

UNITED STATES INTERNATIONAL TRADE COMMISSION

GRAIN-ORIENTED SILICON ELECTRICAL STEEL FROM ITALY AND JAPAN

Investigations Nos. 701-TA-355 and 731-TA-659-660 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

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DETERMINATION

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the countervailing duty order on imports of grain-oriented silicon electrical steel from Italy and revocation of the antidumping duty orders on imports of grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted these reviews on December 1, 1999 (64 F.R. 67318) and determined on March 3, 2000, that it would conduct full reviews (65 F.R. 13989, March 15, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on August 16, 2000 (65 F.R. 50004).³ The hearing was held in Washington, DC, on January 11, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Vice Chairman Deanna Tanner Okun and Commissioners Lynn M. Bragg and Jennifer A. Hillman dissenting.

³ As revised by 65 F.R. 75302, December 1, 2000.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the countervailing duty order covering grain-oriented silicon electrical steel (“GOES”) from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹ We also determine that revocation of the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

I. BACKGROUND

On May 27, 1994, the Commission found that an industry in the United States was materially injured by reason of subsidized imports of GOES from Italy and by reason of imports of GOES sold at less than fair value (“LTFV”) from Japan. On August 8, 1994, the Commission found that an industry in the United States was materially injured by reason of LTFV imports from Italy. Commerce published the countervailing duty order against Italy on June 7, 1994, the antidumping duty order against Japan on June 10, 1994, and the antidumping duty order against Italy on August 12, 1994.

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.³ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

On December 1, 1999, the Commission instituted reviews pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the countervailing and antidumping duty orders on imports of GOES from Italy and the antidumping duty order on imports of GOES from Japan would likely lead to continuation or recurrence of material injury.⁴ The Commission received a joint response containing company-specific information from two domestic producers of grain-oriented electrical steel, which account for all domestic production, and from three unions, which represent workers in GOES production. With respect to respondent interested parties, the Commission received responses from two Japanese producers, which account for all Japanese GOES production and one Italian producer, which accounts for all Italian GOES production.

¹ Vice Chairman Deanna Tanner Okun, Commissioners Lynn M. Bragg, and Jennifer A. Hillman dissenting. See Dissenting Views of Vice Chairman Okun and Commissioner Hillman and Dissenting Views of Commissioner Bragg. Vice Chairman Okun and Commissioner Hillman join sections I-IV- B of these views. Commissioner Bragg joins sections I-II-A. and the Commission’s discussion of conditions of competition.

² Vice Chairman Deanna Tanner Okun, Commissioners Lynn M. Bragg, and Jennifer A. Hillman dissenting.

³ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁴ 64 Fed. Reg. 67318 (Dec. 1, 1999).

On March 3, 2000, the Commission determined that all individual interested party responses to its notice of institution were adequate, that the domestic interested party group response was adequate, and that each respondent interested party group response was adequate. Consequently, the Commission decided to conduct full reviews for all orders in these grouped reviews.⁵

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”⁶ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”⁷ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”⁸

In its reviews, Commerce defined the subject merchandise as:

GOES, a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.8 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness⁹

Commerce further states that the subject merchandise is currently classifiable under HTS statistical reporting numbers 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5056.¹⁰

GOES is a flat-rolled speciality steel product sold in strip or sheet form, having a grain structure that permits it to conduct a magnetic field with a high degree of efficiency.¹¹ The subject steel is used in the manufacture of power and distribution transformers as well as speciality transformers because of its superior magnetic properties, principally higher permeability and lower core loss.¹²

⁵ See Explanation of Commission Determinations on Adequacy, Confidential report, as revised by memorandum INV-Y-017, (“CR”) and Public Report (“PR”) at Appendix A, 65 Fed. Reg. 13989 (Mar. 15, 2000).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁸ 19 U.S.C. § 1675a(a)(1)(a).

⁹ 65 Fed. Reg. 41433 (July 5, 2000). Commerce’s definition of the scope of GOES in its reviews is the same definition used in the original investigations.

¹⁰ 65 Fed. Reg. 41433 (July 5, 2000). On January 1, 1996, these statistical reporting numbers were superseded by the current subheadings and statistical reporting numbers 7225.11.00, 7226.11.10, 7226.11.9030, and 7226.11.9060. CR at I-11 n.9, PR at I-9 n.9.

¹¹ CR at I-12, PR at I-9.

¹² CR at I-12, PR at I-10.

In addition to variations in thickness, GOES is produced in at least two levels of magnetic permeability, “conventional” and “high permeability.”¹³ The high permeability product allows transformers to operate at a higher level of flux density than does the conventional product, thus permitting production of smaller transformers with lower operating costs.¹⁴ High permeability GOES is also produced in a domain-refined type to achieve lower core loss at high flux density.¹⁵

The starting point of the Commission’s like product analysis in a five-year review is the like product definition in the Commission’s original determination.¹⁶ In the original investigations, the Commission found that all types of GOES comprise a single like product.¹⁷ In so doing, the Commission rejected arguments advanced by the Japanese producers that high permeability and conventional grades of GOES constitute separate like products, finding that “the different grades represent a continuum of products where the gradations between each more efficient grade is not significant.”¹⁸ The Commission further found that the different grades of GOES are chemically alike, possess essentially the same physical characteristics, are marketed through the same channels of distribution, have similar uses, are interchangeable to a certain degree, and share common production facilities.¹⁹

In these reviews, parties have raised no new like product issues and there is no information that indicates a need to revisit the Commission’s definition of the like products in the original determination.²⁰ Rather, the record indicates that there have been no significant changes in the nature, uses, and manufacture of GOES since the original investigations. Accordingly, we define one domestic like product, GOES, coextensive with Commerce’s scope.

