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PUBLIC VERSION

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November 13, 2017

Via Electronic Filing and Hand Delivery

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, S.W., Room 112A
Washington, D.C. 20436

**Re: Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea,
Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and
the United Kingdom Inv. No(s). 701-TA-573-574 and 731-TA-1349-1358
(Final): Pre-Hearing Brief of British Steel Ltd.**

Dear Secretary Barton:

On behalf of British Steel Ltd. ("British Steel"), we hereby file in the above-captioned proceeding the public version of British Steel Pre-Hearing Brief in accordance with 19 C.F.R. § 201.8.

In accordance with 19 C.F.R. § 201.6, British Steel requests that confidential treatment be accorded to the factual information contained within brackets in this submission. The bracketed

information consists of business proprietary information obtained from the petition, questionnaire responses, and other business proprietary information released under Administrative Protective Order in this proceeding which is not publicly available. The proprietary business information so designated concerns and/or relates to British Steel and the other companies submitting the information and the disclosure of this information would cause substantial harm to the competitive position of the companies submitting that information.

This submission has been served on counsel pursuant to the attached certificate of service. Please do not hesitate to contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,



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CERTIFICATION OF COUNSEL

I, Thomas J. Trendl, of Steptoe & Johnson LLP, counsel to British Steel Limited, hereby certify that (1) I have read the attached submission of Pre-Hearing Brief pursuant to the U.S. International Trade Commission's Investigation of Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and United Kingdom, Inv. Nos. 701-TA-573-574 and 731-TA-1349-1358 (Final) on November 9, 2017; and (2) the information contained in this submission is, to the best of my knowledge, accurate and complete.

DATED: 11/9/17

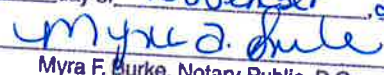

Thomas J. Trendl

Subscribed and sworn before me this 9th day of November, 2017.


Notary Public

My Commission expires 7-31-2019



District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 9th day of November, 2017

Myra F. Burke, Notary Public, D.C.
My commission expires July 31, 2019.

CERTIFICATE OF SERVICE

Carbon and Certain Alloy Steel Wire Rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and United Kingdom

701-TA-573-574 and 731-TA-1349-1358 (Final)

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**UNITED STATES
INTERNATIONAL TRADE COMMISSION**

**In the Matter of:
Carbon and Alloy Steel Wire Rod
from Belarus, Italy, Korea, Russia,
South Africa, Spain, Turkey, Ukraine,
the United Arab Emirates, and
the United Kingdom**

**PUBLIC VERSION
Inv. Nos. 701-TA-573-574 &
701-TA-1349-1358
(Final)**

Pre-hearing Brief of British Steel Ltd.

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I. INTRODUCTION AND SUMMARY

This is an investigation in which the record demonstrates conclusively that subject imports have not caused and do not threaten material injury to the domestic industry that produces carbon and certain alloy steel wire rod. Following are eight reasons why the Commission must make a negative injury determination:

- The U.S. producers of wire rod on whose behalf this proceeding was brought substantially increased both their volume of U.S. commercial shipments and their share of the U.S. market during the period 2014-2016.¹ The appearance of declines in shipments and market share on which the Commission relied in its affirmative preliminary determination is entirely attributable to the departures from the wire rod industry of two U.S. producers, departures that were not caused by subject imports.
- The industry's profits on total market operations improved over the POI.² Relatively small declines in profits on merchant market operations³ are shown by the staff's variance analysis to have been attributable to "unfavorable price variances," not to volume variances.⁴ However, subject imports neither depressed nor suppressed U.S. producers' prices.
- With respect to price depression, the record demonstrates that cost declines – not subject imports' volume or pricing – fully explain the declines in U.S. producers' prices in two respects. First, U.S. producers' average cost of goods sold (COGS) declined by a greater percentage than the average unit value of their commercial sales.⁵ Second, wire rod

¹ Exhibit 1 (Table1) demonstrates the year over year totals for US Shipments; Exhibit 1 (Table2) demonstrates these same totals without US Producers who left the market prior to the end of 2016 for reasons other than competition with subject imports.

² Pre-Hearing Staff Report at VI-5.

³ Pre-Hearing Report at VI-8.

⁴ Preliminary Staff Report at VI-17.

⁵ Pre-Hearing Report at VI-6.

consumers focused attention on declines in the prices of steel scrap⁶, which greatly exceeded the declines in U.S producers' wire rod prices⁷, and used those scrap price declines to press for reductions in wire rod prices.

- With respect to price suppression, the Commission correctly concluded in its Preliminary Determination that the 2014 to 2016 decline in apparent domestic consumption, coupled with falling costs, made it unlikely that U.S. producers could have raised prices, regardless of subject imports.⁸
- Petitioners are simply wrong – on both the law and the facts – in claiming that subject imports caused material injury by depriving petitioners of volume they somehow should have gained when Chinese imports declined dramatically. There is neither a statutory basis nor any Commission precedent for determining that volume taken by subject imports from non-subject imports constitutes material injury to the domestic industry. And the record here shows that U.S. producers captured a larger share of the decline in Chinese imports than would have been expected, given the U.S. producers' share of the U.S. wire rod market at the beginning of the period of investigation.
- There is nothing in the record to support an affirmative threat determination. The U.S. industry is not vulnerable, with volume and prices rising. The outlook for U.S. wire rod demand is strong. Subject imports did not take market share from the domestic industry during the POI and the increase in subject imports' volume was less than the increase in U.S. producers' volume. Moreover, there is no evidence of excess capacity in subject countries that would support an affirmative threat determination.

⁶ Pre-Hearing Report at V-2 and Figure V-1.

⁷ Pre-Hearing Staff Report at VI-6 and Table VI-1 (average unit values), and at V-9 through 20, Figures V-3 through V-8 (pricing products).

⁸ Views of the Commission (preliminary investigation) at 50.

- The Commission should find that grade 1080 tire cord/tire bead (TC/TB) wire rod is a separate like product. Since domestic mills do not produce this product in commercial quantities, and because the domestic grade 1080 production cannot meet the stringent requirements for these applications, a negative determination as to imports of grade 1080 TC/TB wire rod is required here.
- Finally, if grade 1080 TC/TB wire rod is treated as a separate like product, then the Commission must determine that imports of other carbon and alloy wire rod from the United Kingdom, South Africa and Spain are negligible.

On the basis of the foregoing, the Commission must determine that imports of carbon and certain alloy wire rod from Belarus, Italy, Korea, Russia, South Africa, Spain, Turkey, Ukraine, the United Arab Emirates and the United Kingdom have not caused and do not threaten material injury to an industry in the United States.

II. THE SHARE OF THE U.S. WIRE ROD MARKET HELD BY THE DOMESTIC INDUSTRY INCREASED SIGNIFICANTLY DURING THE PERIOD OF INVESTIGATION

The fundamental basis of the Commission’s preliminary affirmative determination in this investigation was that the U.S. wire rod industry lost market share to underselling by subject imports. The Commission emphasized this conclusion in its discussions of volume effects, price effects, impact of subject imports and threat:

- “The domestic industry’s share of apparent U.S. consumption in the merchant market also fell from 59.2 percent in 2014 to 59.0 percent in 2015 and 58.0 percent in 2016.”⁹
- “{S}ubject imports did not merely replace non-subject imports from China, they also took market share from the domestic industry in the merchant market. . . .”¹⁰

⁹ Views of the Commission at 46.

- “Prices of the domestic like product declined while low-priced cumulated subject imports increased in volume and gained market share, particularly in the merchant market, at the expense of the domestic industry.”¹¹
- “As discussed above, the domestic industry’s market share in the merchant market declined from 59.2 percent in 2014 to 59.0 percent in 2015 and 58.0 percent in 2016.”¹²
- “[T]he domestic industry lost further market share to the cumulated subject imports particularly in the merchant market.”¹³
- “[T]he modest decline in apparent U.S. consumption, however, fails to explain. . . the U.S. industry’s inability to increase, or even maintain, its market share after wire rod imports from China largely departed the U.S. market.”¹⁴
- “Due to the U.S. industry’s decline in market share, production, U.S. shipments, capacity utilization and profitability, we find that the domestic industry is in a vulnerable position.”¹⁵
- “The significant volumes of low-priced subject imports will likely continue to displace sales of the domestic like product and cause the domestic industry to lose market share, which will lead to adverse effects on the domestic industry’s revenues and financial performance.”¹⁶

In short, if the Commission had not determined that the domestic wire rod producers’ market share had declined because of subject imports, it could not have found injurious volume effects, injurious price effects, and adverse impact of subject imports on U.S. producers’

¹⁰ Id. at 47.

