctuated over the period examined, although most high volume products tended to peak in 2000, decline to period lows in early 2001, then increase late in 2001. INV-Z-156 at Tables V-3 - V-9.

<sup>14</sup> INV-Z-156 at Tables V-11 -V-12.

<sup>15</sup> INV-Z-156 at Tables V-3 - V-6 and V-9 - V-10. In 20 instances the margins of underselling were less than 5 percent; in the remaining 16 instances the margins ranged between 5.3 percent and 11.2 percent. *Id.*

<sup>16</sup> In its final dumping determination concerning Trinidad and Tobago, Commerce found dumping margins of 11.40 percent for Caribbean Ispat, Ltd. and all others. 67 Fed. Reg. 55788 (Aug. 30, 2002).

<sup>17</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851 and 885 (“In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

<sup>18</sup> 19 U.S.C. § 1677(7)(C)(iii); *see also* SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>19</sup> See Original Determination, USITC Pub. 3546 at 30-33.

<sup>20</sup> INV-Z-162 at Table C-2a.

loss and market-disrupting low prices experienced by the domestic industry were not more than minimally or tangentially by reason of the subject imports from Trinidad and Tobago.

We have considered whether factors other than subject imports have had an adverse impact on the domestic industry to ensure that we do not attribute effects from such factors to the subject imports from Trinidad and Tobago. In particular, we have considered the role of imports of wire rod from other countries subject to the original investigations (Brazil, Canada, Indonesia, Mexico, Moldova, and Ukraine) and from nonsubject sources (including Germany). While apparent U.S. consumption declined by \*\*\* from 1999 to 2001, the cumulated volume of other subject imports increased by \*\*\* and these imports' share of the U.S. market rose from \*\*\*.<sup>21</sup> The market share of nonsubject imports (including wire rod from Germany) also increased from \*\*\* to \*\*\* from 1999 to 2001.<sup>22</sup> Conversely, the domestic industry saw its market share erode by \*\*\* from 1999 to 2001, primarily at the expense of imports other than those from Trinidad and Tobago. Specifically, other imports captured substantial market share from the domestic industry, increasing by \*\*\* compared to the increase of only \*\*\* by subject imports from Trinidad and Tobago.

Moreover, the evidence also shows that wire rod from other subject countries generally was priced lower than both domestic product and subject imports from Trinidad and Tobago.<sup>23</sup> Not surprisingly, much of the growth in other subject import market share was the result of low-priced imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine.<sup>24</sup>

In the absence of significant volume and price effects from wire rod from Trinidad and Tobago and evidence that factors other than subject imports adversely affected the domestic industry's performance over the period, we do not find a sufficient causal link between subject imports from Trinidad and Tobago and the adverse condition of the domestic industry. Therefore, we determine that subject imports from Trinidad and Tobago did not have a significant adverse impact on the domestic industry.

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<sup>21</sup> INV-Z-162 at Table C-2a.

<sup>22</sup> INV-Z-162 at Table C-2a.

<sup>23</sup> For product 1, subject imports from Trinidad and Tobago generally were priced higher than subject imports from \*\*\*. INV-Z-156 at Table V-3. For product 2, subject imports from Trinidad and Tobago generally were priced higher than subject imports from \*\*\*. INV-Z-156 at Table V-4. For product 4, subject imports from Trinidad and Tobago generally were priced higher than subject imports from \*\*\*. INV-Z-156 at Table V-6. For product 7, subject imports from Trinidad and Tobago generally were priced lower than \*\*\* but higher than \*\*\*. INV-Z-156 at Table V-9.

<sup>24</sup> INV-Z-162 at Table C-2a (subject imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine gained nearly \*\*\* of market share from 1999 to 2001); INV-Z-156 at Table V-10 (subject imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine undersold comparable domestic wire rod in \*\*\* of comparisons). We recognize that imports from Canada increased by \*\*\* from 1999 to 2001 and that such imports typically sold at prices higher than comparable wire rod produced in the United States. INV-Z-162 at Table C-2a and INV-Z-156 at Table V-10.

### III. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>25</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.<sup>26</sup> In making our determinations, we consider all statutory threat factors that are relevant to these investigations.<sup>27</sup>

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<sup>25</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>26</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>27</sup> These factors are as follows:

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) 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;

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and,

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

19 U.S.C. § 1677(7)(F)(I). As a result of Commerce’s negative countervailing duty determination, factor I is inapplicable to wire rod from Trinidad and Tobago. This investigation does not involve an agricultural product, so statutory threat factor (VII) is not implicated. As no one has argued that the domestic industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, statutory threat factor (VIII) is not implicated.

