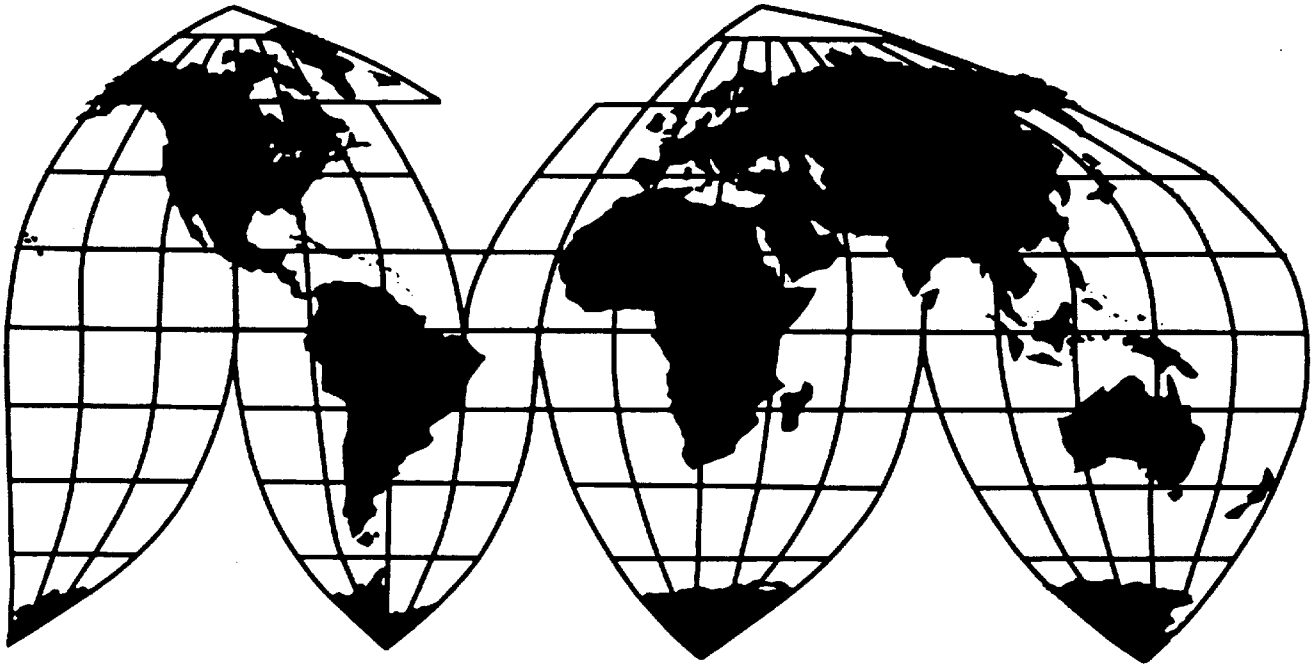
Carbon and Certain Alloy Steel Wire Rod From Egypt, South Africa, and Venezuela

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

Publication 3796 **September 2005**

U.S. International Trade Commission



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U.S. International Trade Commission

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VIEWS OF THE COMMISSION [1]

I. Background and Summary

By decision dated June 7, 2005,[2] the Court of International Trade (the "Court") remanded the Commission's preliminary determinations that subject imports of carbon and certain alloy steel wire rod ("wire rod")[3] from South Africa individually, and Egypt, South Africa and Venezuela in the aggregate, would not imminently exceed the statutory negligibility thresholds for threat determinations.[4] The Court ordered the Commission to reconsider its preliminary determinations that subject imports of wire rod from South Africa would not imminently exceed three percent, and that those from Egypt, South Africa and Venezuela, collectively, would not imminently exceed seven percent, of the volume of all wire rod imported into the United States.[5] The Court indicated that if the Commission found on remand that these imports were negligible for purposes of its threat determination, it should provide clear and convincing evidence supporting those determinations.[6]

In particular, the Court noted the rate of increase in subject imports from South Africa from 1998 to 2000, which the Court hypothesized could result in subject imports from South Africa exceeding the negligibility threshold in "a year or two."[7] The Court interpreted the statutory term "imminent" to be consistent with the consideration of a one to two year time frame, relying on an earlier decision by the Court, Asociacion de Prod. De Salmon Y Trucha de Chile AG v. U.S. Int'l Trade Comm'n, 26 CIT 29, 39, 180 F. Supp. 2d 1360, 1371 (2002) ("Salmon"). In addition, the Court remanded the Commission's

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[1] Commissioner Marcia E. Miller did not participate in this remand determination. Commissioner Daniel R. Pearson and Commissioner Shara L. Aranoff are not participating in this remand determination.

[2] Co-Steel Raritan, Inc. v. United States International Trade Commission, Ct. Int'l Trade Slip Op. 05-63 (June 7, 2005) Court No. 01-00955 ("Slip Op. 05-63") ("*Co-Steel III*").

[3] In its notice of initiation, the Department of Commerce ("Commerce") defined the imported merchandise within the scope of these investigations as:

> [C]ertain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.0 mm, in solid cross-sectional diameter, with certain enumerated exclusions.

66 Fed. Reg. 49931, 49931-49932 (Oct. 1, 2001) (initiation of countervailing duty investigations). 66 Fed. Reg. 50164 (Oct. 2, 2001) (initiation of antidumping duty investigations).

[4] Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine and Venezuela, Inv. Nos. 701-TA-417-421 and 731-TA-953-963, USITC Pub. 3546 (Oct. 2001) ("Preliminary Determinations"). Citations are to the confidential version of the Preliminary Determinations. The statutory negligibility provision is codified at 19 U.S.C. § 1677(24).

[5] Slip Op. 05-63 at 15.

[6] Slip Op. O5-63 at 12-13, 15.

[7] Slip Op. 05-63 at 13.

aggregate negligibility determination, directing the Commission to "pinpoint the clear and convincing evidence on the record" supporting the Commission's determination.[8]

On remand, we have reexamined the record and determine that subject imports of wire rod from South Africa that are allegedly sold in the United States at less than fair value are negligible individually, and that subject imports from Egypt, South Africa and Venezuela that are allegedly sold in the United States at less than fair value are negligible in the aggregate, for purposes of our threat determinations. 19 U.S.C. § 1677 (24)(A)(iv). In reaching these determinations, we have carefully considered the Court's holdings and instructions, and the record evidence in these preliminary investigations.

As discussed below, we find no evidence on the record that subject imports from South Africa, individually, or that aggregate subject imports from Egypt, South Africa and Venezuela, will imminently exceed the applicable negligibility thresholds, respectively, three and seven percent of total imports.[9] As a preliminary matter, we interpret the statutory meaning of imminent to vary with the industry under investigation, consistent with language in Salmon, and we find that "imminent" in this case is a shorter period of time than in Salmon, in light of the differences in the two industries, products, and markets.

With respect to South Africa individually, the record supports a finding that subject imports will, at most, increase only minimally in the imminent future. We base this assessment on actual import data, record evidence from importers and one exporter, and market conditions. The actual import data show that subject import volume increased only marginally between the 12-month periods January to December 2000 and August 2000 to July 2001, the statutory negligibility period. Data from the largest reporting importer of subject merchandise from South Africa and the responding exporter do not indicate a significant increase in subject imports from South Africa in the imminent future.

Market conditions are not conducive to further penetration of the U.S. market by subject imports from South Africa. First, the U.S. market has grown increasingly competitive as the volume of total imports in the market has increased over the period of investigation while demand, measured by apparent consumption, has fallen. Moreover, any increase in wire rod imports in the imminent future is most likely to come from four subject countries with excess production capacity and significant incentives to increase exports to the United States, rather than South Africa. Over the period of investigation, subject imports from Brazil, Canada, Mexico and Trinidad and Tobago increased until, aggregated, they exceeded fifty percent of total imports to the United States during the statutory negligibility period, and the record indicates a likelihood of increased imports from these countries, in particular due to excess capacity and significant incentives to increase exports. Even if subject imports from South Africa were to increase, this increase would likely be much smaller than the increase in total imports, with a resulting decline in South Africa's share of total imports.