¹¹ Id. at 51.

¹² Id. at 51. It must be remarked that, even if it were supported by the record (which it is not), this small decline in market share – 1.2 percent over a two year period – is too small to be deemed “material.”

¹³ Id. at 54.

¹⁴ Id. at 54.

¹⁵ Id. at 62.

¹⁶ Id. at 62.

operating results. Nor could it have found a threat of imminent future material injury. This is fundamental for the Commission’s final determination, because the record shows clearly that the industry on whose behalf this case was brought did not lose volume or market share during the 2014-2016 period of investigation. To the contrary, the U.S. producers’ shipments and market share increased substantially, showing greater increases than subject imports.

The crucial fact here is that the entire decline in U.S. industry volume and market share over the 2014-16 POI is attributable, not to competition with subject imports, but rather to the withdrawal from the industry of Arcelor Mittal in 2015 and Republic in early 2016. Indeed, cessation of wire rod production by those two companies, reduced U.S. industry shipments by [] tons,¹⁷ accounting for much more than the entire decline in U.S. industry shipments found by the Commission in the preliminary determination.

The rest of the domestic wire rod producers – the companies that constitute the U.S. industry on behalf of which the petition in this case was filed on March 28, 2017 – substantially increased their U.S. commercial shipments and their market share over the 2014-2016 POI:

U.S. Merchant Market 2014-2016¹⁸

	<u>Pre-Hearing Staff Report</u>	<u>Excluding Arcelor Mittal & Republic</u>
Commercial Shipments	-157,987	+ []
Market Share	-1.1 %	+ []%

¹⁷ Arcelor Mittal’s U.S. commercial shipments declined from [] tons in 2016 to [] tons in 2016. Arcelor Mittal final investigation questionnaire response at Page 13. Republic’s U.S. commercial shipments declined from [] tons in 2014 to [] tons in 2016. Republic preliminary investigation questionnaire response at Page 12. Each is stated in Table III-1 at page III-2 of the Pre-Hearing Staff Report to have no current wire rod production and no share of U.S. industry production.

¹⁸ Figures taken from Table C-2 at page C-5 of Pre-Hearing Staff Report, adjusted by U.S. commercial shipment data from Table II-7 of the responses to the Final Investigation Foreign Producers Questionnaire (Arcelor Mittal) and to the Preliminary Investigation Foreign Producers Questionnaire (Republic).

Far from suffering a material loss of shipment volume or of market share, the companies that constitute the U.S. wire rod industry that this proceeding seeks to protect performed extremely well during the POI. In the face of a decline of [] tons in U.S. apparent domestic consumption,¹⁹ the industry increased its U.S. commercial shipments by [] tons. This resulted in a market share increase of [] percent, essentially [] the [] percent increase in subject imports' share.

The foregoing analysis provides a totally different understanding of what happened in the U.S. wire rod market during the 2014-2016 period of investigation. Two U.S. producers experienced problems which, as discussed below, were not caused by competition with subject imports. And it was those very different problems that caused those two producers to exit the U.S. wire rod industry in mid-2015 and early 2016. The remaining U.S. producers, which now constitute the U.S. wire rod industry whose welfare is the subject of this investigation, performed extremely well. Far from losing shipment volume and market share to subject imports, they increased shipments significantly despite a decline in apparent domestic consumption, resulting in a formidable market share increase of [] percent. Subject imports achieved a much lesser market share gain of [] percent, which came at the expense of non-subject imports,²⁰ not at the expense of the U.S. industry.

The U.S. industry gains in shipment volume and market share require a fundamental revision of the Commission's analysis in the Preliminary Determination:

- The U.S. industry suffered no injury in the form of declining volume of shipments or loss of market share.

¹⁹ Pre-Hearing Staff Report, Table C-2 at page C-5.

²⁰ See discussion Section V, below.

- Decline in wire rod prices cannot be attributed to subject imports taking volume and market share from domestic producers.
- It is not true to say that the U.S. industry was unable “to increase, or even maintain, its market share after wire rod imports from China departed the U.S. market.”²¹
- Nor can evidence of U.S. industry vulnerability to future imports be found in “the U.S. industry’s decline in market share, production, U.S. shipments.”²²

The Commission in past cases has been careful to analyze overall domestic industry data in light of producers that left the market for reasons other than the effects of subject imports. In Liquid Sulfur Dioxide from Canada, Inv. No. 731-TA-1098 (Preliminary), USITC Pub. 3826 (2005), the fact that Rhodia, a major U.S. producer, left the industry for environmental reasons was a major factor in the Commission’s negative preliminary determination. Of particular relevance to the present case is the Commission’s analysis of domestic industry shipments and market share:

Declines in shipments and sales by the domestic industry from 2003 to 2004 were heavily impacted by decreases in shipments and sales by Rhodia as it left the industry.... We note that total shipments and sales (by quantity and value) by domestic producers other than Rhodia increased from 2002 to 2004, and are relatively stable in interim 2005 as compared to interim 2004.²³

Most recently, the Commission again found no evidence of material injury in Titanium Sponge from Japan and Kazkhstan, Inv. No. 701-TA-587 and 731-TA-1385-1387 (Preliminary,

²¹ Views of the Commission, at 54.

²² Id., at 62.

²³ Views of the Commission, at 16. The Commission applied a similar analysis in its negative determination in Steel Wire Rope from China and India, Inv. No. 731-TA-868 (Final), USITC Pub. 3406 (2001), where two U.S. producers, Rochester and Macwhyte exited the industry during the period of investigation. The Commission concluded that “we attribute much of the declines in U.S. shipments, number of production and related workers, and hours worked to the departure of Macwhyte and Rochester from the industry.” Views of the Commission, at 16.

USITC Pub. 4736 (2017), where a U.S. producer ceased domestic production of the subject merchandise during the period of investigation. Importantly, the Commission noted that “most of the declines between the interim periods appear to be attributable to ATI’s cessation of domestic production operations” which was a “business decision to due to the cost disadvantages of a non-integrated facility, and was not a result of low-priced subject imports.” (Views of the Commission, at 38).

The analysis in Sulfur Dioxide, Steel Wire Rope and Titanium Sponge is equally appropriate in the present case. Here, as in those cases, overall industry statistics show some decline in shipments and market share. But that decline is entirely accounted for by the exit from the industry, for reasons other than subject imports, of Arcelor Mittal²⁴ and Republic, just as Rhodia exited the steel wire rope industry for environmental reasons unrelated to subject imports and ATI exited the titanium sponge industry because of cost problems. And just as the volume indicators for domestic sulfur dioxide producers other than Rhodia and for domestic titanium sponge producers other than ATI improved instead of declining, here the U.S. wire rod industry’s shipment volume and market share show substantial improvement over the POI when adjusted for the exit from the industry of Arcelor Mittal and Republic.

Accordingly, it is important here for the Commission to understand the reasons for the exit of Arcelor Mittal and Republic. As discussed in Section III below, and in the briefs being filed by the American Wire Producers Association and the Turkish producers (with which British Steel wholly concurs on this point), subject imports did not cause those exits.

²⁴ In some public statements concerning the South Carolina plant, Arcelor Mittal mentioned competition with other wire rod suppliers including imports, but any reading of the company’s contemporaneous statements and the contemporaneous press accounts (see Section III.A, below) makes clear that the failure to obtain dredging at the harbor, together with the age and inefficiency of the plant, were the predominant causes of the closure. Any effect of imports clearly did not rise to the level of forcing closure of the plant.