As an initial matter,<sup>28</sup> we do not find that the domestic industry is vulnerable to a threat of material injury by reason of subject imports from Trinidad and Tobago. As noted above, the domestic industry experienced a sharp decline in its operating performance between 1999 and 2001. However, with the closure of four mills between December 2000 and June 2001, the domestic industry has streamlined and restructured.<sup>29</sup> Such market conditions would be conducive to higher price levels and more productive use of assets. Indeed, the domestic industry achieved profitability in the first quarter of 2001 on the strength of rising prices and declining costs.<sup>30</sup>

We have found the modest increase in the volume of subject imports in the U.S. market, both absolutely and relative to U.S. consumption, not to be significant. The evidence in the record does not indicate that a substantial increase in subject imports in the imminent future is likely.

Moreover, the sole Trinidadian producer, now known as Arcelor Mittal Point Lisas, Ltd. (“AMPL”),<sup>31</sup> has limited available capacity and already depends on the U.S. market for a substantial portion of its sales, neither of which suggests the likelihood of a significant increase in subject import volume in the imminent future. During the period of investigation, AMPL’s capacity remained stable and is projected to remain at \*\*\* annually.<sup>32</sup> The industry operated at \*\*\* high capacity utilization rates throughout the period of investigation and projects similarly high rates in the future, leaving little spare capacity for additional exports.<sup>33</sup> The U.S. market has been the primary focus of the Trinidadian industry and is projected to remain so in the imminent future.<sup>34</sup> Moreover, the share of shipments exported to the United States has been relatively stable over the period of investigation. Inventories were somewhat higher at the end of 2001 than in 1999, but the increase in inventories was small relative to overall shipments.<sup>35</sup>

The relevant facts regarding Trinidad and Tobago do not suggest a likely substantial increase in subject imports from Trinidad and Tobago in the imminent future – Trinidad wire rod production capacity still is \*\*\*, Trinidad already is dependent on the U.S. market for a substantial portion of its sales, and capacity, even if production is increased, will limit additional exports to the U.S. market to levels at or lower than during the period of investigation. In light of the consistently high capacity utilization levels by AMPL, its limited availability of excess capacity and the relatively low and stable inventory levels, we find no likelihood of a substantial increase in the volume of subject imports.

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<sup>28</sup> We note that the conditions discussed in this opinion are those that were in existence at the time of the Commission’s original final determination.

<sup>29</sup> INV-Z-156 at II-2-4.

<sup>30</sup> INV-Z-162 at Table C-2a.

<sup>31</sup> The sole Trinidadian producer and exporter of wire rod was named Caribbean Ispat at the time of the original investigations, was subsequently renamed Mittal Steel Point Lisas, Ltd., and now is known as Arcelor Mittal Point Lisas, Ltd.

<sup>32</sup> INV-Z-156 at Table VII-7.

<sup>33</sup> INV-Z-156 at Table VII-7. AMPL’s capacity utilization levels were \*\*\* in 1999, \*\*\* in 2000, and \*\*\* in 2001. In the first quarter of 2002, capacity utilization was \*\*\* compared to \*\*\* in the first quarter of 2001. *Id.*

<sup>34</sup> INV-Z-156 at Table VII-7. Exports to the U.S. market already account for a substantial share of AMPL’s shipments, fluctuating between \*\*\* and \*\*\* of total Trinidadian shipments from 1999 to 2001. Projections for 2002 and 2003 of \*\*\* in line with the export shipments during the period of investigation. *Id.* AMPL’s non-U.S. export markets include \*\*\*. INV-Z-156 at Table VII-7, note 2.

<sup>35</sup> INV-Z-156 at Table VII-7. Moreover, U.S. importer-held inventories were quite small (less than \*\*\* and consistently less than \*\*\* of imports of wire rod from Trinidad and Tobago. INV-Z-156 at Table VII-9.

We have already found that subject imports from Trinidad and Tobago have not had significantly adverse effects on domestic prices. Because prices increased in the most recent quarters, domestic supply has become more constrained due to mill closures, and a significant increase in subject imports from Trinidad and Tobago does not appear imminent, we do not find that subject imports from Trinidad and Tobago are likely to have significant depressing or suppressing effects on domestic prices in the imminent future.