B. Domestic Industries

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²¹ In defining the domestic industry, the

¹³ CR at I-13, PR at I-10.

¹⁴ CR at I-13, PR at I-10.

¹⁵ CR at I-13, PR at I-10. Domain refinement is accomplished by scribing thin lines on the surface of the steel. There are several methods of domain refinement available, including laser scribing, mechanical scribing, and electrolytic etching. CR at I-13, PR at I-10.

¹⁶ In the like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. *See The Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. *See, e.g.* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); *Torrington*, 747 F. Supp. at 748-49.

¹⁷ *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Inv. Nos. 701-TA-355 and 731-TA-660 (Final) USITC Pub. 2778 at I-6-I-8 (May 1994) (“USITC Pub. 2778”).

¹⁸ USITC Pub. 2778 at I-8.

¹⁹ USITC Pub. 2778 at I-7-8.

²⁰ In their initial comments, the Japanese respondents raised the issue of whether non-domain refined GOES and high permeability domain-refined GOES were separate like products but did not pursue the issue in their subsequent briefs or at the Commission hearing.

²¹ 19 U.S.C. § 1677(4)(A).

Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²² In accordance with our domestic like product determination, we determine that the domestic industry consists of two domestic producers of GOES: AK Steel Corporation ("AK Steel" or "AK") and Allegheny-Ludlum Corporation ("Allegheny").

C. Related Parties

Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²³

In the original investigations, the Commission considered whether Armco should be considered a related party because of its joint venture with Vicksmetals, a subsidiary of Sumitomo Corporation, an importer of subject merchandise from Japan. The Commission based its determination not to exclude Armco on the fact that Armco's joint venture did not import subject merchandise but merely offered slitting services to domestic manufacturers and importers of GOES and because Armco did not possess an ownership interest in an importer or exporter of the subject merchandise.²⁴

In these reviews, the issue is raised whether AK Steel is a related party by virtue of its wholly-owned subsidiary's relationship with an importer of the subject merchandise. Since the time of the original investigations, Armco was acquired by AK Steel. AK Steel, through a wholly owned subsidiary, has a general partnership, Vicksmetal/Armco Association, with a wholly-owned subsidiary of Sumitomo.²⁵ According to the domestic producers, this general partnership's purpose, like the original joint venture

²² See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

²³ See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-à-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. See, e.g., Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. No. 2793, at I-7-8 (July 1994).

²⁴ USITC Pub. 2778 at I-9.

²⁵ Domestic Producers' Prehearing Br. at 18.

between Armco and Sumitomo, is to slit electrical steel.²⁶ It does not import the subject merchandise nor does it take title to the subject merchandise.²⁷

Based on the above facts, AK Steel does not fall within the definition of related party as the facts do not indicate that either AK Steel or Sumitomo exercise direct or indirect control over each other due to the partnership of their wholly-owned subsidiaries, or that the relationship causes AK Steel to act differently than a non-related producer.²⁸ Moreover, no party has urged that AK Steel be considered a related party. Therefore, we find that AK Steel is not a related party.

III. CUMULATION

A. Legal Standards

Section 752(a) of the Act provides that:
the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.²⁹

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.³⁰ We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports

²⁶ Domestic Producers’ Prehearing Br. at 19.

²⁷ Domestic Producers’ Prehearing Br. at 19.

²⁸ See 19 U.S.C. § 771(4)(B)(ii)(IV).

²⁹ 19 U.S.C. § 1675a(a)(7).

³⁰ 19 U.S.C. § 1675a(a)(7).

“are likely to have no discernible adverse impact” on the domestic industry.³¹ With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.^{32 33}

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.³⁴ Only a “reasonable overlap” of competition is required.³⁵ In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other contexts where cumulation is discretionary.³⁶

In these reviews, the statutory requirement for cumulation that all GOES reviews be initiated on the same day is satisfied.³⁷ Based on the record, we do not find that subject imports from either of the subject countries would be likely not to have a discernible adverse impact on the domestic industry if the orders

³¹ SAA, H.R. Rep. No. 103-316, vol. I (1994).

³² For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman regarding the application of the “no discernible adverse impact” provision, see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348 (Review). For a further discussion of Chairman Koplan’s analytical framework, see Iron Metal Construction Castings from India; Heavy Iron Construction Castings from Brazil; and Iron Construction Castings from Brazil, Canada, and China, Invs. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

³³ For a discussion of the analytical framework employed by Commissioner Bragg to assess cumulation in the context of grouped sunset reviews, see Potassium Permanganate from China and Spain, Separate and Dissenting Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. No. 3245 at 27-30 (Oct. 1999); see also Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Invs. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. No. 3290, at 27-32 (Apr. 2000).

³⁴ The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

³⁵ See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996)).

³⁶ See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

³⁷ Commissioner Bragg does not join the remainder of these views with the exception of the discussion of conditions of competition, to which she joins. See Dissenting Views of Commissioner Lynn M. Bragg.

were revoked. We also find that a reasonable overlap of competition between the subject imports and the domestic like product likely would exist if the orders were revoked. Finally, we find that the subject imports likely will compete in the U.S. market under generally similar conditions of competition. We therefore exercise our discretion to cumulate the likely volume and price effects of subject imports from Italy and Japan.

1. Likelihood of No Discernible Adverse Impact

Because of the conditions of competition and the current condition of the domestic industry, exports from Italy and Japan likely would have a discernible adverse impact on the domestic industry.

Subject imports from Italy and Japan have remained in the U.S. market in the years since the orders were imposed, albeit at substantially reduced levels.³⁸ The continuing presence of these subject imports in the domestic market indicates that subject foreign producers continue to have contacts and channels of distribution necessary to compete in the U.S. market.