III. THE RECORD IS CLEAR THAT THE ARCELOR MITTAL AND REPUBLIC EXITS FROM THE U.S. INDUSTRY HAD NOTHING TO DO WITH SUBJECT IMPORTS

As demonstrated by the statistical analyses in the preceding Section, the illusion of industry declines in shipment volume and in market share is attributable entirely to inclusion in the industry statistics of data relating to two companies that left the industry in mid-2015 and early 2016, long before this proceeding was initiated. In fact, the data from those two companies must be excluded from any analysis of the volume and market share effects of subject imports, because each of those two exits was the result of factors entirely unrelated to subject imports. The Commission should read the discussion below of these two companies' plant closures in conjunction with the more expansive and documented analyses presented in the prehearing submissions of the Turkish producers and of the American Wire Producers Association. British Steel is entirely in accord with the substance of those parties' submissions on this crucial issue.

A. Arcelor Mittal

The Arcelor Mittal wire rod plant was originally built in Georgetown, South Carolina by Korf Industries in 1969. It has had a series of severe problems over the last two decades:

- a bankruptcy in 2001,
- a second bankruptcy in 2003, with a closure of the mill,
- another closure in 2009 during the Great Recession, and
- a closure to repair a serious oil leak in 2014.

In recent years, the plant has encountered two problems that, taken together, proved fatal:

One was the building of a new, modern, state of the art wire rod mill by Nucor only 100 miles away in Darlington, South Carolina. That plant had substantial cost advantages over the old, much less efficient mill in Georgetown. The Nucor wire rod mill began operations in 2013.

The second – and much more serious problem – related to the plant’s necessary use of the Georgetown harbor. The wire rod mill at one time had made its own DRI on site, but the DRI plant was closed, its DRI equipment was sold, and the DRI had to be imported into the Port of Georgetown. But the Georgetown harbor developed a serious silting problem, reducing its depth from 27 feet to a level that made it impractical to bring the DRI into that port.

Arcelor Mittal and the city of Georgetown sought funding to dredge the harbor to a satisfactory depth – originally estimated to cost \$33.5 million – and perform the annual dredging necessary to keep the waterway useable, which would cost \$5 million to \$6 million per year. But those efforts were abandoned where the Army Corps of Engineers revised its cost estimate upward to \$66 - \$70 million. Neither the Corps nor state or local authorities were willing to undertake that level of expense.

With the Port of Georgetown unusable, the DRI would have to be imported into Charleston, South Carolina or Wilmington, North Carolina and brought by barge to the Georgetown plant. The \$50 - \$60 per ton cost of such transport would be uneconomic, especially in light of the need to compete against the nearby low-cost Nucor wire rod mill.

Accordingly, the Arcelor Mittal wire rod plant was closed in August, 2015. While the company’s press release mentioned several causes, including competition with imports from China and elsewhere, it was clear that, without access to the Port of Georgetown harbor to import DRI, the plant could not compete with any of its rivals in the wire rod market, whether Nucor or

imports or any other competitor. The closure, therefore cannot be attributed to the prices or volume of subject imports.

B. Republic

Republic Steel produced bars, rounds and certain products falling into the HTS wire rod category at its Lorain, Ohio bar mill. The mill had three components:

- Production of rounds, predominantly sold to the immediately adjacent U.S. Steel Lorain Tubular Operations for processing into pipe and tube products for the oil and gas industry,
- Production of large diameter bars (4 to 6 ¾ inches), also predominantly for oil and gas applications, and
- A smaller production of small diameter bars (nothing lower in diameter than 0.297 inches for the past 15 years), some of which fell into HTS wire rod classifications.

The Republic blast furnace at Lorain shut down in 2008, leaving the rolling mill in operation. Like other bar producers, Arcelor Mittal/Lorain periodically complained of import competition, but it was competition from large diameter bar imports, not from wire rod imports.

In 2014, during the boom in sales of steel (including rounds and bars) to the oil and gas industry, Republic opened a new electric arc furnace at Lorain. The timing proved unfortunate as the oil and gas market crashed in 2015. U.S. Steel idled its Lorain Tubular operations, which was a crippling blow to the Republic Lorain bar mill. In July 2015, Republic shut down the electric arc furnace. Then without its major customer (U.S. Steel) and with the market for bars in the oil and gas sector deeply depressed, Republic closed the Lorain mill. While the production of the wire rod products was shut down along with the rest of the Lorain production, that clearly

had nothing to do with competition from the wire rod imports that are the subject of this proceeding.

Any doubt on this point is removed by an examination of the Lorain mill's operating results on the products classified as wire rods, as shown by Republic's response to the Commission's preliminary investigation questionnaire. (Republic has not submitted, as of the date this prehearing brief is written, a response to the final investigation questionnaire.) No determination of wire rod results can explain the Lorain mill closure, because Republic's operating results on wire rod [

] over the POI.²⁵ Republic's average sales value of commercial shipments [],²⁶

compared with an overall wire rod industry decline in excess of [] percent.²⁷ Clearly, any problems severe enough to cause a plant closure arose from Republic/Lorain's bar and rounds operations, not its wire rod operations.

IV. SUBJECT IMPORTS CAUSED NO ADVERSE EFFECTS ON U.S. INDUSTRY PRICES

The Staff's variance analysis makes it clear that the merchant market problems experienced by the U.S. wire rod industry during the 2014-2016 period were the result of declining U.S. wire rod prices.

With respect to the merchant market, operating income decreased primarily because the favorable net cost/expense variance was not large enough to offset unfavorable price variances (i.e. prices decreased more than costs and expenses).²⁸

²⁵ Republic Response to Preliminary Investigation Questionnaire, at 22.

²⁶ *Id.* at 23.

²⁷ Pre-Hearing Staff Report at VI-9, Table VI-3. The unit value of U.S. industry commercial sales fell from \$716/ton in 2014 to \$530 per ton in 2016, a decline of 25.98 percent.

²⁸ Pre-Hearing Staff Report at VI-17.

But the record is equally clear that subject imports did not either suppress or depress U.S. producers' wire rod prices.

A. Price Suppression

In its preliminary determination, the Commission was clear in concluding that subject imports were not a cause of price suppression. It found that, because of the [] percent decline in apparent consumption in the merchant market during the POI and the declines in raw material and other costs, U.S. firms could not increase prices for wire rod:

{T}he domestic industry's COGS to net sales ratio in the merchant market declined from 60.6 percent in 2014 to 55.3 percent in 2015 to 50.3 percent in 2016. Unit costs in the merchant market decreased from \$678 in 2014 to \$559 in 2015 and \$493 in 2016. Because price increases were unlikely in light of apparent domestic consumption trends and falling costs, we do not find that cumulated subject imports prevented price increases that otherwise would have occurred to a significant degree.²⁹

This point is echoed in the Pre-Hearing Staff Report, which states: “{a}s a ratio to net sales, COGS decreased while gross profit, selling, general and administrative (“SG&A”) expenses, operating income, and net income increased from 2014 to 2016 in both total market and merchant operations.”³⁰

B. Price Depression

²⁹ Pre-Hearing Staff Report, Table IV-8 at IV-17.

³⁰ Pre-Hearing Staff Report at VI-3.

In the Preliminary Determination, the Commission stated that it was “unclear whether [] can explain the magnitude of the declines” in U.S. producers’ prices.³¹ The Commissioners went on to say:

In any final phase of these investigations, we will consider the extent to which both the cumulated subject imports and factors other than cumulated subject imports, such as changes in steel scrap costs and demand, played a role in price declines for wire rod in the U.S. market.³²

The data of record now make it clear that cost declines fully explain³³ the 2014-2016 declines in U.S. producers’ prices. Declines in costs affect wire rod price declines in two ways:

First, in a competitive market such as wire rod, declines in the cost of goods sold (COGS) cause producers to reduce prices to gain or preserve sales volume. A decline in COGS commensurate with a decline in prices shows that producers were able to reduce prices while maintaining the margin of price over cost.³⁴

Here the staff report shows clearly that the industry’s per-unit COGS declined more than the AUV of sales over the 2014-2016 POI. Per-unit COGS declined from \$673 in 2014 to \$493 in 2016, a decline of 26.7 percent. That COGS decline exceeded the decline in the industry’s AUV of sales, which fell 25.5 percent (from \$716 in 2014 to \$530 in 2016).³⁵ This means that, while reducing prices in a competitive market, U.S. producers’ percentage return on cost of goods sold actually increased, from 5.60 percent in 2014 ($\$716 \div \673) to 7.50 percent in 2016 ($\$530 \div \493). This conclusion, that price declines were fully supported by cost declines, is confirmed by the increases over the POI in the ratio of average operating income to net sales

³¹ Views of the Commission at 33.