We also find that subject imports from Trinidad and Tobago are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts<sup>36</sup> nor that AMPL is likely to shift production from other products to wire rod.<sup>37</sup> Finally, Colombia has had an antidumping duty order on low carbon wire rod from Trinidad and Tobago since December 1997, which terminated on December 26, 2002.<sup>38</sup>

#### IV. CONCLUSION

For the reasons stated above, we find that the domestic industry producing wire rod is not materially injured or threatened with material injury by reason of subject imports from Trinidad and Tobago sold at LTFV.

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<sup>36</sup> Domestic production and capital expenditures were higher in the first quarter of 2002 compared to the first quarter of 2001, although capacity and R&D expenditures were lower. INV-Z-162 at Table C-2a and INV-Z-156 at Table VI-5.

<sup>37</sup> While AMPL produces \*\*\* on the same equipment used to produce wire rod, there is no evidence indicating that it is likely to alter its allocated capacity of about \*\*\* between \*\*\* and wire rod. INV-Z-156 at VII-10.

<sup>38</sup> USITC Pub. 3546 at VII-5. Under the order, imports were required to meet or exceed certain reference prices established by the Colombian Ministry of Foreign Trade. Also, since March 1, 2000, U.S. imports of wire rod other than those from Canada and Mexico had been subject to a tariff-rate quota (TRQ); the TRQ, which included a defined allocation for Trinidad and Tobago imposing an additional 5 percent tariff on over-quota shipments, expired in March 2003. Id.



## DISSENTING VIEWS OF COMMISSIONER DEAN A. PINKERT

Based on the record in this investigation, I determine that an industry in the United States is not materially injured or threatened by material injury by reason of subject imports of wire rod from Trinidad and Tobago that have been found by Commerce to be sold in the United States at less than fair value.

As discussed in greater detail below, I find the volume of subject imports<sup>1</sup> and their price effects to be significant. Based on the causation analysis required by the Federal Circuit in *Bratsk* and *Mittal*, however, I find that the domestic industry is not materially injured “by reason of” subject imports.<sup>2</sup> Moreover, I find that the domestic industry is not threatened with material injury by reason of subject imports because subject imports will not likely increase in volume or cause increased price effects in the imminent future, and there is no indication that the dynamics of competition in the U.S. market will change significantly in that timeframe.

### I. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO

#### A. Volume of Subject Imports

The volume and market share of subject imports from Trinidad and Tobago increased from 1999 to 2001, even though apparent U.S. consumption was declining. Subject import volume decreased from 341,815 short tons in 1999 to 287,507 short tons in 2000 and then increased to 355,089 short tons in 2001.<sup>3</sup> The share of the U.S. market held by the subject imports similarly decreased from \*\*\* percent in 1999 to \*\*\* percent in 2000 and then increased to \*\*\* percent in 2001.<sup>4</sup> The ratio of subject imports to domestic production also decreased from \*\*\* percent in 1999 to \*\*\* percent in 2001 before increasing to \*\*\* percent in 2001.<sup>5</sup>

Subject imports from Trinidad and Tobago are concentrated in low carbon industrial quality wire rod – a highly price-sensitive and interchangeable product sold by many suppliers in the United States, including domestic producers.<sup>6</sup> Subject import shipments were particularly concentrated in the low

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<sup>1</sup> In these Views, “subject imports” refers to imports of subject merchandise from Trinidad and Tobago.

<sup>2</sup> As set out in the background of the Commission’s majority views, my interpretation of the requirements set forth in *Bratsk Aluminum Smelter v. United States*, 444 F. 3d 1369 (Fed. Cir. 2006), and *Mittal Steel Point Lisas, Ltd. v. United States*, 543 F. 3d 867 (Fed. Cir. 2008), differs from that of my colleagues.

<sup>3</sup> Memorandum INV-Z-162, Table C-2a. I give less weight to the interim (January to March) 2002 data, which were affected by the pendency of the investigation. I note, however, that the volume of subject imports from Trinidad and Tobago was 60,992 short tons in interim 2001 and 89,857 short tons in interim 2002. *Id.*

<sup>4</sup> Memorandum INV-Z-162, Table C-2a. The market share was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002. *Id.*

<sup>5</sup> Calculated from Memorandum INV-Z-162, Table C-2a. The ratio of subject imports from Trinidad and Tobago to domestic production was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002.