Industry capacity in Japan has remained large (greater than annual U.S. consumption) and industry capacity in Italy has grown since the original investigations. The GOES industries in both Italy and Japan devote considerable resources to export markets. In 1999, the share of total shipments of GOES exported from Italy was *** percent³⁹ while the share of total shipments of GOES exported from Japan was *** percent.⁴⁰

For the reasons discussed below, we believe that subject imports from each country would enter the U.S. market in sufficient quantities and at sufficiently low prices such that they would have a discernible adverse impact on the domestic industry.

2. Reasonable Overlap of Competition

In the original investigations, the Commission found that the balance of evidence indicated that there was not a reasonable overlap of competition and did not cumulate imports for the purposes of its injury determinations. The Commission found that all imported Italian GOES was conventional, and all but a very small percentage was M-6 grade. By contrast, the Commission found that most Japanese GOES was high-permeability steel, with some conventional, primarily M-3 grade, GOES. The Commission found that GOES from Japan did not compete with M-6 grade GOES from Italy, because purchasers often substituted only one grade up or one grade down, and that very few purchasers bought both the Italian and Japanese product. The Commission found that imports of some M-3 GOES from Japan were not sufficient to establish a reasonable overlap of competition. At the same time, the Commission found that the sole Italian exporter was precluded by contract from selling high-permeability grain-oriented steel in the United States. The Commission also found differences in channels of distribution, in that Japanese GOES was sold directly to transformer manufacturers, whereas Italian GOES was sold to stampers who laminated the product and then sold it to makers of small transformers or appliances.⁴¹

The differences in product type and channels of distribution between recent subject imports have not changed since the original determination. Indeed, subject imports from Italy have consisted exclusively of conventional GOES (M-6 grade), while subject imports from Japan have consisted nearly entirely of high

³⁸ CR and PR at Table I-1.

³⁹ CR and PR at Table IV-2.

⁴⁰ CR and PR at Table IV-6.

⁴¹ USITC Pub. 2778 at I-12-14.

permeability grades of GOES. Moreover, subject imports from Italy are largely sold to slitters/stampers before being sold to end-users, while the Japanese products are sold directly to a few customers.

We note the existence of these stated differences, but do not find them significant enough to prevent us from concluding that there is likely to be a reasonable overlap of competition. In a five-year review, the proper focus is on the likely post-revocation behavior, and the composition of current imports, affected by the discipline of an antidumping or countervailing duty order, is not necessarily indicative of likely post-revocation competition. While current imports may be specialized or limited to a particular grade, subject producers in both Italy and Japan can and do produce a broad range of GOES products.⁴² For example, while Japan sells primarily high permeability GOES to the U.S. market, it also sells significant amounts of conventional GOES grades to other markets.⁴³ Over *** percent of its shipments to both Canada and Mexico were of conventional GOES in 2000.⁴⁴ Similarly, while Japanese producers currently sell directly primarily to end-users in the United States, this pattern of sales is likely to change with an alteration in the product mix shipped to the United States. Indeed, Japanese subject producers sell to laminators/slitters for subsequent sale of the GOES in Mexico and presumably could do so in the United States.⁴⁵

With respect to competition between imports and domestic GOES, the record establishes that the domestic industry manufactures a broad range of GOES products and thus competes directly with imports from Japan and Italy.⁴⁶ We note that most of the domestic product, unlike the imports from Italy, is currently sold directly to end-users.⁴⁷ However, given the substitutability of the Italian product with the domestic product, we believe that there is direct competition between the domestic product and GOES from Italy.

Two other factors (simultaneous presence and sales or offers to sell in the same geographic market) are less easy to evaluate, given that, since the orders were imposed, U.S. imports of the subject product from both Italy and Japan have declined substantially. In the original investigations, the Commission found that imported GOES from both Italy and Japan were simultaneously present and generally competed directly with the domestic product nationwide.⁴⁸

We, therefore, find that there likely would be a reasonable overlap of competition between the subject imports and the domestic like product, and between the subject imports themselves, if the orders are revoked.

We have taken into account other significant conditions of competition detailed below that are likely to prevail if the orders were revoked in evaluating whether to cumulate imports. We find that subject imports from Italy and Japan would compete in the U.S. market under similar conditions of competition. Therefore, based on the foregoing, we exercise our discretion to cumulate subject imports from Italy and Japan.

⁴² CR and PR at Table IV-3, Table IV-7.

⁴³ CR and PR at Table IV-7.

⁴⁴ Japanese Respondents' Posthearing Br. at Appendix B.

⁴⁵ CR at II-2 n.9, IV-2 n.1, II-29 n.79, PR at II-2 n.9, IV-1 n.1, II-15 n.79. In addition, AST may seek to sell some of its high-permeability products in the United States in view of the *** on selling these products in the United States and its increased production of high-permeability GOES. AST Posthearing Br. at A-1; Domestic Producers' Prehearing Br. at Ex. 3.

⁴⁶ CR at II-36-38, PR at II-18-21.

⁴⁷ CR at II-36, PR at II-18.

⁴⁸ USITC Pub. 2778 at I-12-14.

IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS ARE REVOKED

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidy is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”⁴⁹ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁵⁰ Thus, the likelihood standard is prospective in nature.⁵¹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁵² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{53 54}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁵⁵ It directs the Commission to take into

⁴⁹ 19 U.S.C. § 1675a(a).

⁵⁰ SAA at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁵¹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁵² 19 U.S.C. § 1675a(a)(5).