³² *Id.*

³³ The []% decline in apparent domestic consumption also contributed to the declines in prices, providing further evidence that the declines are fully explained by factors other than subject imports.

³⁴ Note that the relevant changes to be compared are the percentage declines in average unit sales value and per-unit COGS, not the absolute per-unit changes. This is because the AUV of sales includes a profit margin and is thus a higher value than the per-unit COGS. Therefore, a decline in per-unit COGS of the same or greater percentage as the decline in AUV sales maintains or increases that margin.

³⁵ Pre-Hearing Staff Report at Table F-2. All figures are for the merchant market.

(from a low of 0.9 percent to 1.8 percent in 2016) and average net income to net sales (a low of 0.4 percent to 1.6 percent in 2016).³⁶

Thus declines in cost of goods sold fully explain the 2014-2016 decline in wire rod prices. As costs declined, U.S. producers reduced prices somewhat less than the percentage cost declines. That they maintained, and indeed even increased, the margin of price over costs confirms that no outside factor – such as competition from subject imports – acted to increase the price declines.

Second, the decline in the price of scrap steel, the major cost element in wire rod production, has a particularly important effect on wire rod prices. The prices of scrap steel are publicly visible, so that when wire rod consumers see scrap steel prices decline, they demand that wire rod producers reduce wire rod prices commensurate with the scrap price declines.³⁷ During the 2014-2016 POI, this phenomenon clearly put intense downward pressure on wire rod prices.

Prices of the three categories of steel scrap relevant to wire rod production declined sharply from January 2014 to December 2016³⁸ :

- No. 1 busheling scrap -- down []
- No 1 heavy melt scrap -- down []
- Shredded auto scrap -- down []

These scrap price declines greatly exceeded the declines in wire rod prices. As noted earlier, the industry's AUV of net sales declined 25.5 percent over the POI.³⁹ For the six pricing products

³⁶ *Id.* at Table F-2 All figures are for the merchant market.

³⁷ Staff Conference Transcript (“Tr.”) at 16 (Nolan); at 26 (Johnson); at 62 (Nolan).

³⁸ Pre-Hearing Staff Report at V-2.

³⁹ Pre-Hearing Staff Report at VI-5, Table VI-1.

surveyed by the Commission’s questionnaires, price declines from January 2014 to December 2016 ranged from 26.4 percent to 33.9 percent.⁴⁰

Even more dramatic is a comparison between the declines of scrap prices and the declines of pricing product prices from their high points at or near the beginning of the POI to their low points at the end of 2015 or the beginning of 2016:

<u>Scrap Prices</u> ⁴¹	<u>Pricing Product Prices</u> ⁴²
No. 1 busheling scrap - [] %	Product 1 - [] % (1Q14 - 1Q16)
No. 1 heavy melt scrap - [] %	Product 2 - [] % (1Q14 - 1Q16)
Shredded auto scrap - [] %	Product 3 - [] % (1Q14 – 1Q16)
	Product 4 - [] % (1Q14 - 1Q16)
	Product 5 - [] % (2Q14 - 1Q16)
	Product 6 - [] % (1Q14 – 4Q15)

These comparisons demonstrate that, during the periods when wire rod prices were declining, before they rebounded in 2016, steel scrap prices were falling much more than wire rod prices. Clearly these very much greater declines in visible scrap prices led purchasers to put intense pressure on U.S. producers to reduce wire rod prices.

Finally, two further pieces of evidence confirm beyond any doubt that the trend of scrap steel prices, not any effect of subject imports, explains the decline in U.S. industry wire rod prices:

⁴⁰ Id., at V-24.

⁴¹ Pre-Hearing Staff Report, at V-2, Figure V-1

⁴² Id. at V-8 to V-20, Tables V-3 to V-10.

First, the Commission should note the timing of the trends in wire rod prices and scrap steel prices. As shown in Pre-hearing Staff Report Figure V-1 (at page V-2), the prices of all three scrap steel categories declined essentially without interruption from January 2014 until reaching bottom at the end of 2015, then turned up. As shown in the table above, the prices of each of the six pricing products also declined from the first quarter of 2014 until reaching bottom in the first quarter of 2016 (or, in one case, in the last quarter of 2015) and then turned up.

The correlation is exceptionally clear. Scrap prices led wire rod prices downward throughout 2014 and 2015. Then, immediately after scrap prices turned up, wire rod prices reversed.

This clear correlation between the trend and turning point in scrap and wire rod prices stands in sharp contrast to the absence of any correlation between the turning point in wire rod prices and the commencement of this proceeding. Petitioners here cannot argue, as petitioners do in many cases, that the commencement of their case (which occurred more than a year after the turn in wire rod prices) had any causal effect on the trend in wire rod prices. Rather, the trend in scrap prices caused both the 2014-2015 decline in wire rod prices and the 2016-2017 rebound in wire rod prices.

The second confirmation can be found by examining the trend of Republic's wire rod prices, as compared to the trend of other wire rod prices. As discussed in Section III.B above, the Republic product classified as wire rod (and thus included in the scope of this proceeding) is – unlike the wire rod production of all other U.S. producers – made in a bar mill. Accordingly, it uses billet rather than scrap steel as its raw material. If subject imports' volume or pricing were the cause of trends in wire rod prices, one would expect to see the Republic wire rod prices follow roughly the same trend as the rest of the industry. But that is dramatically not the case.

As discussed in Section III B, and as shown in Republic's questionnaire response in the preliminary investigation,⁴³ the average sale value of Republic's commercial wire rod shipments [] percent from 2014 to 2016, in sharp contrast to the overall industry wire rod price decline in excess of [] percent. Why such a drastic difference? Because the cause of the wire industry's rod price decline – the decline in scrap steel prices – had no relevance to the product sold by Republic.

In summary, there is no basis whatsoever for attributing to subject imports the causation of U.S. producers' price declines. Rather, declines in COGS and steel scrap prices – both of which exceeded the wire rod price declines – along with declining apparent domestic consumption fully explain U.S. producers' price reductions.

V. PETITIONERS' ARGUMENT THAT THEY DID NOT CAPTURE THE VOLUME PREVIOUSLY HELD BY CHINESE IMPORTS IS WITHOUT LEGAL MERIT AND IS FACTUALLY INCORRECT

In a transparent effort to add some force to a weak case, the petitioners have advanced a curious argument concerning Chinese imports. Noting that Chinese imports almost entirely left the market after the entry of orders against those imports, petitioners contend that they should have captured all of the U.S. volume represented by the 2014-2016 decline in Chinese imports. That argument has neither legal nor factual merit.

The Commission has frequently dealt with cases where non-subject imports have declined during the POI, at the same time that subject imports have increased. Where the data show that the increase in subject imports has come entirely or predominantly at the expense of non-subject imports, it has found that subject imports did not cause volume effects injurious to the domestic industry.

⁴³ See Republic Questionnaire Response in the preliminary phase of this investigation. Republic did not submit a questionnaire in the final phase.

Here that is precisely the case: Imports from China declined by [] tons over the 2014-2016 POI.⁴⁴ That decline greatly exceeded the [] ton increase in subject imports.⁴⁵ Since shipments by the U.S. industry (excluding Arcelor Mittal and Republic, whose exits from the industry were not caused by subject imports, as discussed above in Section III) increased over the POI, the conclusion is inescapable that subject imports' increase came at the expense of non-subject imports, not at the expense of the domestic industry.

Moreover, it is fatuous for petitioners to argue that all of the volume left by Chinese imports' disappearance should have been taken by U.S. producers. At the beginning of the POI in 2014, U.S. producers (again, excluding Arcelor Mittal and Republic) had [] percent of the U.S. merchant wire rod market.⁴⁶ At most, they might have expected to gain about [] percent of the disappearing Chinese volume, or an increase of [] tons. In fact, the U.S. producers (other than Arcelor Mittal and Republic) saw their volume increase by [] tons.⁴⁷ Clearly, subject imports did not "deprive" these U.S. producers of any volume they might have expected to gain from China's exit.