<sup>6</sup> In the original 2002 investigations, Petitioners stated that imports of wire rod from Trinidad and Tobago were \*\*\*. Petitioners’ Prehearing Brief at 62.

carbon industrial quality wire rod category,<sup>7</sup> which accounted for \*\*\* percent of subject import shipments in the U.S. market and \*\*\* of domestic producer U.S. shipments from 1999 to 2001.<sup>8</sup>

Similarly, the second largest category in which subject imports from Trinidad and Tobago compete in the U.S. market – high carbon industrial quality or high carbon wire rod – is a significantly price-sensitive and interchangeable product sold by many suppliers in the U.S. market.<sup>9</sup> Subject imports in the high carbon industrial quality wire rod category<sup>10</sup> accounted for \*\*\* percent of subject import shipments in the U.S. market and \*\*\* percent of domestic producer U.S. shipments from 1999 to 2001.<sup>11</sup>

The vast majority of subject import shipments \*\*\* and domestic producers' shipments \*\*\* from 1999 to 2001 were in one of these two standardized industrial quality wire rod categories. The high intensity of direct competition between subject imports from Trinidad and Tobago and the domestic like product in these categories increases the significance of the subject import volume.<sup>12</sup>

In such a competitive, price-sensitive market, I find the volume and market share of subject imports to be significant, both absolutely and relative to production and consumption in the United States, particularly given that (1) subject import volume was at its highest level in 2001 (when apparent U.S. consumption fell) and (2) the domestic industry experienced a significant decline in trade and financial indicators at that time.

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<sup>7</sup> The tables in Appendix D to the staff report refer to this category of wire rod as low/medium-low carbon industrial/standard quality wire rod. These products are made from low or medium-low carbon steel and are used to manufacture wire that is consumed in making nails, coat hangers, and mesh for concrete reinforcement/fencing. Low carbon industrial quality wire rod is sometimes referred to as “industrial quality wire rod.” CR/PR (the public or confidential version of the original final phase staff report in these investigations, specifically Memorandum INV-Z-156 dated September 19, 2002) at Table I-1; CR at I-7, PR at I-6. CR/PR at Tables D-1 and D-2.

<sup>8</sup> CR/PR at Tables D-1 and D-2. Shipments of low carbon industrial quality wire rod also accounted for the majority of U.S. shipments from Brazil, Indonesia, Mexico, Moldova, Ukraine, and “other sources” from 1999 to 2001. *Id.*

<sup>9</sup> “[I]n the end quarterly negotiations usually come down to price, whether it's mesh or hanger quality, bead or high carbon, CHQ or industrial quality, price is the primary and overriding issue. We have found that if the price is right, the issues of availability, qualifications, et cetera, seem to work themselves out.” Tr. at 66-67 (Lundberg, North Star Steel).

<sup>10</sup> The tables in Appendix D to the staff report refer to this category of wire rod as high /medium-high carbon industrial/standard quality wire rod. These products are made from high or medium-high carbon steel and are used to manufacture wire that is consumed in making strand and rope, tire bead and upholstery string, and other items. CR/PR at Table I-1. High carbon industrial quality wire rod is sometimes referred to as “high carbon wire rod.” CR/PR at Table I-1. *See* Table D-3, Preliminary Staff Report, referencing “H/MH carbon quality rods.” Memorandum INV-Y-204 issued October 9, 2001.

<sup>11</sup> CR/PR at Tables D-1 and D-2. Importers shipped low and high carbon industrial quality wire rod from a wide variety of countries into the U.S. market from 1999 to 2001. The remaining shipments from Trinidad and Tobago were in the welding and “all other” categories; those types of wire rod were also supplied by the domestic industry in substantial quantities. *Id.*

<sup>12</sup> Petitioners characterized wire rod as “a basic industrial commodity that is primarily sold on price” and the market for wire rod as “a commodity market characterized by intense price-based competition.” Petitioners' Posthearing Brief at 50, 62.

## B. Price Effects of Subject Imports

Wire rod is sold largely on the basis of price.<sup>13</sup> Purchasers ranked price as the second most important factor after quality in selecting a wire rod supplier.<sup>14</sup> Wire rod of similar quality and intended for similar uses is generally interchangeable regardless of source.<sup>15</sup> Purchasers reported that wire rod from foreign and domestic sources can be used in the same applications in most instances.<sup>16</sup>

As stated above, subject imports are highly substitutable with the domestic like product in the low and high carbon industrial quality products, which are the dominant product categories for both subject and domestic shipments.<sup>17</sup> Subject imports compete directly against the domestic like product in those categories.