⁵³ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁵⁴ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

⁵⁵ 19 U.S.C. § 1675a(a)(1).

account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁵⁶

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."⁵⁷

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.^{58 59} In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁶⁰

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁶¹

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to

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

⁵⁷ SAA at 869.

⁵⁸ 19 U.S.C. §1675a(a)(2).

⁵⁹ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determinations in the instant reviews.

⁶⁰ 19 U.S.C. § 1675(a)(2)(A)-(D).

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

develop a derivative or more advanced version of the domestic like product.⁶² All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁶³ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping and countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.

B. Conditions of Competition⁶⁴

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁶⁵ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for GOES.

GOES is used in the manufacture of power and distribution electrical transformers as well as speciality transformers.⁶⁶ The demand for GOES is dependent upon demand for these transformers, which in turn, is derived from the demand for electricity.⁶⁷ Since the time of the original investigations, the demand for electricity has increased as the U.S. and world economies have expanded thereby reducing excess electrical capacity and straining power grids around the world.⁶⁸ As a result, the demand for transformers

⁶² 19 U.S.C. § 1675a(a)(4).

⁶³ Section 752(a)(6) of the Act states that the Commission may consider the magnitude of the margin of dumping in making its determination in a five-year review investigation. 19 U.S.C. § 1675(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce found the following sunset margins in its expedited reviews of the antidumping duty orders: *Italy*: ILVA S.p.A., Acciai Speciali Terni, S.r.l. and All Others, 60.79 percent; *Japan*: Kawasaki Steel Corporation, Nippon Steel Corporation and All Others, 31.08 percent. 65 Fed. Reg. 41433, 41434 (July 5, 2000).

Although the statute does not expressly define the “magnitude of the net countervailable subsidy” to be used by the Commission in five-year reviews, it states that “[t]he administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated.” 19 U.S.C. § 1675a(b)(3). In its final results of the full five-year review determination, Commerce found the subsidiary margin of the countervailing duty order against Italy as: all Italian producers/exporters, 24.2 percent. 65 Fed. Reg. 65295 (Nov. 1, 2000).

In five-year reviews concerning countervailing duty orders, the Commission is required to consider “information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.” 19 U.S.C. § 1675a(b)(6). However, as of January 1, 2000, Article 6.1 of the Subsidies Agreement has ceased to apply. *See* Article 31 of the Subsidies Agreement. (Article 31 states that certain provisions of the Agreement, including those of Article 6.1, would apply for a period of five years from the date of entry into force of the Agreement. The Agreement entered into force on January 1, 1995.) In its final determination in its full sunset review of the countervailing duty order imposed on Italian imports, Commerce stated that although the programs at issue do not fall within Article 3 of the Subsidies Agreement, some or all of them could be found to be inconsistent with Article 6.1. 65 Fed. Reg. 65295 (Nov. 1, 2000).

⁶⁴ Commissioner Bragg joins this section of the opinion.

⁶⁵ 19 U.S.C. § 1675a(a)(4).

⁶⁶ CR at I-12, PR at I-9.

⁶⁷ CR and PR at II-1.

⁶⁸ CR and PR at II-1.

has increased greatly during this period as has the demand for GOES.⁶⁹ In 1993, apparent U.S. consumption was 248,490 short tons.⁷⁰ In 1999, apparent U.S. consumption increased to close to *** short tons.⁷¹ Moreover, demand for GOES will likely increase somewhat over the next several years as demand for electricity will continue to increase and the need will arise to replace aging transformers as the electrical power system enters a replacement cycle.⁷²

Another factor influencing the demand for GOES in the United States is deregulation of the electrical power industry. U.S. producers, importers, and purchasers indicated in their questionnaire responses that uncertainties raised by deregulation of the electric utilities have led some U.S. electric utilities to become more concerned with low initial purchase prices for transformers, rather than the total ownership cost (“TOC”) evaluations traditionally used.⁷³ They further report that, because of this concern, some electric utilities have purchased transformers on a low-evaluated or even on a non-evaluated basis, resulting in the increased use of lower, less efficient, and less costly grades of GOES in transformer manufacture.⁷⁴ This is consistent with the prevalence of conventional GOES in the U.S. market.⁷⁵

Even as electrical demand has increased and with it the demand for transformers, the customer base for GOES in the United States has shifted since the time of the original investigations. After the orders were imposed, some purchasers moved some or all of their transformer production operations to Mexico or Canada in part to obtain GOES from Italy and Japan there without paying the countervailing and antidumping duties imposed on imports of GOES from Italy and Japan into the United States. Several of the large relocated end-users have indicated that they have no plans to return transformer production operations to the United States, and that relocation was unlikely to occur based solely on the revocation of the orders.⁷⁶ As a result, the remaining U.S. transformer producers and laminators/stampers increasingly compete with transformer imports from Canada and Mexico, including transformers made with the GOES from Italy and Japan.⁷⁷ Some U.S. transformer producers and U.S. laminators/stampers maintain that they have become less competitive in the U.S. market as these newly-located firms or

⁶⁹ CR and PR at II-1.

⁷⁰ CR and PR at Table I-1.

⁷¹ CR and PR at Table C-1.

⁷² CR at II-1-2, PR at II-1.

⁷³ CR at II-2, II-29-30, PR at II-1-2, II-15-16.

⁷⁴ CR at II-29-30, PR at II-15-16.

⁷⁵ CR at II-30, Table III-3, PR at II-15-16, Table III-3.

⁷⁶ For example in 1995, GE moved its transformer production equipment and operations in Hickory, NC, and Rome, GA, to Monterrey, Mexico, in a joint venture with PROLEC to form a new company named PROLEC-GE that produces distribution and power transformers. According to a GE representative, the factors that prompted GE’s move to Mexico included ***. ***. CR at II-5-6, PR at II-2-3.