We also find that there is no potential that subject imports from Egypt, South Africa and Venezuela would imminently exceed the aggregate negligibility threshold. These aggregate subject imports have exhibited a downward trend since 1999. As with South Africa individually, aggregate subject imports from Egypt, South Africa and Venezuela face a more competitive U.S. market, with decreased demand, increased total imports, and potentially significant increases in imports from large exporters. Responding wire rod producers from Egypt, South Africa and Venezuela have reported, respectively, *** production capacity, no interest in exporting to the United States, and *** production capacity. They also have *** inventories. These data are not indicative of increased exports to the United States. Increases in total imports in the imminent future are likely to outstrip any increase in aggregate

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[8] Slip Op. 05-63 at 15.

[9] We base our determinations on the record as it existed at the time of our original preliminary determinations. Our determinations are issued in the present tense, as if we were issuing them at that time.

subject imports from these countries, with a resulting decline in their share of total imports. We discuss these conclusions in more detail below.

II. Procedural History

The procedural history of this case is complex. We provide a brief summary but assume familiarity with earlier aspects of the administrative proceedings and subsequent litigation.

A. The Commission's Original Determinations

On August 31, 2001, several domestic producers of wire rod filed petitions alleging that an industry in the United States was materially injured by reason of imports of wire rod from 12 countries that were allegedly subsidized and/or sold at less than fair value.

On October 12, 2001, the Commission found a reasonable indication that an industry in the United States was materially injured by reason of imports of wire rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey that were allegedly subsidized, and by reason of imports of wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine that were allegedly sold in the United States at less than fair value. It also found that imports of wire rod from Egypt, South Africa and Venezuela that were allegedly sold in the United States at less than fair value were negligible.[10] The Commission therefore terminated the investigations of the subject imports from Egypt, South Africa and Venezuela.

The Commission found a single domestic like product consisting of all wire rod corresponding to Commerce's scope in these investigations.[11] Based on its finding that the domestic like product consisted of all wire rod included within the scope of these investigations, the Commission found that the domestic industry consisted of all domestic producers of wire rod.[12]

The Commission evaluated negligibility based on official Commerce import statistics for the period August 2000 through July 2001, the most recent twelve month period for which data were available at the time of the Preliminary Determination. It found that negligibility was an issue for three of the 12 countries with respect to the antidumping duty investigations, namely Egypt, with a share of total imports of 1.4 percent; South Africa, with a share of 2.6 percent; and Venezuela, with a share of 2.1 percent.[13] The level of imports from each of these countries was below the negligibility threshold of three percent of total imports, and the combined import share of these three countries, 6.1 percent, was below the aggregate negligibility level of seven percent prescribed by statute. The Commission therefore found that subject imports from Egypt, South Africa, and Venezuela were negligible for purposes of its present material injury analysis.[14]

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[10] Commissioner Lynn M. Bragg dissented, as discussed below.

[11] Preliminary Determination at 9.

[12] Preliminary Determination at 9.

[13] Preliminary Determination at 11-13.

[14] In reaching these conclusions, the Commission relied on import data from the period August 2000 to July 2001, rejecting Plaintiffs' arguments that it should examine imports from the July 2000-June 2001 period. Preliminary Determination at 11, n.37 The Court has upheld that finding by the Commission. Co-Steel Raritan, Inc. v. United States International Trade Commission, 244 F. Supp. 2d 1349, 1353 (CIT 2002) ("*Co-Steel I*"). The Commission also rejected Plaintiffs' arguments that its request for a scope modification at Commerce required the Commission to find that all subject imports

The Commission then turned to its negligibility analysis for purposes of analyzing threat of material injury. It found, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from Egypt, South Africa, and Venezuela would not imminently account for more than three percent individually, or seven percent in the aggregate, of the total volume of wire rod imports.[15] It addressed each of these countries separately, and in the aggregate.

Egypt. For the statutory negligibility period, August 2000 to July 2001, subject imports from Egypt accounted for 1.4 percent of total imports. Egyptian subject imports' share of total imports was 2.0 percent in 1998, 0.8 percent in 1999, and 1.2 percent in 2000; the share was 0.9 percent in interim (January to June) 2001.[16] Capacity utilization for the Egyptian industry was at *** percent in 2000, and was *** in both 2001 and 2002.[17] Inventories in Egypt ***.[18] Given Egypt's very small share of total imports, *** level of capacity utilization, and ***, the Commission concluded that subject imports from Egypt would not imminently exceed three percent of total imports.

South Africa. For the statutory negligibility period, subject imports from South Africa accounted for 2.6 percent of total imports. South African subject imports' share of total imports was 1.8 percent in 1998, 2.0 percent in 1999, and 2.4 percent in 2000; the share was 2.6 percent in interim 2001.[19] The Commission acknowledged that subject imports from South Africa had increased over the period of investigation, and were higher in interim 2001 as compared to interim 2000, but also found that they remained well under the three percent threshold throughout the period of investigation. Given South Africa's import share for the period August 2000 to July 2001, 2.6 percent, and that its import share had not exceeded three percent at any time during the period of investigation, the Commission found that South Africa's share of total imports would not imminently exceed three percent of total imports.[20]

In a footnote, the Commission acknowledged that it had received questionnaire responses from only one out of three producers of wire rod in South Africa, Scaw Metals, Limited (Scaw Metals). Scaw Metals reported that it accounted for *** percent of South African production of wire rod, and did not export to the United States during the period examined. The Commission found that although Scaw Metals had excess capacity and intended to increase production, Scaw Metals did not intend to begin exporting to the United States.[21]

Venezuela. For the statutory negligibility period, subject imports from Venezuela accounted for 2.1 percent of total imports. Venezuelan subject imports' share of total imports was 1.6 percent in 1998, 4.6 percent in 1999, and 2.7 percent in 2000; the share was 1.5 percent in interim 2001.[22] The volume of subject imports from Venezuela decreased since its peak in 1999, and the volume of subject imports from Venezuela was significantly lower in interim 2001 (20,724 short tons) than in interim 2000 (48,440 short

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were non-negligible. Id. at 13, n.41. The Federal Circuit upheld that Commission finding. Co-Steel Raritan, Inc. v. Int'l Trade Comm'n, 357 F. 3d 1294, 1313-14 (Fed. Cir. 2004).

[15] Commissioner Bragg found that imports from Egypt, South Africa, and Venezuela collectively would imminently exceed the aggregate statutory negligibility threshold, and made an affirmative threat determination with regard to such imports. Preliminary Determination at 14, n.43.

[16] Preliminary Determination at 14.

[17] Preliminary Determination at 14.

[18] Preliminary Determination at 14.

[19] Preliminary Determination at 15.

[20] Preliminary Determination at 15.

[21] Preliminary Determination at 15, n.48.

[22] Preliminary Determination at 15.

tons).[23] Venezuelan capacity utilization was *** in 2000, and was projected to *** in 2001 and 2002.[24] Inventories in Venezuela fell from 1998 to 2000, although they were higher in interim 2001 compared with interim 2000.[25] Given Venezuela's import share, decreasing volumes, *** capacity utilization, and *** inventories, the Commission found that Venezuela's share of total imports would not imminently exceed three percent.

Aggregate. The Commission found that there was limited potential for growth in the share of imports by any of the three subject countries, and concluded that the aggregate share of these three countries, which was 6.1 percent for the period August 2000 to July 2001, would not imminently exceed seven percent. Pursuant to 19 U.S.C. § 1673b(a)(1), the Commission terminated the antidumping duty investigations for Egypt, South Africa, and Venezuela by operation of law.

B. The Court's Decisions in *Co-Steel I* and *Co-Steel II*, the Commission's First Remand Decision and the Federal Circuit Decision

After the Commission issued its Preliminary Determinations, Plaintiffs appealed the Commission's negligibility determinations to the Court. In *Co-Steel I*, the Court affirmed in part, and remanded in part, the Commission's Preliminary Determinations.