Overall, subject imports from Trinidad and Tobago undersold comparable U.S. products in 70.8 percent of quarterly price comparisons from 1999 to 2001.<sup>18</sup> Products 1 and 2 were grades of low carbon industrial quality wire rod, and the price comparisons between subject imports and the domestic like product with respect to these products represented substantially more merchandise than the price comparisons with respect to the other products for which the Commission obtained pricing data. Subject imports undersold the domestic like product in price comparisons involving the two products in 22 out of 26 comparisons by margins ranging up to 11.0 percent.<sup>19</sup> Subject imports also undersold the domestic like product with respect to Product 4, a high carbon wire rod, in 9 of 13 comparisons by margins ranging up to 4.6 percent.<sup>20</sup> I find the underselling by the subject imports, particularly in the low carbon industrial quality wire rod segment of the market, to be significant.

The domestic industry's cost of goods sold ("COGS") as a share of net sales increased steadily from \*\*\* percent in 1999 to \*\*\* percent in 2000 and \*\*\* percent in 2001.<sup>21</sup> Unit COGS also increased steadily over this period.<sup>22</sup> Pricing pressure from lower priced subject imports from Trinidad and Tobago prevented the domestic industry from raising prices to a significant degree, particularly in 2001, when subject import volume and unit costs reached their highest levels of the period examined and the COGS/sales ratio exceeded \*\*\* percent.<sup>23</sup> Although other factors, such as decreased demand and other

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<sup>13</sup> Tr. at 66-67 (Lundberg, North Star Steel); Petitioners' Posthearing Brief at 50.

<sup>14</sup> CR/PR at Table II-2.

<sup>15</sup> CR at I-7; PR at I-6.

<sup>16</sup> CR/PR at Table II-4.

<sup>17</sup> There were also smaller volumes of subject shipments in the welding quality and "all other" categories.

<sup>18</sup> CR/PR at Tables V-3, V-4, V-5, V-6, and V-9. Including in interim 2002, subject imports undersold the domestic like product in 69.2 percent of all quarterly price comparisons for the periods examined. Moreover, eight purchasers rated the U.S. product inferior (higher) in price to subject imports from Trinidad and Tobago, and only one purchaser ranked the domestic like product superior (lower) in price to subject imports. CR/PR at Table II-11.

<sup>19</sup> CR/PR at Tables V-3-V-4.

<sup>20</sup> CR/PR at Table V-6. The available price comparison data for Product 7 showed a greater number of instances of overselling than of underselling. CR/PR at Table V-9.

<sup>21</sup> OINV Memorandum INV-Z-162, Table C-2a. COGS as a share of net sales was \*\*\* percent in interim 2001 and \*\*\* percent in interim 2002. *Id.* As stated earlier, however, I give less weight to the interim 2002 data.

<sup>22</sup> OINV Memorandum INV-Z-162, Table C-2a. Unit COGS was higher in interim 2001 than in interim 2002. *Id.*

<sup>23</sup> CR/PR at Tables V-3, V-4 and V-6.

lower priced imports, may have affected U.S. prices, I find that lower priced subject imports from Trinidad and Tobago suppressed domestic prices to a significant degree.

Accordingly, I find that subject imports from Trinidad and Tobago had significant adverse price effects on domestic wire rod prices over the period of investigation.

### C. *Bratsk* Analysis

The Federal Circuit in *Bratsk* and *Mittal* held that the Commission is required when considering present material injury, in certain circumstances, to undertake a particular kind of causation analysis, albeit without reliance on presumptions or rigid formulas.<sup>24</sup> As explained below, I conclude based on my *Bratsk* analysis that the domestic industry is not suffering present material injury by reason of subject imports.<sup>25</sup> In accordance with post-*Bratsk* Federal Circuit precedent, I have treated all non-Trinidadian imports as non-subject imports for purposes of this analysis.<sup>26</sup>

As a threshold matter, I find that the *Bratsk* triggering factors are satisfied. The first triggering factor is that “commodity products” must be “at issue” in an investigation.<sup>27</sup> In *Bratsk* the Federal Circuit stated that a commodity product is “generally interchangeable regardless of its source.”<sup>28</sup> The wire rod at issue in this investigation is the subject wire rod imported from Trinidad and Tobago. As stated earlier, wire rod of similar quality and uses is generally interchangeable regardless of source.<sup>29</sup> Although there are specialized types of wire rod from some sources that may not be readily interchangeable with wire rod from other sources, the subject imports were concentrated heavily in low and high carbon industrial quality wire rod during the period of investigation.<sup>30</sup> These products are standardized, interchangeable products that compete on the basis of price and are available from many suppliers in the U.S. market. Thus, I find the subject imports from Trinidad and Tobago to be commodity products for *Bratsk* purposes.