The Commission considered almost the same volume and market share fact pattern as that presented here, and reached a unanimous negative determination, in Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, Korea, Thailand, the United Kingdom and Venezuela.⁴⁸ There both subject imports and U.S. producers' merchant market shipments and merchant market shares increased during the POI, as was the case here.⁴⁹ The Commission found that the increase in subject imports' volume and market share did not come at

⁴⁴ Working Table 1, Wire rod: U.S. imports from China, 2014-2016, EDIS Doc. No. 611872.

⁴⁵ Pre-Hearing Staff Report, at IV-4, Table IV-2.

⁴⁶ *Id.*, at IV-17, Table IV-9, adjusted by exclusion of Arcelor Mittal and Republic from U.S. industry merchant market shipments.

⁴⁷ Figures taken from Table C-2 at page C-5 of Pre-Hearing Staff Report, adjusted by U.S. commercial shipment data from Table II-7 of the responses to the Final Investigation Foreign Producers Questionnaire (Arcelor Mittal) and to the Preliminary Investigation Foreign Producers Questionnaire (Republic).

⁴⁸ Inv. Nos. 701-TA-360 and 361 (Final) and 731 TA-688-695 (Final), USITC Pub. 2870 (April 1995).

⁴⁹ *Id.*, Staff Report at IV-18, Table IV-9.

the expense of the domestic industry. Rather, “we find that the increases in subject import and domestic market shares between 1991 and 1992 resulted from the rapid decline of imports of Chinese and Thai (non-AST) fittings following suspension of liquidation on those products in 1991.”⁵⁰

Significantly, the Commission, far from finding that the domestic producers had some sort of right to capture the volume available as a result of orders entered against the Chinese and Thai imports, viewed the decline in those non-subject imports as a condition of competition in the U.S. market:

Greatly diminished volumes of imports from China and Thailand, two countries that were formerly important sources of supply, is another condition of competition distinctive to this industry. Carbon steel butt-welded pipe fittings from these countries are currently subject to antidumping orders.... During the period of these investigations imports from China and Thailand subject to these outstanding orders were virtually eliminated.⁵¹

The same treatment of Chinese imports is appropriate here. Their exit from the market, whether from Title VII orders or some other cause,⁵² is simply a condition of competition. It creates no right or entitlement on the part of U.S. producers to claim all or any part of the former Chinese volume. And where, as is the case here, the domestic producers’ increased volume represented a percentage of the former Chinese volume larger than their beginning-of-POI market share, the U.S. industry did in fact benefit from the Chinese market exit to the extent they might have been expected to benefit.

⁵⁰ *Id.*, Views of the Commission, at I-23.

⁵¹ *Id.*, Preliminary Staff Report, at I-10.

⁵² See also Polyvinyl Alcohol from Germany and Japan, Inv. Nos. 731-TA-1015-1016 (Final), USITC Pub. 3604 (June 2003). There, a negative determination was reached despite increases in subject imports’ volume and market share. That increase did not come at the expense of domestic producers, whose volume and market share also increased. The increases for both subject imports and domestic producers occurred, despite a decline in apparent domestic consumption, because of large declines in the volume of non-subject imports from China and Taiwan.

VI. GRADE 1080 TIRE CORD/TIRE BEAD IS A SEPARATE AND DISTINCT LIKE PRODUCT AND SUBJECT IMPORTS HAVE NOT CAUSED AND DO NOT THREATEN MATERIAL INJURY TO THE INDUSTRY PRODUCING THAT PRODUCT

- A. The Commission Should Determine that 1080 and Higher Tire Cord and Bead Constitute a Separate Like Product Based on Application of the Commission's Six Factor Test

British Steel urges the Commission to reconsider its preliminary determination that 1080 tire cord and bead ("1080 TC/TB") be treated as the same like product as standard wire rod. As British Steel set forth in great detail in its post-conference brief, the nature of 1080 TC/TB production has changed a great deal since the Commission's 2002 determination in terms of the product, its production process, and its applications. British Steel reviews the current state of 1080 TC/TB below, and additionally fully supports the arguments made by POSCO, American Wire Producers Association, and Kiswire on this topic. In short, the *current* facts require the Commission to make a different finding in the instant investigations that 1080 tire cord and bead, as defined below, is a separate like product.

Wire rod, Grade 1080 and higher for tire cord and bead wire production, with 0.8 percent and higher carbon content, measuring 5.0 mm or more but not more than 6.5 mm in cross-sectional diameter, low manganese content in the range of 0.25 - 0.6 percent, and having no inclusions greater than 20 microns.

As testified to at the Preliminary Conference, customers today demand 1080 tire cord and bead produced to very stringent standards of consistent purity and cleanliness that is possible only with BOF furnace production. Customer demands also have changed in terms of the product they manufacture, as tire manufacturers have moved away from smaller tires to larger tires, thereby necessitating correspondingly higher specification inputs.⁵³ Additionally, the former Arcelor Mittal Georgetown plant which claimed to have some capacity to produce 1080 TC/TB

⁵³ Tr. at 60:20-25 (Trendl); Tr. at 66:19-67:9 (Cameron); Tr. at 83:12-14 (Hughes).

closed down and, due to infrastructure issues discussed *infra*, has not been reopened.⁵⁴ As a prefatory matter, British Steel wholly concurs with others that the Georgetown plant was not making 1080 TC/TB, it was not a BOF plant and what it did produce was a lower grade for smaller tires.⁵⁵ Additionally, the Georgetown plant isn't in operation and its former production cannot be a reason to find that 1080 is part of a "continuum" of wire rod products. 1080 TC/TB products have advanced as customer needs have advanced. The stark reality is that the 1080 TC/TB at issue in this investigation is nothing like the standard wire rod petitioners make and is not part of some continuum of products.

During the Preliminary Conference, the representative from Keystone Steel & Wire made this abundantly clear in an exchange with Mr. Knipe of the Commission⁵⁶:

MR. ASHBY {Keystone/Petitioner}: **Typically prices for bead are substantially higher than prices for industrial quality products. Also the cost of production is significantly higher.** So margin positions may have to only be the same.

MR. KNIPE {ITC}: What's different about the production process that makes the price higher?

MR. ASHBY: **Low residual, big iron. The recipe to make the steel, the handling of the steel, the rolling of the steel, everything it all has to be looked at very, very carefully and closely.**
Mainly though it is the melt shop with regard to residuals. It's all about the recipe. Less scrap more iron whatever your particular recipe happens to be.
It's very significant in terms of billet production at the melt shop.

⁵⁴ Tr. at 83-84 (Minnick); Tr. at 84-86 (Stauffer).

⁵⁵ Tr. at 83-84 (Minnick); Tr. at 66-67 (Cameron).

⁵⁶ Tr. at 184:2-15 (Ashby).

The lack of continuum from industrial grade wire rod on which petitioners focus their operations and 1080 TC/TB as produced by British Steel is dramatically evidenced in application of the Commission's six factor test, as set forth below.

1. **Whether and to what extent the physical characteristics of tire cord and tire bead are different from those of other categories of wire rod.**

Unlike standard wire rod, or so-called "industrial" wire rod, the wire rod used to manufacture tire reinforcement products such as tire cord and tire bead has to meet stringent, restrictive quality requirements. The tire cord manufacturing process is highly demanding (and higher cost than industrial high carbon grades), [

] Tire bead is [

]

Also unlike the "conventional low, medium, and high carbon grades" which counsel for Nucor stated were "used to make products that range from PC strand to fencing to small wire baskets,"⁵⁷ the technical parameters for 1080 and above wire rod are not remotely comparable. The key technical parameters for tire cord and tire bead include steel cleanness, segregation, surface quality, decarburization and dimensional tolerances. Standard wire rod essentially has no such requirement.

The levels and testing requirements for these parameters are significantly more demanding and extensive than for the commercial carbon counterparts. Different rules and methodology are therefore applied to the manufacture and testing of tire cord and tire bead compared to commercial carbon grades. The "Testing Methods" portion (in green) of

⁵⁷ Tr. at 129:22-24 (Price).

Attachment 2 demonstrates the extremely stringent testing required for the 1080 product compared the lack of testing required for the standard product. For example, for 1080 wire rod, cleanliness testing requires [

] No such testing is done or required for standard products.