The Court affirmed the Commission's use of import data from the August 2000 to July 2001 period. *Co-Steel I*, 244 F. Supp. 2d at 1353. It remanded the Commission's present material injury negligibility determinations, however, ordering it to take into consideration Commerce's modification of the scope of investigation, issued subsequent to the Commission's Preliminary Determinations.[26] The Court did not address Plaintiffs' arguments regarding the Commission's negligibility for threat analysis. The Commission issued an affirmative remand determination in compliance with the Court's order, although it disagreed with the Court that it should consider on remand events subsequent to its original determination.[27] That remand determination was affirmed in *Co-Steel II*.[28]

The case was appealed to the Federal Circuit. The Federal Circuit found that the Court had erred in ordering the Commission to take subsequent events into account on remand, and vacated *Co-Steel II*. It remanded the case to the Court for it to address Plaintiffs' negligibility in threat arguments,[29] which the Court has done in *Co-Steel III*.

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[23] Preliminary Determination at 15-16.

[24] Preliminary Determination at 16.

[25] Preliminary Determination at 16.

[26] This modification was in response to Plaintiffs' request for a modification to the scope of investigation, which was filed on October 9, 2001, three days before the Commission's vote in this case, on October 12, 2001. Letter to the Commission dated October 9, 2001, with attached request for scope modification to Commerce.

[27] Carbon and Certain Alloy Steel Wire Rod from Egypt, South Africa and Venezuela, Invs. Nos. 731-TA-955, 960 and 963 (Remand) USITC Pub. 3529 (Oct. 2002) at 4.

[28] Co-Steel Raritan, Inc. v. United States International Trade Commission, 26 CIT 1131 (2002) ("*Co-Steel II*").

[29] Co-Steel Raritan, Inc. v. Int'l Trade Comm'n, 357 F. 3d 1294, 1316-17 (Fed. Cir. 2004).

C. The Court's Decision in *Co-Steel III*.

In *Co-Steel III*,[30] the Court addressed Plaintiffs' negligibility for threat arguments, which it had not done in its previous decisions. Once again, the Court affirmed the Commission's Preliminary Determinations on negligibility in part, and remanded in part.

The Court affirmed the Commission's findings that subject imports from Egypt and Venezuela were individually negligible for purposes of the Commission's threat analysis.[31] The Court agreed with the Commission that the ratio of subject imports from Egypt to total wire rod imports was so low that there was no potential that subject imports from Egypt would imminently account for more than three percent of the volume of all wire rod imported into the United States.[32] The Court also upheld the Commission's determination that subject imports from Venezuela would not imminently account for more than three percent of the volume of all wire rod imported into the United States.[33] The Court noted Plaintiffs' argument that the Commission had erred when it discounted projected increases in exports from Venezuelan wire rod producer and exporter Sidor in 2001, in favor of import data that reflected lower subject imports from Venezuela in interim 2001 as compared to interim 2000.[34] The Court rejected this argument because reliance on the interim import data was not an abuse of discretion.[35] Rather, the Court found that the Commission was permitted to make reasonable interpretations of the evidence and to assign varying degrees of significance to any particular factor.[36] The Court pointed out that the Commission had not relied only on import volume data, but also on production capacity and inventory data for the Venezuelan wire rod industry.[37] The Court found that there was a rational connection between the evidence relied on by the Commission and its negligibility determination.[38] Accordingly, the Court upheld the Commission's individual negligibility for threat determination with respect to Venezuela.[39]

The Court remanded the Commission's finding that subject imports from South Africa were negligible. The Court found some potential for subject imports from South Africa to increase in total import share over the next one to two years. The Court acknowledged that the import share held by South Africa had stayed below the negligibility threshold, but found that was not enough to sustain a negligibility determination, given the upward trend over the period of investigation in the proportion of imports represented by subject imports from South Africa.[40] The Court found that the Commission was required to consider the rate of import growth under the Statement of Administrative Action ("SAA"),[41]

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[30] *Co-Steel III* is cited as Slip Op. 05-63.

[31] Slip Op. 05-63 at 8-10.

[32] Slip. Op. 05-63 at 8.

[33] Slip. Op. 05-63 at 8-10.

[34] Slip. Op. 05-63 at 8-9.

[35] Slip. Op. 05-63 at 9.

[36] Slip. Op. 05-63 at 9.

[37] Slip. Op. 05-63 at 9.

[38] Slip. Op. 05-63 at 9.

[39] Slip. Op. 05-63 at 10.

[40] Slip. Op. 05-63 at 11.

[41] H.R. Doc. No. 103-316, vol. 1 (1994). The SAA is an authoritative interpretation of the Uruguay Round Agreements Act. 19 U.S.C. § 3512 (d). See also Caribbean Ispat v. United States, 366 F.

and that "[a] rough estimate makes it only a matter of a year or two before the three percent threshold could be exceeded."[42] According to the Court, the word "imminent" found in the negligibility provision encompassed at least one to two years, based on language in the 2002 decision by the Court in Salmon.[43]

The Court acknowledged the Commission's analysis of information gathered from South African wire rod producer Scaw Metals, which accounted for *** percent of wire rod production in South Africa. The Commission had found that although Scaw Metals projected increased production and increased shipments to third country markets in the future, it did not export wire rod to the United States over the period examined, and it did not plan to do so in the future.[44] The Court stated that increased shipments to third country markets were not inconsistent with increased shipments to the United States.[45]

As for Plaintiffs' arguments regarding the lack of questionnaire responses on behalf of South African exporters other than Scaw Metals,[46] the Court found that the SAA was "permissive of incomplete information in deciding negligibility," and cited to language in the SAA stating inter alia that the negligibility provision permits the Commission to make reasonable estimates on the basis of available statistics, given that the Commission may not have access to complete questionnaire data in a preliminary determination.[47]

The Court then remanded the Commission's negligibility findings as to threat with respect to subject imports from South Africa, individually, and as to Egypt, South Africa and Venezuela, in the aggregate.

III. Domestic Like Product and Domestic Industry.

We reaffirm our prior findings as to domestic like product and domestic industry. We again define the domestic like product to be wire rod corresponding to Commerce's scope of investigation, as it existed at the time of our Preliminary Determinations. We also define the domestic industry to be all domestic producers of wire rod.[48]

Supp. 2d 1300, 1305, n.9 (CIT 2005), appeal docketed, No. 05-1400 (Fed. Cir. May 25, 2005)

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[42] Slip. Op. 05-63 at 11, 13.

[43] The Court based its interpretation of "imminent" on Judge Goldberg's statement in Salmon that "[t]he term [imminent] does not necessarily mean . . . immediate, as the statute does not establish any specific time limit governing when a potential action can be characterized as imminent." Slip. Op. 05-63 at 13 (quoting Salmon, 180 F.Supp. 2d at 1371-72). The Court also cited to Judge Goldberg's statement that "[n]o bright-line test exists to determine when injury is imminent." 180 F. Supp. 2d at 1371.

[44] Slip. Op. 05-63 at 14, n.8.

[45] Slip. Op. 05-63 at 14, n.8.

[46] Slip. Op. 05-63 at 14, n.8.

[47] Slip. Op. 05-63 at 14, n.8.

[48] Commissioner Lane did not participate in the original investigations. She has reviewed the record and adopts the Commission majority's prior views on domestic like product and domestic industry.