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<sup>24</sup> I refer to this analysis as the *Bratsk* analysis.

<sup>25</sup> Although I have considered all of the impact factors set forth in 19 U.S.C. § 1677 (7)(C)(iii), they do not affect the outcome of the analysis in this section.

<sup>26</sup> As discussed in the background section of the majority opinion, after being affirmed by the CIT, the Commission’s original determination in this case was appealed to the Federal Circuit. On appeal, the Federal Circuit held that “[b]ecause CBERA required the Commission to treat Trinidad and Tobago’s imports separately from all other imports, our holding in *Bratsk* indicates that, in the present case, the ‘Commission is required to make a specific causation determination and in that connection to directly address whether [other LTFV imports and/or fairly traded imports] would have replaced [Trinidad and Tobago’s] imports without any beneficial effect on domestic producers.’” *Caribbean Ispat*, 450 F.3d at 1341. In other words, in performing a *Bratsk* analysis, other non-cumulated LTFV imports must be treated as fairly traded imports. I have referred to other LTFV imports and/or fairly traded imports as “non-Trinidadian” imports.

<sup>27</sup> *Bratsk*, 444 F.3d at 1373.

<sup>28</sup> *Bratsk*, 444 F.3d at 1371.

<sup>29</sup> CR at I-7; PR at I-6.

<sup>30</sup> There were also smaller volumes of shipments of subject imports in the welding quality and “all other” wire rod categories. Again, wire rod of similar quality and similar applications is generally interchangeable regardless of source, and there is no indication in the record that these products would not be available from non-Trinidadian producers shipping wire rod in those categories.

The second triggering factor is that “fairly traded, price competitive, non-subject imports” are in the market.<sup>31</sup> Price-competitive, non-Trinidadian imports were \*\*\* percent of total apparent U.S. consumption in 1999, \*\*\* percent in 2000, and \*\*\* percent in 2001.<sup>32</sup> U.S. shipments of non-Trinidadian imports in the low and high carbon industrial quality categories were \*\*\* short tons in 1999, \*\*\* short tons in 2000, and \*\*\* short tons in 2001.<sup>33</sup> Non-Trinidadian imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine, which were concentrated in low carbon industrial quality wire rod, or low and high carbon industrial quality wire rod, undersold the domestic like product in the majority of available price comparisons during the annual periods examined.<sup>34</sup> Thus, I find that price-competitive, non-Trinidadian imports were a significant factor in the U.S. market during the period of investigation.

Having found that the threshold criteria under *Bratsk* are satisfied, I further find that, had the subject imports from Trinidad and Tobago exited the U.S. market during the period of investigation, non-Trinidadian imports would have replaced them without the domestic industry benefitting from the absence of the subject imports. The volume of subject imports was 355,089 short tons at its peak in 2001. Producers in Brazil, Indonesia, Mexico, Moldova, and Ukraine had excess capacity of \*\*\* short tons in 1999, \*\*\* short tons in 2000, and \*\*\* short tons in 2001; they had end-of-period inventories in the aggregate of \*\*\* short tons in 1999, \*\*\* short tons in 2000, and \*\*\* short tons in 2001.<sup>35</sup> Moreover, in 2001, there were \*\*\* short tons of U.S. inventories of imports from these countries, primarily from Moldova and Ukraine.<sup>36</sup> Foreign producers in these countries demonstrated a strong interest in the U.S. market and an ability quickly to shift exports to the U.S. market.<sup>37</sup>

Additionally, wire rod is produced worldwide by many producers. Over \*\*\* short tons of wire rod were produced in 2000 in countries that were not subject to the Commission’s 2002 final investigations.<sup>38</sup> Reporting importers’ shipments of low and high carbon industrial quality wire rod from sources other than the imports under investigation were substantial; they were \*\*\* short tons in 1999, \*\*\* short tons in 2000, and \*\*\* short tons in 2001.<sup>39</sup>

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<sup>31</sup> *Bratsk*, 444 F.3d at 1373.