2. **The extent to which production of tire cord and tire bead is done in different manufacturing facilities and/or with different production employees.**

Critically, as discussed at length during the staff conference, customers only purchase 1080 TC/TB that was produced using BOF.⁵⁸ 1080 TC/TB produced using Electric Arc Furnace (EAF) simply contain too many impurities and result in too low-strength of a product for downstream users to accept.⁵⁹ Therefore, effectively, only products that are created using a BOF process are treated by customers as 1080 TC/TB. The Commission's Preliminary Determination that there is no distinction in production facilities and manufacturing processes between domestically produced grade 1080 TC/TB wire rod and other wire rod, because domestic wire rod mills use the EAF production process to produce wire rod, misses the point. The very fact, as the Commission noted, that "no domestic wire rod producer uses the BOF process"⁶⁰ is proof that domestic producers cannot produce 1080 TC/TB. In other words, domestic producers cannot use the BOF process and are unable to make 1080 TC/TB that consistently meet customers' needs and thus are unavailable to the customers.

⁵⁸ Tr. 37-39 (Hughes); Tr. at 40-44 (Minnick); at Tr. at 70 (Goldfeder).

⁵⁹ Id.

⁶⁰ Views of the Commission (preliminary investigation) at 11.

For 1080 tire cord and tire bead production, through steelmaking, the manufacturing process is tightly managed to control the cleanliness of the steel and to carefully engineer the inclusion species for both cord and bead products. This is done through application of restrictions to the use of alloy materials: [

]

To avoid contamination by [

] For the production of tire cord, British

Steel [

]. There is no such requirement for standard wire rod production.

Additional quality requirements also are applied at casting during cord and bead manufacture to manage general cleanliness levels. A minimum allowable [

]. A

maximum [

]

With cord manufacture, [

]

During the rod rolling operation surface quality is tightly controlled. [

] for inclusion population species assessment are examples of specialist techniques that would never be employed for assessment of commercial carbon grades but are used on cord and bead. Please see the “Testing Methods” (in green) section in Attachment 2.

3. **Whether tire cord and tire bead are interchangeable in use with other wire rod.**

There is absolutely no interchangeability between 1080 tire cord and tire bead and ANY standard wire rod.

The specific applications have a significant influence on the product characteristics required. Tire cord is often required to be drawn to [

] whereas it is extremely rare for a high carbon grade to be drawn below 1.0mm. Segregation requirements are also very different for the products. This has a major impact on the steelmaking processes and controls employed for the different products.

For these same reasons, industrial high carbon grades never will be suitable for the construction of tire cord. Where tire wire manufacturers utilize “high carbon” grades for bead applications, these products are ordered to specific product specifications that make them dissimilar to the industrial high carbon grades utilized in the making of bedding and seating wire, for example.

4. **Whether procedures and/or customers perceive tire cord and tire bead to be distinct product categories.**

British Steel reiterates that there is no question or ambiguity that all producers of 1080 TC/TB products and their downstream supply chains unequivocally consider these products to be distinct. Tire cord and tire bead products at issue are used in high liability downstream markets like automobile tires and high pressure hoses, and therefore must work peak performance.⁶¹ Because of the demanding nature of the end-use, consumers qualify and source suppliers of tire cord wire rod using much more stringent methods than for other types of wire rod.⁶² This is not at all a matter of “every product is different,” but rather evidence that 1080 tire cord and tire bead are wholly unlike all other wire rod. Even internally, British Steel management reports split tire cord, tire bead and high carbon as completely separate product generics.

5. **Whether tire cord and tire bead are sold in different channels of distribution (e.g. through distributors or processors as opposed to direct sales to end users).**

1080 and above tire cord and tire bead are sold in different channels of distribution. Producers of 1080 tire wire products typically engage directly with manufacturers of wire rod whereas buyers of commodity high carbon grades will also buy from traders who can offer product from a number of different countries and manufacturers.

Tire wire product specifications are more technically complex and subject to more formal trial and development programs (due in part to being much more quality/safety critical). This type of engagement leads itself to direct engagement rather than through an intermediary.

In comparison, standard wire rod is bought via a third party this tends to be more on commodity products where access to competitively priced supply is more important (less added value processing by convertor and wire rod percentage of total end-product cost is higher).

6. **Whether tire cord and tire bead are sold at significantly different price levels than other wire rod categories.**

⁶¹ Tr. at 39 {Hughes}.

⁶² Id. (discussing that it takes “two years to qualify a supplier of steel tire cord wire rod.”)

The Staff heard at the preliminary conference from a petitioner,⁶³ foreign producers, and customers, that prices for 1080 tire cord and bead sell at a “substantially” higher price than do standard wire rod products. Given the stringent specifications, significantly different manufacturing requirements and costs and precise testing procedures for 1080 tire cord and bead compared to standard wire rod, this is not surprising.

Whilst price levels can vary by market and customer (different specification requirements, different costs to serve, different buying power etc.) tire wire products sell at higher prices than industrial high carbon products.

A comparison of every one of the Commission’s six factor test between 1080 and above tire cord and bead compared to the “conventional low, medium, and high carbon grades” should force the Commission to find a “clear dividing line” between 1080 TC/TB and all other wire rod products.⁶⁴ As addressed in detail in British Steel’s post-conference brief, 1080 TC/TB meet every criterion requiring it to be treated as a separate like product and British Steel respectfully requests that the Commission do so in this investigation.

B. Considered as a Separate Like Product, and Based on the Record in the Preliminary Investigation, Imports of Grade 1080 and Higher Tire Cord and Bead Clearly Did Not Cause and Do Not Threaten Material Injury to Domestic Production of the Like Product

Counsel for petitioners stated that “there is at least one U.S. producer that makes 1080 tire cord.”⁶⁵ Keystone claimed it made tire cord.⁶⁶ Customers at the Preliminary Conference questioned the ability of such a producer to manufacture 1080 TC/TB to the specifications for cleanness, purity etc. and meet the stringent testing requirements, particularly without a BOF. British Steel concurs with this skepticism.

⁶³ Tr. at 184:2-15 (Ashby).

⁶⁴ Preliminary Determination at 11.

⁶⁵ Tr. at 155:16-17 (Rosenthal).

⁶⁶ Tr. at 155:5-11 (Ashby).

It must be noted that petitioners did not allege any injury due to imports of 1080 TC/TB. Nor did petitioners provide any evidence whatsoever, be it financial or in the form of lost sales or lost revenue, of any impact that 1080 TC/TB imports had on the domestic industry.

That said, the Commission has data on the record of this final investigation upon which it can ascertain whether the domestic industry manufacturing the like product consisting of 1080 TC/TB as defined above, is materially injured or threatened with material injury. First, consider the claimed U.S. production of 1080 TC/TB. Total U.S. production of tire cord and tire bead amounts to [] short tons.⁶⁷ This is [] percent of total U.S. production.⁶⁸ For Keystone, its 1080 tire cord and bead production amounts to [] % of their total sales,⁶⁹ making it mathematically impossible that imports could materially injure Keystone.

The record evidence in this preliminary investigation unequivocally demonstrates that subject imports of 1080 TC/TB did not materially injure nor do they threaten material injury to the domestic industry producing 1080 tire cord and bead. For these reasons, British Steel respectfully requests that the Commission issue a negative determination with respect to the separate like product 1080 TC/TB.

VII. NEGLIGENCE

A. Classification of 1080 and Higher Grade Tire Cord and Bead as a Separate Like Product Makes UK Imports of Other Wire Rod Negligible

The statute is clear in its definition of negligibility – imports from a country that account for less than three percent, by volume, of the imports from all countries during the twelve-month period preceding the filing of the petition are negligible and will not be subject to an injury

⁶⁷ U.S. Producers Responses to U.S. Producer Questionnaire, Question II-10.