Similarly, ABB reported in its purchaser questionnaire response and at the Commission’s hearing that the firm closed its Muncie, IN, plant in 1997 and subsequently shifted the production of that plant’s transformers to Canada. During 1999, ABB shifted production of *** to Canada. During 2000, ABB shifted production of *** to Canada. All these units that are now produced in Canada use GOES ***. ABB testified at the hearing that it would be extremely cost-prohibitive for the firm to close its Canadian operations and return the production of those large power transformers to the United States. CR at II-6, PR at II-3; Tr. at 135.

⁷⁷ The value of transformer imports increased by 72.2 percent from 1997 to 1999, and by 39.3 percent from interim 1999 to interim 2000. Transformer imports from Mexico and Canada accounted for 60.2 percent of the value of transformer imports between 1997 and September 2000. CR at II-28, PR at II-14.

expanded transformer producers export their transformers and laminated GOES sheets to the United States.⁷⁸

As at the time of the original investigations, the sources of U.S. and world supply of GOES is limited to relatively few producers. Currently there are two GOES producers in the United States, AK Steel and Allegheny. AK produces both conventional and high-permeability (both non-domain-refined and domain-refined) GOES, while Allegheny produces only conventional GOES.⁷⁹ High-permeability GOES is used in transformers requiring a low core loss, although transformer design modifications may allow some use of conventional GOES for the more demanding core-loss applications.⁸⁰ According to both U.S. producers and purchasers, the type of GOES chosen by a purchaser is based on the transformer customer's core-loss evaluation, the relative prices of each type of GOES, and other buyer specifications, such as noise, size, and weight of the transformer.⁸¹ Therefore, price is an important factor in purchasing decisions in conjunction with the electromagnetic performance and other properties of the core steel.⁸²

Domestic producers reported that about *** percent of their domestic GOES sales during 1999 were on a short-term contract basis (shipments completed within 12 months of the contract date), almost *** percent were on a long-term contract basis (shipments continuing more than 12 months from the contract), and only *** percent on a spot basis.⁸³ Both U.S. producers and importers reported that short-term and long-term contracts generally fixed price and quantity, although it was not uncommon to adjust price during the contract period when market conditions or purchaser requirements change.⁸⁴ U.S. producers and importers also indicated that prices are generally negotiated with the customer and are based on a number of market factors such as volumes, raw material costs, competitive issues, size ranges, and magnetic quality requirements.⁸⁵

In 1993, U.S. producers' share of the value of apparent consumption was *** percent.⁸⁶ In 1999, U.S. producers' share of the value of apparent consumption was more than *** percent.⁸⁷ The subject imports' market share in 1993 was *** percent.⁸⁸ In 1999, subject imports' market share was under *** percent.⁸⁹ Nonsubject imports, mostly from Russia, the United Kingdom, Germany, and France, accounted for almost 99 percent of imports of GOES in 1999.⁹⁰

Since the original investigations, domestic producers have made significant investments both to add capacity and to improve existing capacity.⁹¹ Although current domestic GOES prices are lower than those

⁷⁸ CR at II-3, n.10; PR at II-2, n.10; Tr. at 62-65.

⁷⁹ CR at II-7, PR at II-4.

⁸⁰ CR at II-7, PR at II-4.

⁸¹ CR at V-6, PR at V-4.

⁸² CR at V-6, PR at V-4; Tr. at 116.

⁸³ CR at V-5-6, PR at V-4.

⁸⁴ CR at V-5-6, PR at V-4.

⁸⁵ CR at V-6, PR at V-4.

⁸⁶ CR and PR at Table I-1.

⁸⁷ CR and PR at Table I-1.

⁸⁸ CR and PR at Table I-1.

⁸⁹ CR and PR at Table I-1.

⁹⁰ CR at IV-16 and Table IV-1, PR at IV-6 and Table IV-1.

⁹¹ CR at II-15, PR at II-7-8; Domestic Producers' Prehearing Br. at 95-96.

during the original investigations, because of the improvements in productivity domestic producers indicate that they are more profitable now than during the original investigations.⁹²

Grain-oriented silicon electrical steel production is relatively capital intensive. As a result, the high costs associated with operating and maintaining a GOES plant require manufacturers to sustain relatively high capacity utilization rates to stay profitable.⁹³ During the original investigations, U.S. capacity utilization dropped from *** percent in 1990 to *** percent in 1993.⁹⁴ During the period of review, U.S. capacity utilization increased from *** percent in 1997 to *** percent in 1999.⁹⁵

Based on the record evidence, we find that these conditions of competition in the U.S. GOES market are not likely to change significantly in the reasonably foreseeable future. Accordingly, we find that current conditions in the domestic GOES market provide us with a basis upon which to assess the likely effects of revocation of the antidumping and countervailing duty orders within a reasonably foreseeable time.⁹⁶

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁹⁷ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁹⁸

In the original investigations, the Commission found that the volume of dumped and subsidized imports, measured by both quantity and value, was significant, and increased substantially during the period of investigation.⁹⁹ The Commission further found that market penetration of subject imports increased dramatically during the period of the investigation.¹⁰⁰ Upon issuance of the orders, the volume and market share of subject imports of GOES fell dramatically and have remained substantially below the levels they attained during the original investigations.¹⁰¹

Several factors support the conclusion that subject import volume is likely to be significant if the orders are revoked. First, there is considerable capacity to produce GOES in the subject countries. In 1999

⁹² Tr. at 10, 27.

⁹³ CR at II-14, PR at II-7; Tr. at 16.

⁹⁴ CR and PR at Table I-1.