<sup>32</sup> Calculated from Supplement to Remand Staff Report, Memorandum INV-EE-002, at Table C-2b.

<sup>33</sup> Calculated from CR/PR at Table D-2.

<sup>34</sup> CR/PR at Table D-2, Table V-10.

<sup>35</sup> Calculated from CR/PR at Tables VII-1, VII-4, VII-5, VII-6, and VII-8.

<sup>36</sup> CR/PR at Table VII-9. Importer inventories were considerably lower in prior years.

<sup>37</sup> The combined volume of subject imports from Brazil, Indonesia, Mexico, Moldova, and Ukraine increased from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, before decreasing to \*\*\* short tons in 2001. The increase in import volume from these five countries from 1999 to 2000 was \*\*\* short tons. Calculated from CR/PR at Table IV-1.

<sup>38</sup> From 1999 to 2000, wire rod was produced in 41 countries that were considered non-subject countries in the original 2002 investigations and seven countries that were subject to those investigations. Remand Staff Report (Memorandum INV-DD-173 dated December 29, 2006) at Table I-4. Germany was included as a non-subject country for purposes of this tabulation; its imports were found to be negligible, and the investigation with respect to Germany was therefore terminated in the Commission’s final determinations.

<sup>39</sup> Calculated from CR/PR at Table D-2. These data are probably underreported, as total reported importer shipments shown in Table D-2 accounted for only \*\*\* percent of total imports in 1999, \*\*\* percent in 2000, and \*\*\* percent in 2001. Calculated from CR/PR at Table IV-1 and Table D-2. These data do not include imports from Germany, as separate data were collected on imports from that country.

Given the consistent interest in the U.S. market shown by producers in Brazil, Indonesia, Mexico, Moldova, and Ukraine and the substantial quantities of imports from other countries in the low and high carbon industrial quality wire rod categories, there is every reason to believe that, in the absence of the subject imports, non-Trinidadian imports would have increased to replace fully the volume and market share of subject imports from Trinidad and Tobago. Producers in those countries have supplied the U.S. market with wire rod comparable to that supplied by Caribbean Ispat, and they would thus likely have taken advantage of its exit from the U.S. market.

The replacement of the subject imports with non-Trinidadian imports during the period would likely have eliminated any benefit to the domestic industry. Turning to the pricing data, imports of Products 1 and 2 -- low carbon industrial quality wire rod products -- from Brazil, Moldova, and Ukraine were generally priced lower than subject imports from Trinidad and Tobago, while imports of these products from Mexico were generally priced higher for Product 1 and sometimes higher/sometimes lower for Product 2.<sup>40</sup> Average unit values (AUVs) for several non-Trinidadian import sources that supplied the U.S. market were lower than those for subject imports from Trinidad and Tobago, even though subject imports were concentrated in low carbon industrial quality wire rod.<sup>41</sup> Thus, the quarterly pricing data and the AUV data indicate that the non-Trinidadian imports were generally competitive in terms of price with the subject imports.

Moreover, because the wire rod at issue is generally interchangeable regardless of source and price is a significant factor in customers' sourcing decisions, suppliers of non-Trinidadian imports, particularly those that supply low carbon industrial quality wire rod, would have been motivated to sell in the United States at the prices necessary to gain them market share.

For the foregoing reasons, I do not find that the domestic industry is materially injured by reason of subject imports from Trinidad and Tobago.

## **II. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM TRINIDAD AND TOBAGO**

I determine that the domestic industry is not threatened by material injury by reason of subject imports of wire rod from Trinidad and Tobago.<sup>42</sup> Although subject imports from Trinidad and Tobago increased over the period of investigation, the record does not reflect a likelihood of substantially increased subject imports in the imminent future.

Caribbean Ispat, the sole subject producer, increased its exports to the U.S. market in 2001, but it projected slightly decreased exports to the U.S. market in 2002 and 2003.<sup>43</sup> It projected increased shipments to non-U.S. markets in 2002 and 2003, in particular to the Caribbean, Central America, Mexico, and South America. It also projected increased shipments to its home market in 2002 and 2003, although that market was relatively small. Thus, although Caribbean Ispat's total shipments and total

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<sup>40</sup> CR/PR at Tables V-3 and V-4.