⁶⁸ *Id.*

⁶⁹ Keystone Response to U.S. Producer Questionnaire, Question II-10

determination from the Commission⁷⁰ unless the volume of imports from all countries named in the petition that individually account for less than three percent collectively account for more than seven percent of total imports during that same time period.⁷¹ The three percent standard sets an absolute maximum. In measuring the import share for purposes of the negligibility determination, the twelve-month period ends with the month preceding the filing of the petition, which in this case means that the measurement period extends from March 1, 2016 through February 28, 2017.⁷² In the current investigation, there are five countries named in the petition whose imports may qualify as negligible: the United Kingdom, South Africa, Belarus, United Arab Emirates, and Italy.⁷³ Because the collective imports from the five countries purportedly exceed seven percent, petitioners have argued that they collectively cannot be considered negligible.⁷⁴

Critical to petitioners' arguments, however, is a definition of a single like product that includes all CASWR. As set forth above, however, it is clear that 1080 TC/TB constitute a separate like product from the remaining steel rod that is the subject of this investigation.

⁷⁰ 19 U.S.C. § 1677(24). The Statute provides in relevant part:

Negligible imports.

(A) In general.

(i) Less than 3 percent. Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are "negligible" if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes--

(I) the filing of the petition under section 702(b) or 732(b) [19 USCS § 1671a(b) or 1673a(b)]...

⁷¹ *Id.* The statute provides for a second exception to the three percent threshold in the ITC's consideration of the threat of material injury standards. However, that exception has not been met in this investigation.

⁷² Certain Oil Country Tubular Goods from India, Korea, the Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine and Vietnam, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. 4422 (Aug. 2013) ("OCTG Prelim.") at 16.

⁷³ Petition, at 17, Table I.

⁷⁴ Tr. at 114 (Rosenthal).

Further, it is equally clear that imports of 1080 TC/TB could not possibly be a cause of material injury or threaten material injury to the domestic industry.

At the preliminary conference, the Staff heard extensive testimony about the physical and commercial differences of 1080 TC/TB when compared to industrial grade CASWR.⁷⁵ These differences are demonstrated in Exhibit 2. There are also manufacturing differences and differences in raw materials, because the 1080 TC/TB require purity levels and defect-free surfaces that can only effectively and efficiently be reached to customer specifications with a BOF operation, rather than the EAF operations currently used in the United States.⁷⁶ As a result, the raw material inputs for the two processes, and therefore for the 1080 TC/TB, are traditional steel inputs, such as iron ore and coal, as opposed to the scrap that is used in EAF operations. It is for all of these reasons that 1080 TC/TB is not produced in any real quantity in the United States. As a result, imports of 1080 TC/TB cannot be a cause of material injury to the U.S. industry producing tire cord.

British Steel addressed the like product issue at length in Section VI.A. of this brief and the fact that sales of imported tire cord and tire bead cannot be a cause of material injury to the domestic industry in Section VI.B. At this point, British Steel is compelled to point out the significance of the issue as it applies to negligibility analysis of the “like product” category consisting of all wire rod other than 1080 TC/TB. If imports of 1080 TC/TB are determined to constitute a separate like product, and the Commission appropriately determines that imports of 1080 TC/TB do not materially injure the domestic industry, it changes the calculation of “negligibility” percentage for numerous countries in the determination concerning wire rod other than 1080 TC/TB.

⁷⁵ See, e.g., Tr. at 59-60 (Cunningham); Tr. at 59-60, 66 (Trendl); Tr. at 66 (Cameron); Tr. at 67 (Minnick).

⁷⁶ Tr. at 67 (Minnick).

Without those products being included in the import data for the subject countries, two things happen – the numerator for the subject countries either decreases or remains the same and the denominator for the total subject import numbers decreases. Specifically, British Steel’s denominator falls, but the decrease is offset by the reduction in total imports, leaving British Steel’s overall percentage flat at **2.6%**. At the same time, for countries not importing 1080 TC/TB, the numerator is left unchanged by the exclusion of these two products, but because of the reduction in the denominator consisting of total imports of subject merchandise, the countries’ import shares increase. As demonstrated in Exhibit 3, in the case of Belarus and Italy, the change increases each country’s import share to a level greater than 3%.⁷⁷ As such, both countries are no longer considered negligible. Of significance to the UK and the other two remaining negligible countries, their cumulative market share is now below 7%.⁷⁸ For these three countries, then, individual market shares of less than 3% means that the country’s market share is statutorily negligible and the ITC must render a negative determination as to the United Kingdom, South Africa, and the United Arab Emirates.

B. There Is No Potential That British Steel’s Imports From the United Kingdom Imminently Will Account for More Than 3% of Total Imports

The statute provides a limited exception to the 3% negligibility standard, which is applicable only to a threat of material injury determination. If a country’s import share is below the 3% threshold during the twelve-month period preceding the filing of the petition, its imports may nevertheless be considered only for purposes of the threat determination if the Commission determines that there is “...a potential that imports from a country described in clause (i) will

⁷⁷ 3.12% for Belarus, and 3.01% for Italy.

⁷⁸ With the UK at 2.6%, South Africa at 1.4%, and the UAE at 1.5%, the cumulative total is 5.5%. See Exhibit 3.

imminently account for more than 3 percent of the volume of all such merchandise imported into the United States...”⁷⁹ In the current investigation, there is no potential whatsoever that British Steel’s imports of CASWR from the United Kingdom will increase to more than 3% of total imports or that any such increase, even if it were possible to occur, is imminent. Such a determination must rest on a finding that imports are “...increasing at a rate that indicates they are likely to imminently exceed that threshold...”⁸⁰ As the official data demonstrate, however, imports of CASWR from the United Kingdom are not increasing. In fact, data from the prehearing report shows that United Kingdom’s imports of wire rod *decreased* [] from [] in January 2016 to [] in September 2017. This downward trend in imports makes impossible a finding that they will imminently exceed 3%.

As demonstrated above, at 2.6%, British Steel’s share of total subject imports for the twelve-month period preceding the filing of the petition was far less than 3%. Rather, they were at or below levels that in prior determinations the Commission has found to be “well under” the 3% threshold.⁸¹

Moreover, throughout the extended period of investigation, UK import share for CASWR never exceeded the 3% threshold. Even at 2.6%, the share of total imports is distorted by the presence of Tata Steel UK exports prior to the sale to British Steel. As is obvious from the

⁷⁹ 19 U.S.C. § 1677(24)(A)(iv). The relevant text of the statute reads:

Negligibility in threat analysis. Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

⁸⁰ The Uruguay Round Agreements Act Statement of Administrative Action, H.R. No. 103-316 (1994) (“SAA”) at 856.

⁸¹ 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 (Preliminary), USITC Pub. 3456 (Oct. 2001), at 7-11. *See also*, Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan and South Africa, Inv. Nos. 731-TA-1048-1053 (Preliminary), USITC Pub. 3633 (Sept. 2003) at 14-19 (2.5% import share. The 2.5% figure is at p. 7, n. 37.)

monthly import data, for the period March 2016 through June 2016, when Tata Steel UK was the owner, monthly imports totaled [] tons per month. In the period beginning July 2016 and ending February 2017, when British Steel was the producer and responsible for the company's sales to the United States and elsewhere, monthly import volumes averaged [], or approximately a [] reduction. Thus, there is nothing in the POI data to suggest that the current low level of the British import market share is aberrational, or that an increase anywhere near, let alone above, 3% is either expected or imminent.

Therefore, British Steel submits that there is no basis to conclude that it is probable that an increase in UK imports to a level at or above 3% of total imports is imminent. Absent such a finding, the Commission must conclude that imports of CASWR from the UK are negligible and terminate the proceeding as to the United Kingdom.

VIII. THE COMMISSION SHOULD MAKE A NEGATIVE CRITICAL CIRCUMSTANCES DETERMINATION

The Commission should make a negative critical circumstances determination in this investigation despite the fact that Commerce made a preliminary affirmative critical circumstances determination as to British Steel.⁸²

In order for provisional measures to be applied retroactively, the Commission must make a final affirmative critical circumstances determination. In its determination, the Commission must determine whether “imports are likely to undermine seriously the remedial effect of the countervailing duty order . . .”⁸³ In making this determination, the Commission is to consider, among other factors, “the timing and volume of the imports, . . . any rapid increase in inventories

⁸² Carbon and Alloy Steel Wire Rod from the United Kingdom: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, 82 Fed. Reg. 50394 (Oct. 31, 2017).