IV. Negligibility.

A. Negligibility for Purposes of Present Material Injury

Under 19 U.S.C. § 1673b(a)(1), the Commission is to determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that "imports of the subject merchandise are not negligible." The statute further provides that "[i]f the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated."[49]

The statutory provision on negligibility, 19 U.S.C. § 1677 (24) (A), provides that subject imports are negligible "[i]f such imports account for less than [three] percent of the volume of all such merchandise [corresponding to a domestic like product] imported into the United States in the most recent 12-month period for which data are available that precedes" the filing of the petition or the initiation of the investigation. As stated in our original preliminary determination, negligibility is an issue only with respect to subject imports from Egypt, South Africa and Venezuela. In that determination, we found that subject imports from Egypt, South Africa and Venezuela were negligible, individually, and in the aggregate, for purposes of our present material injury determination.[50] Those findings have been challenged and upheld in subsequent litigation, and we affirm those prior findings in this remand determination.[51]

B. Negligibility For Purposes of Threat of Material Injury Determination

Even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of the Commission's threat analysis if the Commission determines that there is a potential that imports from the country concerned will imminently account for more than three percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volume of imports from the several countries with negligible imports will imminently exceed seven percent of all such merchandise imported into the United States. 19 U.S.C. § 1677 (24).

We adhere to our prior findings that Egypt and Venezuela are individually negligible for purposes of our threat analysis. These findings have been affirmed by the Court.[52] The Court has remanded to us our prior findings that South Africa is individually negligible, and that subject imports from Egypt, South Africa and Venezuela are negligible in the aggregate for purposes of our threat analysis.[53] As a preliminary matter, we consider the meaning of "imminent" in these investigations. Then we analyze the specific negligibility findings remanded by the Court in the context of the meaning of imminent.

1. The Meaning of "Imminent"in the Context of the Wire Rod Industry.

The statute provides that in making a threat of material injury determination, the Commission is to consider the statutory threat factors as a whole and determine whether further dumped imports are

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[49] 19 U.S.C. § 1673b(a)(1).

[50] Preliminary Determination at 13.

[51] Commissioner Lane adopts the Commission's prior views on negligibility for purposes of its present material injury analysis.

[52] Slip. Op. 05-63 at 8-10.

[53] Slip. Op. 05-63 at 15.

"imminent" and whether material injury by reason of imports "would occur" unless an order is issued.[54] We agree with the Court that "the statute does not establish any specific time limit governing when a potential action can be characterized as imminent."[55]

The statute does distinguish an "imminent" time frame for a threat determination from a generally longer "reasonably foreseeable future" time frame for five-year reviews. The statute states that in five year reviews, "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[56] Thus, imminent is generally a shorter period of time than the "reasonably foreseeable future." The SAA similarly states that "[a] 'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis."[57]

The Court decision in Salmon stated that "[n]o bright-line test exists to determine when injury is imminent,"[58] and that "in each case the Commission should look at the facts and circumstances of the industry, product, and marketplace to determine if further dumped or subsidized imports are imminent."[59] This is consistent with the emphasis in the overall statutory scheme that Commission determinations are sui generis, each involving different competitive conditions, with a unique combination and interaction of economic variables.[60] Therefore, the findings in one investigation are not dispositive of those in a second. Consistent with this principle, the application of the imminent standard varies depending on the industry under investigation.

The dictionary definition for "imminent" is "impending, soon to happen."[61] In Salmon, the Court upheld as reasonable and supported by substantial evidence the finding that, in the context of the investigation at issue, "imminent" encompassed one to two years.[62]

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[54] 19 U.S.C. § 1677 (7)(F)(ii).

[55] Slip. Op. 05-63 at 13 (quoting Salmon, 180 F.Supp. 2d at 1371-72).

[56] 19 U.S.C. § 1675a (a)(5).

[57] SAA at 887.

[58] Salmon, 180 F. Supp. 2d at 1371.

[59] Salmon, 180 F. Supp. 2d at 1372.

[60] E.g., S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987). It is well-established that the Commission's injury determinations are sui generis. See Nucor Corp. v. United States, 414 F. 3d 1331, 1340 (Fed. Cir. 2005) ("[A]s the trial court noted, the Commission 'has recognized that each injury investigation is sui generis, involving a unique combination and interaction of many economic variables; and consequently, a particular circumstance in a prior investigation cannot be regarded by the [Commission] as dispositive of the determination in a later investigation.' We agree with the trial court that the Commission's determinations in other 2002 investigations do not detract from the reasonableness of the Commission's analysis . . . in this case.") Nitrogen Solutions v. United States, 358 F. Supp. 2d 1314, 1324 (CIT 2005) citing to Nucor Corp. v. United States, 318 F. Supp. 2d 1207, 1246-47 (CIT 2004) ("It is a well-established proposition that the ITC's material injury determinations are sui generis; that is, the agency's findings and determinations are necessarily confined to a specific period of investigation with its attendant, peculiar set of circumstances." Caribbean Ispat v. United States, 366 F. Supp. 2d 1300, 1305, n.9 (CIT 2005), appeal docketed, No. 05-1400 (Fed. Cir. May 25, 2005).

[61] The New Shorter Oxford English Dictionary, (4th Ed. 1993).

[62] Salmon, 180 F. Supp. 2d at 1370-71. We note that Commissioner Bragg never actually defined "imminent" in the remand determination that was affirmed by the Court in Salmon. She stated that ". . .

The production process and market for steel wire rod are quite different than those for salmon. Supply in the salmon market is affected by the three-year growth/production cycle for salmon. It takes three years for farmed salmon to reach a size that may be sold in the market. Accordingly, production decisions must be made between four to five years in advance of the date of sale. Given the length of the production cycle, the Commission found in its original salmon determination that the ability of salmon producers to increase production levels rapidly to satisfy demand is constrained.[63]

In contrast to the several year production cycle for salmon, wire rod can be quickly produced and delivered to the U.S. market with short lead times. The median lead time between a customers' order and delivery of wire rod was 30 days for U.S. producers.[64] The median lead time for importers during the period of investigation was 11 weeks, due to greater distances and the need for ocean shipping (except for imports from Canada and Mexico).[65] Wire rod sales are made generally either on the spot market or through short-term three month contracts.[66] The wire rod industry is thus far less constrained than the salmon industry in its ability to increase production and shipments quickly.

In Salmon, the Court upheld the finding that one to two years was the length of time within which foreign salmon producers could increase production capacity in order to increase shipments to the U.S. market.[67] The record here, in contrast, shows that increases in capacity to produce wire rod can occur in a shorter period of time. Production capacity increased or varied from year to year for foreign producers in most of the subject countries.[68] Capacity can be increased in the wire rod industry by shifting the use of production equipment manufacturing other steel products to the production of wire rod. Rebar and other "long" steel products are produced on some of the same equipment as wire rod. Foreign producers in ***.[69] Plaintiffs have argued that foreign producers could switch from producing these long steel

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producers who reported capacity levels on the basis of investments in facilities were able to ramp up production significantly within a period of one to two years after increasing capacity levels." Fresh Atlantic Salmon from Chile Inv. No. 731-TA-768 (Remand) USITC Pub. 3244 (Oct. 1999) at 18, n.74.

There is no such lag in the wire rod industry. Production can exceed the prior year's capacity level, see ***.

[63] Fresh Atlantic Salmon from Chile, Inv. No. 731-TA-768 (Final) USITC Pub. 3116 (July 1998) at 15, 17. Although Commissioner Bragg found that there was a potential for product-shifting in her threat determination on remand, she also found that production was constrained in the salmon industry due to the production cycle. Fresh Atlantic Salmon from Chile Inv. No. 731-TA-768 (Remand) USITC Pub. 3244 (Oct. 1999) at 17-18 & n.74.

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

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

[66] Preliminary Determination at 31.

[67] Salmon, 180 F. Supp. 2d at 1370-71.

[68] CR/PR at Table VII-1-VII-12. Capacity data changed during the period of investigation for eight of the 12 subject countries, and changed in each of the annual periods surveyed for half of the subject countries.