⁹⁵ U.S. capacity utilization surpassed *** percent during the first nine months of 2000. CR and PR at Table III-1.

⁹⁶ Vice Chairman Okun and Commissioners Bragg and Hillman do not join the remainder of these views.

⁹⁷ 19 U.S.C. § 1675a(a)(2).

⁹⁸ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁹⁹ USITC Pub. 2778 at I-15-17.

¹⁰⁰ USITC Pub. 2778 at I-15-17.

¹⁰¹ CR and PR at Table I-1.

reported GOES production capacity in the subject countries totaled *** short tons, almost *** U.S. apparent consumption for the same year.¹⁰²

Although subject producers all reported high capacity utilization rates,¹⁰³ there is incentive to maximize and sustain the utilization of available capacity as a result of the high costs associated with GOES production. The subject producers have managed to maintain high capacity utilization rates primarily due to their export markets. At the time of the original investigations, subject producers exported a substantial portion of their GOES production.¹⁰⁴ Likewise, as of 1999, subject producers continued to export a considerable portion of their GOES production.¹⁰⁵ In addition, subject producers have demonstrated considerable flexibility to switch between their export markets as a substantial portion of their exports that were being shipped to the United States have made their way to other markets.¹⁰⁶

Moreover, because of the heightened competition between domestic GOES purchasers which did not expand or relocate production abroad and their competitors in Canada and Mexico, U.S. GOES customers have indicated that they are seeking new sources of low-priced GOES.¹⁰⁷ If the orders are revoked, in all likelihood, the U.S. customers, many of whom are former customers of the subject producers that currently purchase the subject product in Canada and Mexico, will turn to subject producers to satisfy their supply needs.¹⁰⁸ In fact, there is indication that several laminators/stamper firms that relocated some of their operations to Mexico and Canada would likely return to the United States if the orders were revoked.¹⁰⁹ It is also likely that the subject producers will seek out their former and new U.S. customers as prices for GOES in the U.S. market are higher than in some other GOES markets, including both Canadian and Mexican markets.

Accordingly, we find that the likely volume of cumulated subject imports from Italy and Japan would be significant within a reasonably foreseeable time if the orders were revoked.¹¹⁰

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty or countervailing duty orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject

¹⁰² CR and PR at Table IV-2, Table IV-6.

¹⁰³ CR and PR at Table IV-2, Table IV-6.

¹⁰⁴ 1994 Confidential Staff Report at II-44, II-46.

¹⁰⁵ Exports of Italian GOES to other countries accounted for *** percent in 1997, *** percent in 1998, and *** in 1999 of Italian GOES shipments. CR and PR at Table IV-2. At the same time, exports of Japanese GOES to other countries accounted for *** percent in 1997, *** percent in 1998, and *** percent in 1999 of Japanese GOES shipments. CR and PR at Table IV-6.

¹⁰⁶ CR and PR at Tables IV-2, IV-6, and IV-5. For example, Japanese shipments to Asian markets have been erratic with significant annual increases and declines. CR and PR at Tables IV-6 and IV-5.

¹⁰⁷ Purchaser Questionnaire Responses.

¹⁰⁸ CR at II-43-44 and Appendix D, PR at II-23-24 and Appendix D.

¹⁰⁹ See e.g., CR at II-29 n.78, PR at II-15 n.78.

¹¹⁰ Chairman Koplan notes that, as a legal matter, TIB entries re-exported to a NAFTA country are treated as entries for consumption. Nevertheless, his determination of the likely volume of subject imports in these reviews was unaffected by whether such TIB entries are currently considered entries for consumption.

imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.¹¹¹

In the original investigations, the Commission recognized the significant, negative price effects on the domestic industry caused by competition with the low-priced subject imports from each country.¹¹² For the following reasons, absent the discipline of the orders, there is a substantial likelihood that the harmful price effects found in the original investigations will reoccur.

Because of the minimal levels of subject imports during the period of review, we have little data with which to compare the current prices of subject GOES and domestically-produced GOES. The available pricing data indicate that domestic prices have fallen during these reviews and are at lower levels than prices during the original investigations.¹¹³ The falling prices of U.S. GOES are due to a number of factors, including downstream competition from increased U.S. imports of both transformers and laminated/stamped GOES.¹¹⁴ While U.S. producers have attempted to raise prices, they have been relatively unsuccessful in their attempt.¹¹⁵

As noted above, the domestic and subject product are substitutable and price is an important factor in purchasing decisions, particularly with the increased downstream competition. Even a relatively small amount of lower-priced imports from the subject countries would further suppress prices as domestic producers attempt to compete with the increased volume of low-priced imports and are pressured by their customers for further price reductions. It is apparent from the record in these reviews that the large purchasers have significant market power. Many of these purchasers are buying subject GOES from Italy and Japan for their facilities in Mexico and/or Canada at prices that are lower than prevailing U.S. prices. These purchasers would be likely to seek to obtain prices for their U.S. facilities that are comparable to the prices they pay for the subject product shipped to their Canadian and/or Mexican operations. Indeed, much of the subject product ultimately destined for those two foreign markets currently is shipped through the United States, such that there would not be significant logistical impediments to effectuating such a change. Moreover, many other purchasers that do not currently purchase subject GOES indicated in their questionnaire responses that they thought it likely that the subject imports would be offered at prices that are lower than prevailing U.S. price levels.¹¹⁶ Finally, although domestic sales are generally made through short- and long-term contracts, the contracts will afford little protection to the domestic producers as contract terms are often re-negotiated during the life of the contract.¹¹⁷ There is incentive for the low-priced, subject imports to return to the U.S. market as subject producers would undoubtedly receive a higher return for product in the U.S. market than in other third country markets, even while they lowered prices to increase sales.