⁸³ 19 U.S.C. § 1671d(b)(4)(A)(i).

of the imports, and . . . any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.”⁸⁴

Crucially, the Commission must consider any increases in imports in light of the absolute tonnage involved in making a critical circumstances evaluation. Even a large relative change in imports needs to be placed in the context of the importer’s actual share of the U.S. market. Where the importer’s absolute market share was negligible, as in *Carbon and Alloy Steel Cut-to-Length Plate from Brazil, South Africa, and Turkey*,⁸⁵ the Commission did not find critical circumstances even though imports increased from 14,385 short tons to 29,351 short tons (an increase of 104%). Likewise, in *Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, Germany, Italy, Japan, Korea, and Taiwan*,⁸⁶ the Commission again did not find critical circumstances even where subject imports from Italy rose from 8,585 short tons to 24,313 short tons (an increase of 183%). Citing the “low absolute tonnage involved,” the Commission recognized that even a seemingly large increase in imports did not necessitate a finding that the remedial effect of the antidumping duty order will be seriously undermined.

For much the same reason, the Commission should find no evidence of critical circumstances in the present case. Even if the Commission uses the same 6-month period of comparison that Commerce used, there is no massive increase based on the Commission’s standards. Subject imports rose from 7,561 short tons from October 2016 through March 2017, to 23,955 short tons between April and September of 2017.⁸⁷ While this may appear to result in a large relative increase in imports, when considered in light of British Steel’s actual share in the U.S. market the change is miniscule. **United Kingdom’s total market share hovers at a mere**

⁸⁴ *Id.* § 1671d(b)(b)(4)(A)(ii).

⁸⁵ USITC Inv. No. 731-TA-1319 and 731-TA-1326 (Jan. 2017).

⁸⁶ USITC Inv. No. 701-TA-561 and 731-TA-1317-1318, 1321-1325, and 1327 (Final), (May 2017).

⁸⁷ Antidumping Duty Investigation of Carbon and Alloy Steel Wire Rod from the United Kingdom: Critical Circumstances Analysis (Oct. 24, 2017).

1% of total United States consumption – a share that has in fact *decreased* from 2016 to 2017.

The meager fraction that the United Kingdom holds should make it abundantly apparent that any increases in subject imports have no material impact on the U.S. market. Thus, the “low absolute tonnage involved” in the present case requires a negative critical circumstances determination with regard to subject imports in the antidumping duty investigation of Wire Rod from the U.K.

IX. CONCLUSION

For all the foregoing reasons, British Steel respectfully requests that the Commission enter a negative final determination with regard to the investigation of imports of carbon and alloy steel wire rod into the United States. Additionally, British Steel asks that the Commission consider 1080 TC/TB, as defined above, as a separate like product. As a consequence of that like product determination, the Commission should (a) enter a negative final determination as to imports of 1080 TC/TB, and (b) as to imports of all other carbon and alloy steel wire rod, and find imports from the United Kingdom to be negligible. Finally, the Commission must make a negative critical circumstances determination with respect to the United Kingdom.

Respectfully submitted,

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Exhibit 1

Table 1: US Producer US Shipments SHORT TON

		[]
A	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14	
Commercial	2014 []
	2015 []
	2016 []
	Jan - Sept 2016 []
	Jan - Sept 2017 []
		[]
B	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14	
Internal	2014 []
	2015 []
	2016 []
	Jan - Sept 2016 []
	Jan - Sept 2017 []
		[]
C	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14	
Transfer	2014 []
	2015 []
	2016 []
	Jan - Sept 2016 []
	Jan - Sept 2017 []
		[]
D = A + B + C	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14	
US SHIPMENTS	2014 []
	2015 []
	2016 []
	Jan - Sept 2016 []
	Jan - Sept 2017 []

* Ties directly to the Pre Hearing Staff Report, Table C-1
 ^ [] rereported in staff report.

Table 2: US Producer US Shipments SHORT TON

		[
	A	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14		
	Commercial	2014]
		2015]
		2016]
	Jan - Sept	2016]
	Jan - Sept	2017]
		[
	B	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14		
	Internal	2014]
		2015]
		2016]
	Jan - Sept	2016]
	Jan - Sept	2017]
		[
	C	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14		
	Transfer	2014]
		2015]
		2016]
	Jan - Sept	2016]
	Jan - Sept	2017]
		[
	D = A + B + C	Page of the US Producer Questionnaire	14	13	14	14	14	13	13	13	14		
	US SHIPMENTS	2014] *
150000		2015] *
95000		2016] *
245000	Jan - Sept	2016] *
	Jan - Sept	2017] ^

* Ties diectly to the Pre Hearing Staff Report, Table C-1
 ^ [] repeorted in staff report.

Exhibit 2

**THIS EXHIBIT IS NOT
SUSCEPTIBLE TO PUBLIC
SUMMARIZATION**

Exhibit 3

Methodology		2016										2017		Period Total	% of Period Total
A	Country	March	April	May	June	July	August	September	October	November	December	January	February		
B	Turkey	12,521.43	567.73	3,756.40	9,966.68	7,018.86	4,089.27	547.46	16,788.74	6,317.30	4,901.77	10,143.33	3,156.38	79,775.34	5.39%
C	Russia	13,808.14	3,618.68	17,145.34	1,901.84	7,410.89	17,206.81	12,500.30	4,577.68	8,590.47	-	1,978.64	17,488.61	106,227.41	7.18%
D	Korea	12,608.14	14,504.48	4,083.67	11,720.85	6,390.21	12,146.66	6,213.70	13,615.33	929.35	853.31	3,381.85	143.79	86,591.34	5.86%
E	Ukraine	13,707.08	16,953.04	14,995.76	9,673.60	6,700.17	19,759.32	13,930.12	18,190.06	4,276.48	8,059.51	7,704.84	30,824.83	164,774.82	11.14%
F	Belarus	4,648.75	6,941.30	2,644.25	-	-	15,126.52	-	22.21	-	-	-	16,761.67	46,144.71	3.12%
G	Italy	-	8.89	-	-	-	11,998.10	-	9,195.19	11,905.55	55.01	11,395.17	-	44,557.92	3.01%
H	Spain	192.82	974.80	5,783.21	7,356.14	2,070.02	1,646.09	12,558.17	9,200.07	4,202.99	2,385.73	7,327.40	809.58	54,507.01	3.69%
I = SUM(A to H)	<i>Subtotal, Subject (Over 3% Import Share)</i>	57,486.36	43,568.93	48,408.63	40,619.10	29,590.15	81,972.77	45,749.75	71,589.30	36,222.15	16,255.32	41,931.23	69,184.86	582,578.54	39.40%
J	United Kingdom	4,130.32	6,745.57	6,397.63	8,383.27	4,346.11	3,528.38	62.91	4,561.69	747.44	46.53	-	226.36	39,176.20	2.65%
K	South Africa	123.64	9,286.34	4,528.49	3,341.98	-	-	-	-	-	-	-	3,230.68	20,511.13	1.39%
L	United Arab Em	27.09	3,349.43	54.39	8,064.95	5,188.81	-	5,447.18	-	27.21	-	-	-	22,159.06	1.50%
M = SUM(J to K)	<i>Subtotal, Subject (Negligible)</i>	4,281.05	19,381.34	10,980.51	19,790.19	9,534.91	3,528.38	5,510.10	4,561.69	774.65	46.53	-	3,457.04	81,846.39	5.53%
N = I + M	<i>Target Country Total</i>	61,767.41	62,950.27	59,389.14	60,409.30	39,125.06	85,501.15	51,259.85	76,150.98	36,996.79	16,301.85	41,931.23	72,641.89	664,424.92	44.93%
O	All Other Sources	73,936.13	71,680.24	75,182.97	76,842.41	63,904.70	70,702.41	67,046.20	64,846.56	58,983.15	69,558.06	64,057.67	57,629.14	814,369.63	55.07%
P = N + O	<i>Total Imports</i>	135,703.54	134,630.51	134,572.10	137,251.71	103,029.75	156,203.56	118,306.05	140,997.54	95,979.94	85,859.91	105,988.90	130,271.03	1,478,794.56	100.00%

Sources: U.S. Census Bureau Official Import Statistics for HTS Codes 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 only. Raw data collected in kilograms, but converted to short tons above using a factor of 907.185 kilograms per short ton.