[69]CR at VII-1-VII-7; PR at VII-1-VII-5.

products to wire rod with relative ease.[70] Plaintiff North Star reported that it could discontinue rebar operations at ***.[71]

In sum, we recognize that the Court in Salmon upheld the Commission's threat analysis that relied on a one to two year time frame, consistent with the facts particular to the industry in question. We find that the record in these investigations shows clear differences in the conditions of competition between Salmon and the instant case. In light of the circumstances, we find that "imminent" encompasses a shorter time frame in this case than in Salmon.[72]

2. Negligibility in Threat as to South Africa Individually, and Egypt, South Africa and Venezuela in the Aggregate.

The Court remanded to the Commission for reconsideration the Commission's determination that there is no potential "that imports from [South Africa] will imminently account for more than [three] percent of the volume of all [wire rod] imported into the United States; and its determination that there is no potential that the aggregate volume of subject imports from countries that were individually negligible, namely Egypt, South Africa and Venezuela, "will imminently exceed [seven] percent of the volume of all [wire rod] imported into the United States."[73]

a. Application of the Individual and Aggregate Threat In Negligibility Provisions.

The Commission's decisional standard regarding negligible imports in preliminary investigations is the same as its standard for preliminary negative determinations - - the standard set out in American Lamb Co. v. United States, 785 F. 2d 994 (Fed. Cir. 1986).[74] The Commission is entitled to weigh the evidence under this standard, and its decision is to be based on the record as it existed at the time of its preliminary determinations.[75] Under the American Lamb standard, the Commission issues preliminary negligibility determinations inter alia when "the record as a whole contains clear and convincing evidence" that subject imports are negligible.[76]

We have considered the record as a whole in reaching our conclusion that there is no potential that subject imports from South Africa individually, or subject imports from Egypt, South Africa and Venezuela collectively, will imminently exceed the statutory negligibility threshold of, respectively, three percent and seven percent. In applying these provisions to the record in this case, we analyze

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[70] Plaintiffs' Postconference Brief at 46. "The possibility for product-shifting into [wire rod] is high." Id.

[71] Plaintiff North Star reported that it could discontinue rebar operations and restart wire rod operations at one of its plants ***. CR at III-3, n.3; PR at III-1, n.3.

[72] As the Court noted, there is no statutory definition of "imminent." Slip Op. 05-63 at 11, 13. We note that we are not required by statute to provide specificity as to the meaning of imminent in any particular investigation. We emphasize that just as the "imminent" period differs between Salmon and the instant case, due to significant differences in the conditions of competition, it could similarly differ in other cases as well.

[73] 19 U.S.C. § 1677(24)(A)(iv).

[74] SAA at 857.

[75] American Lamb Co. v. United States, 785 F. 2d at 1002-1004.

[76] American Lamb Co. v. United States, 785 F. 2d at 1001.

whether the threat of material injury is real and imminent.[77] We do not rely on speculation or conjecture in making such determinations.[78]

The statute provides that the focus of a negligibility analysis is the volume of all subject merchandise imported into the United States in the most recent 12-month period preceding the filing of the petition for which data are available, which in this case is August 2000 through July 2001. The SAA provides that in performing a negligibility analysis for threat of material injury, the Commission is to consider "actual" and "potential" imports. As the Court noted in its decision, the SAA further states that "[i]mport volumes at the conclusion of the 12-month period examined for purposes of considering negligiblility may be below the negligibility threshold, but increasing at a rate that indicates they are likely to imminently exceed that threshold during the period the Commission examines in conducting its threat analysis."[79]

For the reasons set out below, we find, for purposes of our threat determination, that subject imports from South Africa are individually negligible and that subject imports from Egypt, South Africa and Venezuela are negligible in the aggregate. As directed, we have found that our determination is supported by clear and convincing evidence.

b. There is no potential that subject imports from South Africa will imminently exceed three percent of total imports of wire rod to the United States.

(I). Actual Imports from South Africa and Other Countries.

We have considered actual subject imports from South Africa and other countries, and the ratio of subject imports from South Africa to total imports. During the statutory negligibility period (August 2000 to July 2001), subject imports from South Africa totaled 79,541 short tons, and total wire rod imports were 3,086,932 short tons. Subject imports from South Africa accounted for 2.6 percent of total wire rod imports in the United States in the statutory period, well below the statutory threshold of 3.0 percent. In fact, the ratio of subject imports from South Africa to total imports never exceeded 3.0 percent over the period of investigation. It was 1.8 percent in 1998, 2.0 percent in 1999, 2.4 percent in 2000, 2.0 percent in interim 2000, and 2.6 percent in interim 2001.[80]

The SAA provides guidance that the Commission is to consider, in determining negligibility for threat purposes, whether subject imports in the statutory negligibility period were increasing at a rate that indicated that they would imminently exceed the negligibility threshold. Subject imports from South Africa are not increasing at such a rate. For calendar year 2000, subject imports from South Africa were 75,412 short tons. During the statutory negligibility period, which ended seven months later, subject imports from South Africa were 79,541 short tons, a difference of only approximately 4,000 short tons.[81] Total imports were 3,095,711 short tons in 2000 and 3,086,932 short tons in the statutory negligibility

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[77] Calabrian Corporation v. United States International Trade Commission, 794 F. Supp. 377, 388 (CIT 1992), citing to S. Rep. No. 249 at 89, 96th Cong., 1st Sess. 252 (1979) .

[78] 19 U.S.C. § 1677 (7)(F)(ii); SAA at 855.

[79] SAA at 856; Slip Op. 05-63 at 11.

[80] We recognize that subject imports from South Africa were higher in interim 2001 than in interim 2000, but that fact does not detract from our conclusion based on other record evidence that subject imports from South Africa will not exceed the statutory negligibility threshold in the imminent future. Subject imports from South Africa were at low levels in interim 2000 (27,256 short tons) with a correspondingly low ratio to total imports at that time (2.0 percent). CR/PR at Table IV-1.

[81] Derived from CR/PR at Table IV-1 and Table IV-2.

period. Thus, comparing the two periods, which varied by seven months, total imports remained essentially level, and South Africa's share of total imports changed by only 0.14 percentage points, from 2.44 percent to 2.58 percent.[82] Thus, the record reflects that the rate of increase for subject imports from South Africa slowed considerably after calendar year 2000.[83] [84]

We note further that although apparent U.S. consumption increased from 1998 to 2000, it was *** percent lower in interim 2001 as compared to interim 2000.[85] We find that decreased demand for wire rod may have been a factor in the decreased rate of increase for subject imports from South Africa.

Our conclusion that subject imports from South Africa will remain negligible is also supported by data on total import volume. Total imports of wire rod increased from 1998 to 2000, counteracting to a large extent the much smaller increase in subject imports from South Africa and keeping the South African share of total imports very low. Total imports of wire rod to the United States increased by 348,620 short tons from 1998 to 1999, and by 254,879 short tons from 1999 to 2000 for an average increase from 1998 to 2000 of 301,750 short tons. In contrast, subject imports from South Africa rose by 11,404 short tons from 1998 to 1999, and by 19,562 short tons from 1999 to 2000, for an average annual increase from 1998 to 2000 of 15,483 short tons. This rate of increase for subject imports from South

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[82] CR/PR at Table IV-1 and IV-2.

[83] We have also considered monthly import data provided by Plaintiffs, recognizing that these data include some nonsubject merchandise because they include data from statistical HTS reporting numbers, beyond those upon which we based our import data. Compare HTS numbers, Exhibit 2, Plaintiffs' Postconference Brief to HTS numbers, CR at IV-2, n.2. Although we primarily rely on the import data contained in the staff report, we note that Plaintiffs' monthly import data are consistent with our conclusions. The volume of subject imports from South Africa on a monthly basis was generally trending downward after 2000. Plaintiffs' data show the following monthly volume for subject imports from South Africa: none in August 2000; 9,721 short tons in September 2000; 9,307 short tons in October 2000; none in November 2000; 19,210 short tons in December 2000; none in January 2001; none in February 2001; 7,177 short tons in March 2001, 18,412 short tons in April 2001; 7,716 short tons in May 2001; 2,546 short tons in June 2001 and 5,465 short tons in July 2001. Plaintiffs' Postconference Brief, Exhibit 2.

[84] Commission counsel argued in its brief before the Court that "the record does not reflect any significant increase in imports from South Africa for 2001," citing to the fact that subject imports from South Africa in calendar year 2000 and the statutory negligibility period were not materially different. Defendant U.S. International Trade's Brief at 46.