For the foregoing reasons, we find that revocation of the antidumping and countervailing duty orders on subject imports would be likely to lead to significant underselling by the subject imports of the

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

¹¹² USITC Pub. 2778 at I-15-17.

¹¹³ CR at V-15-17, PR at V-7-9.

¹¹⁴ CR at V-13, PR at V-7; Tr. at 61-62, 64, 75 and 90-91.

¹¹⁵ CR at V-13-14, PR at V-7.

¹¹⁶ See e.g., *** Questionnaire Responses.

¹¹⁷ CR at V-6, PR at V-4; Tr. at 112.

domestic like product, as well as significant price depression or suppression, within a reasonably foreseeable time.

E. Likely Impact

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.¹¹⁸ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty or countervailing duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.¹¹⁹

In the 1994 determinations, the Commission found that the increasing volume of the lower-priced subject imports, and the significant market share accounted for by those imports, depressed prices to a significant degree leading to the U.S. industry's loss of market share, reduced capacity utilization rates, and financial losses.

Following imposition of the orders, the domestic industry's performance improved significantly. The domestic industry had a *** operating margin of *** percent in 1993.¹²⁰ By 1997, just three years after the imposition of the orders, with a dramatic decrease in subject imports in the U.S. market, the domestic industry had a *** operating margin of *** percent.¹²¹ Other indicators also improved. Since 1994, the industry has both modernized existing capacity and added needed additional capacity.¹²² Production increased and capacity utilization increased fairly steadily through 1997-99.¹²³ As these facts indicate, the domestic industry has returned to a relatively healthy state and is not currently in a vulnerable condition as contemplated by the statute's vulnerability criterion.¹²⁴

We found above that revocation of the antidumping duty orders would lead to significant increases in the volume of cumulated subject imports at prices that would undersell the domestic product and significantly depress or suppress U.S. prices. We find that the volume and price effects of the cumulated

¹¹⁸ 19 U.S.C. § 1675a(a)(4).

¹¹⁹ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

¹²⁰ 1994 Confidential Staff Report at Table 7.

¹²¹ CR and PR at Table III-7.

¹²² CR at II-3-4, II-13-14, and III-13, PR at II-2, II-7, and III-5; Tr. at 66.

¹²³ CR and PR at Table III-1.

¹²⁴ 19 U.S.C. § 1675a(1)(C). See SAA at 885. ("The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury" "If the Commission finds that the industry is a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.")

subject imports would have a significant negative impact on the domestic industry and would likely cause the domestic industry to lose market share. Moreover, the loss in market share and subsequent decrease in capacity utilization would be stronger in this capital intensive industry, in light of the need to maintain high capacity utilization to recoup investment.

We, thus, find it likely that the effect of revocation on domestic prices, and production and sales would be significant. The price and volume declines would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and make and maintain necessary capital investments. In addition, we find it likely that revocation of the orders will result in employment declines for domestic firms.

Accordingly, we conclude that, if the antidumping duty orders were revoked, subject imports from Italy and Japan would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of GOES from Italy and Japan would be likely to lead to continuation or recurrence of material injury to the U.S. GOES industry within a reasonably foreseeable time. We also find that the revocation of the countervailing duty order on Italy would be likely to lead to continuation or recurrence of material injury to the U.S. GOES industry within a reasonably foreseeable time.

DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG

Based upon the record in these reviews, I determine, under section 751(c) of the Tariff Act of 1930, as amended, that revocation of the antidumping and countervailing duty orders on grain-oriented silicon electrical steel (“GOES”) from Italy and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I note that I join my colleagues’ discussion with respect to the definitions of the domestic like product and domestic industry and the conditions of competition distinctive to the domestic industry.

I. CUMULATION

A. ANALYTICAL FRAMEWORK

As set forth in previous views,¹ in considering whether to cumulate subject imports in a sunset review, I first assess: (1) whether the reviews were initiated on the same day; and (2) the likely reasonable overlap of competition among subject imports and between subject imports and the domestic like product, in the event the orders are revoked.

If, as a result of the foregoing assessment, I determine that subject imports are amenable to cumulation, I then proceed to examine whether the statutory exception precludes cumulation of such imports that are otherwise amenable to cumulation—*i.e.*, I examine whether such imports, when considered individually, are likely to have no discernible adverse impact on the domestic industry. In instances where I find that subject imports from more than one subject country are likely to have no discernible adverse impact, I then consider whether these individual countries for which I have made a likely no discernible adverse impact finding are, in the aggregate, likely to have no discernible adverse impact on the domestic industry.

Upon review of the record in these reviews, I find, as discussed below, that there is likely to be no discernible adverse impact on domestic GOES producers either as a result of revocation of each subject order individually or in the aggregate.

B. REASONABLE OVERLAP OF COMPETITION

In the original investigations, the Commission declined to cumulate subject imports from Italy and Japan based in large part upon its finding that subject imports from Italy were comprised of conventional grade GOES while Japanese subject imports were primarily comprised of high-permeability GOES.² The Commission concluded that these products were not sufficiently fungible to support a finding of a reasonable overlap of competition.³ Importantly, the Commission noted in its original determinations that the sole Italian exporter of subject merchandise to the United States was precluded by contract from selling high-permeability GOES in the United States.⁴

¹ See Separate Views of Chairman Lynn M. Bragg Regarding Cumulation in Sunset Reviews, Potassium Permanganate from China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999) at 27-30; Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 and 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (April 2000) at 27-32.

² USITC Pub. 2778 at I-12-14.

³ USITC Pub. 2778 at I-13.