<sup>41</sup> Remand CR/PR at Table C-2b (*see* AUVs for Brazil, Egypt, Indonesia, Malaysia (lower in two out of three years examined), Mexico, Moldova, South Africa, Turkey, Ukraine, and Venezuela).

<sup>42</sup> In addressing threat, I have considered all factors under 19 U.S.C. § 1677(7) that are relevant to this investigation. Statutory threat factors (I) (VII), and (VIII) are inapplicable.

<sup>43</sup> Although Caribbean Ispat's exports to the U.S. market were higher in interim 2002 than in interim 2001, the interim data in this investigation cover only one quarter, and Caribbean Ispat projected slightly lower exports in full year 2002 relative to full year 2001. CR/PR at Table VII-7.

exports were projected to be higher in 2002 and 2003 than in 2001, it is unlikely that it will divert shipments from other markets to the U.S. market in the imminent future.

Moreover, Caribbean Ispat projected that it would be operating at \*\*\* capacity utilization in 2002 and 2003. Thus, it has \*\*\* unused capacity with which to direct additional exports to the United States. Product-shifting is possible, but unlikely. Although Caribbean Ispat produced \*\*\* on the same equipment as wire rod, \*\*\* accounted for only \*\*\* percent of its sales in 2001, with the comparable figure for wire rod being approximately \*\*\* percent at that time.<sup>44</sup> The record reflects steady production capacity for wire rod, and there is no indication that Caribbean Ispat will shift its production allocations in the immediate future. End-of period inventories of subject wire rod held in Trinidad and Tobago were low relative to production and shipments, and they were projected to remain only slightly above 2001 levels in 2002 and 2003. Importers' inventories of subject merchandise held in the United States were very low.<sup>45</sup>

Given Caribbean Ispat's projections of steady production capacity, high capacity utilization levels, slightly decreased exports to the United States, and increased shipments to other markets in the imminent future, as well as its relatively low and steady inventories, subject import volume levels will likely be similar to 2001 levels in the imminent future.

Subject imports from Trinidad and Tobago are likely to continue to undersell the domestic like product and suppress U.S. prices as they did during the period of investigation. And many other suppliers of comparable wire rod will likely continue to undersell or be price competitive with subject imports from Trinidad and Tobago, including suppliers that would not be subject to antidumping duty orders. The prices of subject imports from Trinidad and Tobago, however, are not likely to increase demand for further subject imports, given that many other suppliers are equally or more price competitive. Furthermore, based on Trinidad and Tobago's projected capacity utilization levels, significant additional supply of wire rod from Trinidad and Tobago is simply not available to respond to any increase in demand.

Nothing in the record indicates the likelihood of significant changes in the imminent future in the dynamics of competition in the U.S. market. Thus, significant volumes of low and high carbon industrial quality non-Trinidadian wire rod imports will likely continue to compete against subject imports from Trinidad and Tobago and the domestic like product.<sup>46</sup> Under these market conditions, subject imports from Trinidad and Tobago are likely to have the same impact on the domestic industry in the imminent future that they had during the period of investigation.

Based on the foregoing analysis, although I find the domestic industry to be vulnerable to future injury given its deteriorating performance in 2001,<sup>47</sup> I do not find that it is threatened with material injury by reason of subject imports from Trinidad and Tobago.

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<sup>44</sup> Caribbean Ispat Foreign Producer Questionnaire at 2.

<sup>45</sup> CR/PR at Table VII-7 and Table VII-9.

<sup>46</sup> Colombia imposed an antidumping duty on low-carbon wire rod from Trinidad and Tobago in 1997, but I do not find that this order will materially impact how subject imports will compete in the U.S. market given that the order is scheduled to expire in December 2002. CR at VII-10-13; PR at VII-5.

<sup>47</sup> The domestic industry's performance deteriorated from 1999 to 2001. Its production, U.S. shipments, and capacity utilization decreased from 1999 to 2000, then fell more sharply from 2000 to 2001. The industry's COGS/sales ratio increased until it exceeded \*\*\* in 2001. From 1999 to 2001, the industry experienced increasingly negative operating margins. OINV Memorandum INV-Z-162, Table C-2a.

## **CONCLUSION**

For the reasons stated above, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of wire rod from Trinidad and Tobago that have been found by Commerce to be sold in the United States at less than fair value.