In its decision, the Court discusses a calculation presented in a footnote to the Commission's brief. Slip Op.05-63 at 12-13. This footnote highlighted flaws in Plaintiffs' analysis presented for the first time to the Court; this analysis was not argued before the Commission. We have now considered this post-investigation argument and explicitly adopt the reasoning set forth in our brief.

Plaintiffs claim that subject imports from South Africa would exceed 98,000 short tons by the end of 2001, based on their rate of increase from 1998 to 2000, on average thirty percent per annum. Plaintiffs' Initial Brief to the Court at 38. Plaintiffs' estimate of future subject imports from South Africa is inflated, and its projected ratio of subject imports from South Africa to total wire rod imports is distorted because it took into account historic increases of subject imports from South Africa but not historic increases of total imports. As we noted in our brief to the Court, "[w]hile inflating the likely level of imports from South Africa (as well as Egypt and Venezuela), Plaintiffs made no adjustment to the figure they use for total imports despite their arguments to the Commission that the level of imports would increase substantially."

[85]CR/PR at Table C-1.

Africa has slowed considerably; subject imports from South Africa were only 4,129 short tons higher in the statutory negligibility period than in calendar year 2000, whereas subject imports remained essentially level.[86]

We also took into account Plaintiffs' arguments and the record evidence regarding subject imports on a country-by-country basis. Plaintiffs argued during the preliminary investigation that subject imports were increasing, that they were targeting the U.S. market, and that they were entering it at prices that would increase demand for further imports.[87] Noticeably, however, Plaintiffs did not make any specific arguments that subject imports from South Africa, Egypt and Venezuela were targeting the United States.[88] Instead, Plaintiffs' arguments focused on subject imports from Brazil, Canada, Mexico, and Trinidad and Tobago.[89]

The record supports Plaintiffs' arguments that subject imports from these countries were increasing. Subject imports from Brazil increased by 348.8 percent, or 118,551 short tons, from 1998 to 1999, and increased by 47.2 percent, or 72,049 short tons, from 1999 to 2000. They were 281,937 short tons in the statutory negligibility period.[90]

Subject imports from Canada, the largest source of subject imports, increased by 13.0 percent, or by 72,211 short tons, from 1998 to 1999, and by 15.4 percent, or 96,931 short tons, from 1999 to 2000. They were 740,556 short tons in the statutory negligibility period.[91]

Subject imports from Mexico increased by 62.2 percent, or 46,797 short tons, from 1998 to 1999, and by 31.0 percent, or 37,780 short tons, from 1999 to 2000. They were 211,924 short tons in the statutory negligibility period.[92]

Finally, subject imports from Trinidad and Tobago increased overall during the period of investigation. They rose by 32.6 percent from 257,720 short tons in 1998 to 341,815 short tons in 1999, and in 2000 decreased by 15.9 percent from 1999 levels but remained above 1998 levels. During the

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[86] Derived from CR/PR at Table IV-1, Table IV-2**.** Total imports were only 0.3 percent lower in the statutory period than in calendar year 2000; they decreased by 8779 short tons.

[87] Plaintiffs' Postconference Brief at 45.

[88] Plaintiffs have argued in this litigation that they presented no threat arguments regarding subject imports from South Africa because of the limited information provided in questionnaire responses on the wire rod industry in South Africa. Plaintiffs' Reply Brief at 23-24.

However, Plaintiffs' arguments on future subject import levels to the Commission were not limited to questionnaire responses. For example, Plaintiffs argued in their postconference brief that "large quantities of [wire rod] are being readied for immediate shipment without being presold, such as a shipment of 50,000 tons from Ukraine now headed to the United States according to market sources." Plaintiffs' Postconference Brief at 23, n.22. Plaintiffs never argued that "market sources" anticipated increased subject imports from South Africa. Plaintiffs also cited to a Securities and Exchange Act registration statement with respect to Trinidad and Tobago producer Caribbean Ispat's production capacity. Plaintiffs' Postconference Brief at 49.

[89] Plaintiffs' Postconference Brief at 43-49.

[90] CR/PR at Table C-1 and Table IV-2.

[91] CR/PR at Table C-1 and Table IV-2.

[92] CR/PR at Table C-1 and Table IV-2.

statutory negligibility period, they were 329,612 short tons. Subject imports from Trinidad and Tobago were much higher (174,361 short tons) in interim 2001 than in interim 2000 (119,834 short tons).[93]

Thus, total imports increased from 1998 to 2000, were slightly higher in interim 2001 than in interim 2000, and remained essentially level in the statutory negligibility period as compared to calendar year 2000. Similarly, subject imports from each of the four countries stressed by Plaintiffs rose as well and were higher in the statutory period than in 2000, most of them substantially higher.[94]

The import ratio for each of these four countries was similarly higher in the statutory period than in calendar year 2000, and the increase much higher than the 0.14 percentage point increase for subject imports from South Africa. Brazil's import ratio was 7.3 percent in calendar year 2000 and 9.1 percent in the statutory period, an increase of 1.80 percentage points. Canada's import ratio was 23.4 percent in calendar year 2000 and 24.0 in the statutory period, an increase of 0.6 percentage points. Mexico's import ratio was 5.2 percent in calendar year 2000 and 6.9 percent in the statutory period, an increase of 1.7 percentage points. Trinidad and Tobago's import ratio was 9.3 percent in calendar year 2000 and 10.7 percent in the statutory period, an increase of 1.4 percentage points.[95]

We find that the increasing volumes of subject imports from these countries from 1998 to July 2001, and their increasingly dominant share of total import volumes,[96] made the market more competitive, thereby diminishing the possibility that the volume of subject imports from South Africa would increase materially in the imminent future. These increased imports also rendered minimal any effect an increase in subject imports from South Africa would have on its share of total imports.

(ii). Potential Imports from South Africa and Other Countries.

We have also considered potential imports from South Africa and other countries in the imminent future. Record evidence from importers and one exporter, market conditions, and potential imports from other countries support our conclusion that there is no potential that subject imports from South Africa will imminently exceed the statutory negligibility threshold. We find that there is clear and convincing evidence supporting our conclusion.

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[93] CR/PR at Table C-1 and Table IV-2. The ratio of subject imports from Trinidad and Tobago to total imports was 9.3 percent in calendar year 2000, and 10.7 percent in the statutory negligibility period. Thus, unlike subject imports from South Africa, the ratio for Trinidad and Tobago was much higher in the statutory period than in calendar year 2000. It was even higher, 12.7 percent, in interim 2001. Id.

[94] CR/PR at Table IV-1 and Table IV-2. Subject imports from South Africa were 4,129 short tons higher in the August 2000 to July 2001 statutory negligibility period as compared to calendar year 2000. This rate of increase is much lower than for these four countries. In contrast, subject imports from Brazil were 57,353 short tons higher in the statutory period; subject imports from Canada, 15,528 short tons higher; subject imports from Mexico, 52,106 short tons higher; and subject imports from Trinidad and Tobago, 42,105 short tons higher. (For Brazil, subject imports were 224,584 short tons in calendar year 2000 and 281,937 short tons in the statutory negligibility period; for Canada the figures were 725,028 short tons and 740,556 short tons; for Mexico 159,818 short tons and 211,924 short tons; and for Trinidad and Tobago, 287,507 short tons and 329,612 short tons). Id.

[95] CR/PR at Table IV-1 and Table IV-2.

[96] These four subject countries in the aggregate accounted for 37.0 percent of total imports in the U.S. market in 1998. In 2000, their share of total imports had increased to 45.2 percent, and it was over half of total imports in the U.S. market, 50.7 percent, in the statutory negligibility period. Table IV-1 and IV-2.

Two importers of subject merchandise from South Africa, ***, responded to our questionnaire.[97] Based on a comparison with official import statistics, Commission staff estimated that responding U.S. importers of wire rod from South Africa accounted for *** percent of U.S. imports of subject merchandise from that country during 2000.[98] ***.[99]

In response to the question whether it had imported or arranged to have any imports of wire rod from subject countries delivered after March 31, 2001, *** reported only one delivery of subject imports from South Africa of *** short tons in ***.[100] This is compared to *** This *** order does not reflect an intent on the part of *** to materially increase its subject imports from South Africa into the U.S. market in the imminent future. ***[101] ***.[102]

As for future exports from South Africa, one exporter, Scaw Metals, responded to our questionnaire. Scaw Metals accounted for *** percent of wire rod production in South Africa in 2000. It reported "zero" exports to the United States during the period of investigation and projected "zero" exports to the United States into the future.[103] Although Scaw Metals projected significant excess capacity for 2001,[104] and could theoretically redirect its exports from other markets to the U.S. market, as the Court notes in its decision,[105] it did not export to the United States during the period of investigation and stated that it does not plan to do so in the future. We accept Scaw Metal's unqualified representation[106] and do not assume, in the absence of any contrary evidence, that its projected increased shipments to other markets will be diverted to the U.S. market in the imminent future.

Therefore, neither the largest responding importer of subject imports, nor the only exporter in South Africa that responded to our questionnaire, gave any indication that they were intending to increase their imports or their exports, respectively, to the U.S. market in the imminent future.

As stated earlier, the U.S. market has become more competitive. Subject imports from South Africa increased from 1998 to 2000 while apparent U.S. consumption also increased. However, in interim 2001, apparent U.S. consumption declined, and it was *** percent lower in interim 2001 than in interim 2000. We find that this decrease in consumption would tend to discourage importers or exporters of wire rod from South Africa from attempting to increase wire rod shipments to the U.S. market.

This decrease in consumption may also discourage wire rod producers from other countries from increasing their exports to the United States. However, we find that the record indicates that if imports were to increase, that increase would be far more likely to consist of subject imports from Brazil, Canada, Mexico and Trinidad and Tobago, rather than subject imports from South Africa. We have already shown that imports from these countries increased significantly over the period of investigation. The record reflects that these countries have the ability and incentive to significantly increase their imports to the United States. We discuss each of these countries in turn.

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[97] CR/PR at IV-1.

[98] CR/PR at IV-1.

[99] ***. ***. ***.

[100] ***. ***. ***.

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

[102] We note that *** comports with our conclusions regarding the appropriate "imminent" period for this case.

[103] CR/PR at Table VII-8.

[104] CR/PR at Table VII-8.

[105] Slip Op. 05-63 at 14, n.8.

[106] ***.

Plaintiffs argued that wire rod producers in Brazil would likely increase their exports to the United States because they were benefitting from export subsidies. Plaintiffs specifically mentioned ***.[107] Brazilian wire rod producers that responded to the Commission's questionnaire projected *** short tons of excess production capacity in 2001.[108]

Plaintiffs alleged that wire rod producers in Canada were benefitting from an exemption from the wire rod tariff rate quota ("TRQ")[109] and export subsidies.[110] Canadian wire rod producers that responded to the Commission's questionnaire projected *** short tons of excess production capacity in 2001.[111]

Plaintiffs alleged that wire rod producers in Mexico were also benefitting from an exemption from the wire rod TRQ, that Mexican producer SICARTSA had increased its productive capacity by about *** tons from 1998 to 2000, and that "over half" of this increased production capacity was targeted at increased exports to the United States.[112] Mexican wire rod producers that responded to the Commission's questionnaire projected that they would ***. Even at that level of exports, they projected excess production capacity of *** short tons in 2001.[113]

Plaintiffs alleged that with its small home market, Caribbean Ispat, the only steel wire rod producer in Trinidad and Tobago, was export-oriented and targeting the U.S. market. They also alleged that Caribbean Ispat was benefitting from export subsidies.[114] Caribbean Ispat reported that it ***,[115] and projected *** short tons of excess production capacity in 2001.[116]

Plaintiffs alleged that the capacity constraint for Caribbean Ispat was its rolling mills for wire rod, which had a capacity of 810,000 tons of wire rod annually, approximately *** tons higher than Caribbean

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[107] Plaintiffs' Postconference Brief at 44.

[108] Derived from CR/PR at Table VII-1. For 2001, these Brazilian producers (which accounted for *** percent of subject imports from Brazil in 2000) projected wire rod production of *** short tons and production capacity of *** short tons.

[109] See Plaintiffs' Postconference Brief at 22, n.21. At the time of its preliminary determinations, the Commission had recently found that a surge in imports of wire rod from Canada and Mexico were undermining the section 201 TRQ that was in place on wire rod. The Commission had found that a significant increase in wire rod imports from Canada and Mexico followed the implementation of the TRQ for steel wire rod. Certain Steel Wire Rod, Inv. No. 312-NAFTA-1, USITC Pub. 3453 (Sept. 2001) at 9, 11. The TRQ for steel wire rod was scheduled to remain in place until March 2003. CR at I-8; PR at I-6.

[110] Plaintiffs' Postconference Brief at 44.

[111] Derived from CR/PR at Table VII-2. For 2001, these Canadian producers (which accounted for *** percent of subject imports from Canada in 2000) projected wire rod production of *** short tons and production capacity of *** short tons.

[112] Plaintiffs' Postconference Brief at 44.

[113] Derived from CR/PR at Table VII-6. For 2001, these Mexican producers (which accounted for *** of subject imports from Mexico in 2000) projected wire rod production of *** short tons in 2001 and production capacity of *** short tons.

[114] Plaintiffs' Postconference Brief at 44, 47-49.

[115] Plaintiffs' Postconference Brief at 49.

[116] Derived from CR/PR at Table VII-9. For 2001, Caribbean Ispat projected wire rod production of *** short tons and production capacity of *** short tons.

Ispat's reported capacity of *** short tons.[117] Plaintiffs further alleged that Caribbean Ispat produced only 695,000 tons of wire rod annually, "leaving 100,000 tons available for increased production and export to the United States."[118]

In total, the record shows excess production capacity from these four countries that could be directed towards the U.S. market in 2001 of 401,338 short tons, based on reported projected production and capacity. If Plaintiffs' allegation regarding Caribbean Ispat's true capacity is taken into account, the unutilized capacity in these four countries increases to 484,074 short tons. We note that wire rod producers in these countries have the incentive as well as the ability to increase their exports to the United States. In fact, producers in Mexico and Trinidad and Tobago reported plans to ***.

We conclude that decreased U.S. demand and increased competition from other subject countries make it unlikely that subject imports from South Africa will increase their share of total imports in the imminent future. During the statutory negligibility period, subject imports from South Africa were 79,541 short tons, 2.6 percent of total imports of 3,086,932 short tons.[119] We find no evidence that subject imports from South Africa would continue to increase from this point at the same rate at which they increased from 1998 to 2000. To the contrary, the record supports our conclusion that this rate of increase has slowed considerably, commensurate with declining U.S. demand.

However, should total imports of wire rod increase more than marginally in the imminent future, they are much more likely to come from Brazil, Canada, Mexico or Trinidad and Tobago than South Africa. These countries have significantly increased their imports to the United States and their collective import share over the period of investigation. Plaintiffs themselves argued that total imports and specifically imports from these countries would increase in the future. Wire rod producers in these countries have either increased production capacity, allegedly receive export subsidies, or have other incentives to increase their exports to the United States.

We conclude that there is no potential that subject imports from South Africa will exceed the applicable individual statutory negligibility threshold of three percent of total wire rod imports in the imminent future, and that they will remain at approximately 2.6 percent of total imports in the imminent future.

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[117] Plaintiffs' Postconference Brief at 49.

[118] Plaintiffs' Postconference Brief at 49. Plaintiffs cited to an Securities and Exchange Commission registration statement to support its capacity allegation. Id.

[119] In the administrative proceedings before us, Plaintiffs did not argue that subject imports specifically from South Africa would imminently exceed the negligibility threshold. Rather, they argued that subject import volumes from certain countries had recently fluctuated above and below the negligibility threshold, and therefore, the Commission should find that all subject imports were non-negligible.

Plaintiffs focused on fluctuations in subject import levels from Indonesia and Germany, both of which the Commission found to be non-negligible in its preliminary determinations. Plaintiffs' Postconference Brief at 12-13.

As stated in our original determination, subject imports from South Africa were never above three percent over the period of investigation. Pursuant to the statute, we do not rely on speculation that they may rise above that level in the future.

b. There is no potential that aggregate subject imports from Egypt, South Africa and Venezuela will imminently exceed seven percent of total imports of wire rod to the United States.

(I) Actual Aggregate Imports and Imports from Other Countries.

We begin our analysis with a consideration of our data on actual imports from Egypt, South Africa and Venezuela, and actual total imports. These data reflect that over the statutory negligibility period subject imports from Egypt, South Africa and Venezuela in the aggregate equaled 6.1 percent of total wire rod imports, well below the statutory threshold. Our import data show that after increasing from 1998 to 1999, the aggregate volume of subject imports from these three countries, as well as their ratio to total imports, consistently declined after 1999. Aggregate subject imports from these countries totaled 187,767 short tons in the statutory August 2000 to July 2001 period.[120] Aggregate subject imports from these three countries were 133,740 short tons in 1998, 211,978 short tons in 1999, and 197,849 short tons in 2000. They were 69,464 short tons in interim 2001 as compared to 75,696 short tons in interim 2000. Thus, in the aggregate, the volume of subject imports from these three countries exhibited a downward trend since 1999.[121] The ratio of these aggregate subject imports to total imports was 6.1 percent in the August 2000 to July 2001 period.[122] This ratio also exhibited a downward trend since 1999: it was 5.4 percent in 1998, 7.5 percent in 1999, and 6.4 percent in 2000. This ratio was 5.1 percent in interim 2001 as compared to 5.6 percent in interim 2000.[123]

As stated above, the SAA provides guidance that the Commission is to consider whether aggregate subject imports from Egypt, South Africa and Venezuela in the statutory period were increasing at a rate that indicated that they would imminently exceed the negligibility threshold of seven percent. They are not increasing at such a rate. In calendar year 2000, aggregate subject imports from Egypt, South Africa and Venezuela were 197,849 short tons.[124] In the statutory negligibility period, they were 187,767 short tons, a decline of 10,082 short tons.[125]

We also note that, as discussed in our individual negligibility analysis with respect to South Africa, total imports increased from 1998 to 2000, at an average increase of 301,750 short tons per annum, making it increasingly unlikely that aggregate subject imports from Egypt, South Africa and Venezuela would increase their share of total imports.

(ii) Potential Aggregate Imports and Imports from Other Countries.

We have also considered potential imports from Egypt, South Africa and Venezuela, as well as from other countries, in the imminent future.

With respect to Egypt, subject import volume fell overall from 49,487 short tons in 1998 to 37,480 short tons in 2000. Its ratio to total imports fell overall from 2.0 percent of total imports in 1998

[120] CR/PR at Table IV-2.

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

[122] CR/PR at Table IV-2.

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

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

[125] Derived from CR/PR at Table IV-2.

to 1.2 percent in 2000, and it was 1.4 percent in the statutory negligibility period.[126] Exports from the responding Egyptian wire rod producer, Alexandria National Iron & Steel ("ANSDK"), accounted for approximately *** percent of subject imports from Egypt to the United States in 2000, based on official Commerce statistics. ANSDK projected exports of *** short tons of wire rod to the U.S. market in 2001 and 2002, which is lower than its imports during the statutory period. It has no plans to expand its production capacity in the imminent future. Its projected capacity utilization for 2001 and 2002 is ***. Its inventories have been ***.[127]

We conclude that subject imports from Egypt will account for at most approximately 1.4 percent of total wire rod imports in the imminent future. ANSDK's reported capacity utilization levels and inventory levels are consistent with this conclusion.

With respect to Venezuela, we note that subject imports from this country have been decreasing since their peak in 1999. In calendar year 2000 they were 84,957 short tons and during the statutory negligibility period they were 65,429 short tons. Subject imports from Venezuela were significantly lower in interim 2001 (20,724 short tons) than in interim 2000 (48,440 short tons). Thus, our import data reflect a strong downward volume trend for subject imports from Venezuela since 1999.

One wire rod producer from Venezuela, Sidor, responded to our questionnaire. Exports from Sidor accounted for *** percent of subject imports from Venezuela, based on official Commerce statistics. Sidor projects capacity utilization of *** percent in 2001 and *** percent in 2002. Sidor's end-of-period inventories decreased from 1998 to 2000, although they were higher in interim 2001 than in 2000. Sidor's projected inventories are below 1998 levels. Although Sidor projected higher exports to the United States in 2001 and 2002 than in 2000, these projections are inconsistent with the downward trend in import data, as well as Sidor's own lower production projections in 2001 and 2002, as compared to 2000.[128]

We conclude based on our analysis of all of the foregoing evidence that wire rod imports from Venezuela will remain at approximately 2.1 percent of total imports in the imminent future.

We have already discussed potential wire rod imports from South Africa, and concluded that they would remain at approximately 2.6 percent of total imports in the imminent future.

Under this analysis, aggregate subject imports from Egypt, South Africa and Venezuela would, in aggregate, account for approximately 6.1 percent of total imports in the imminent future. Our conclusion is bolstered by additional factors discussed earlier with respect to South Africa that would tend to limit any growth in the ratio between aggregate subject imports from these three countries and total wire rod imports. Total wire rod imports increased significantly over the period of investigation, making it increasingly difficult for any increase in already low aggregate subject imports from these three countries to represent a larger proportion of total imports. The U.S. market has become more competitive, with demand having recently decreased at the same time as total imports rose. Wire rod producers in Brazil, Canada, Indonesia, Mexico and Trinidad and Tobago have a variety of incentives to increase their presence in the U.S. market.[129] To the extent that there is any increase in total imports at all in the

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[126]CR/PR at Table IV-1 and Table IV-2.

[127] CR/PR at Table VII-3.

[128] CR/PR at Table VII-8. We note that Sidor's reported actual exports of wire rod in 1998, 1999, and interim 2001 *** the official import statistics for imports from Venezuela, even though Sidor reportedly does not account for *** wire rod production in Venezuela. In light of these discrepancies, we have relied primarily on the official import data.

[129] As discussed earlier, wire rod producers in Brazil, Canada, Mexico and Trinidad and Tobago projected significant excess production capacity of over 400,000 short tons in 2001. We find that these

imminent future, we find that it is much more likely for that increase to come from countries other than Egypt, South Africa and Venezuela, with significant excess capacity and incentives to increase their exports to the United States.

In sum, we find no potential on the record that aggregate wire rod imports from these three countries would exceed seven percent of total wire rod imports in the imminent future. Such a change in this ratio could occur only through a sharp increase in import volume from these countries in the imminent future, or a significant decrease in total imports. The record reflects a potential for neither scenario. To the contrary, the record reflects a downward trend in aggregate subject imports from Egypt, South Africa and Venezuela since 1999, coupled with increased volumes over the period of investigation of imports primarily from other subject countries. Potential increases in imports are most likely to come from subject countries other than Egypt, South Africa and Venezuela.

Accordingly, we affirm our earlier determination, pursuant to 733(a)(1),[130] that the antidumping duty investigations for Egypt, South Africa and Venezuela are terminated by operation of law.

CONCLUSION

For the reasons stated above, we find that imports of wire rod from Egypt, South Africa and Venezuela that are allegedly sold in the United States at less than fair value are negligible.

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producers in the aggregate have much more excess production capacity than wire rod producers in Egypt, South Africa and Venezuela, and stronger incentives to increase their presence in the U.S. market. ANSDK projects *** wire rod production capacity; Sidor projects projected *** capacity *** for 2001, and Scaw Metals has excess capacity, but no projection to export to the United States. CR/PR at Table VII-3, Table VII-8, Table VII-12.

[130] 19 U.S.C. § 1673b(a)(1).