⁴ USITC Pub. 2778 at I-12, n.72.

The record in these sunset reviews, however, indicates that important factors relied upon by the Commission in reaching its original finding of no reasonable overlap of competition have changed. The record now indicates that the sole Italian exporter ***.⁵ In addition, the record indicates that greater cross-grade competition exists in the current market than at the time of the original investigations.⁶

Although the subject imports' product mix and channels of distribution have not changed since the original investigations, I find, based on the aforementioned current conditions of competition, that the product mix is likely to change in the reasonably foreseeable future. I also find that subject imports and the domestic like product would be likely to compete in the same geographical market and be simultaneously present in such markets, as they were at the time of the original investigations.⁷

I therefore find that, on balance, the record indicates that there will be a likely reasonable overlap of competition among subject imports from Italy and Japan and between subject imports and the domestic like product in the event the orders are revoked.

C. NO DISCERNIBLE ADVERSE IMPACT

As set forth below, I find that revocation of the orders on subject imports from Italy and Japan would individually be likely to have no discernible adverse impact on the U.S. industry. In addition, I determine that in the aggregate subject imports from Italy and Japan would also be likely to have no discernible adverse impact, in the event of revocation. I therefore do not cumulate subject imports from Italy and Japan.

1. INDIVIDUAL COUNTRY ANALYSIS

A. ITALY

The record indicates that the sole Italian GOES producer is currently operating ***, *** percent in interim 2000, compared to *** percent in interim 1999.⁸ If this producer were to increase its capacity utilization to *** percent, the amount of excess capacity potentially available for shipment to the United States would be approximately *** short tons, which is equivalent to approximately *** percent of 1999 apparent U.S. consumption and *** percent of 1999 U.S. domestic production.⁹ While such a volume increase could, in certain instances, provide a sufficient basis for a finding that subject imports are likely to have a discernible adverse impact, the record in these reviews indicates that any such potential increase in the volume of Italian subject imports and any resulting potential discernible adverse impact on the domestic industry as a result of such an increase would likely be either limited or offset by several factors.

First, although the volume of subject imports from Italy may increase in the event of revocation (given that the Italian producer can now sell a higher-valued product in the U.S. market), any volume increase will be limited by robust GOES demand in the Italian home market.¹⁰

⁵ Italian Respondents' Posthearing Br. at A-1 (response to Commissioner question).

⁶ CR at I-17-18 and II-31-32, PR at I-13 and II-16-17; Domestic Producers' Prehearing Br. at 26-27, Exh. 4.

⁷ Original CR at II-47-49.

⁸ CR and PR at Table IV-2. I find the most recent interim data in these investigations sufficiently probative given that the period is based upon three quarters of data.

⁹ CR and PR at Tables IV-2 and I-1.

¹⁰ CR and PR at Table IV-2. Over the period reviewed, AST's shipments moved increasingly away from exports towards the home market; export shipments were *** percent of AST's total shipments in 1997 compared

Another important mitigating factor is the current condition of the domestic industry.¹¹ The record indicates that in the most recent reporting period the domestic industry operated at *** percent capacity utilization with operating margins of *** percent.¹² It is likely that this healthy condition will continue based on evidence indicating that GOES demand will remain strong in the United States.¹³ The likely continued growth in apparent U.S. consumption, and apparent current tightness of supply, can also be expected to limit any incentive the Italian subject producer may have to undersell in the U.S. market.¹⁴ Additionally, I note that GOES is generally made to order,¹⁵ and therefore less likely to impact prices throughout the market, in contrast to the impact of commodity products where small volumes of undersold merchandise are much more likely to impact prices broadly.

I therefore determine, based upon the foregoing, that revocation of the antidumping and countervailing duty orders on subject imports from Italy is likely to have no discernible adverse impact on the domestic industry.

B. JAPAN

With respect to Japanese subject imports, on a volume basis, Japanese imports were minimal throughout the period reviewed and will likely remain so after revocation. Although the volume of subject imports from Japan may increase in the event of revocation (based upon the Japanese subject producers' high level of export-orientation),¹⁶ the potential increase is not likely to have a discernible adverse impact on the domestic industry because, as partially discussed above: (1) the condition of the domestic industry is healthy and is expected to be sustained in the reasonably foreseeable future;¹⁷ (2) U.S. and global demand is expected to continue to increase;¹⁸ and (3) Japanese producers are currently operating at ***.¹⁹ In addition, as discussed above, GOES is generally made to order, and therefore less likely to impact prices throughout the market than commodity products.

I therefore determine, based upon the foregoing, that revocation of the antidumping duty order on subject imports from Japan is likely to have no discernible adverse impact on the domestic industry.

to *** percent of total shipments in interim 2000. CR and PR at Table IV-2. I also find that the Italian subject producer is unlikely to redirect GOES shipments from Mexico and Canada to the United States given that purchasers in those markets are unlikely to move production facilities to the United States in the event of revocation.

¹¹ CR and PR at Table I-1.

¹² CR and PR at Table I-1.

¹³ CR at II-25-29, PR at II-12-15.

¹⁴ CR at II-11, PR at II-6.

¹⁵ CR at II-15-16, II-19, II-22, PR at II-8, II-10-11.

¹⁶ CR and PR at Tables IV-6 and IV-7.

¹⁷ CR and PR at Table I-1.

¹⁸ CR at II-25-29, PR at II-12-15; Japanese Respondents' Prehearing Br. Exh. 19 at 6. The likely continued improvement in apparent U.S. consumption, and apparent current tightness of supply, can also be expected to limit any incentive the Japanese subject producers may have to undersell in the U.S. market. CR at II-11, PR at II-6.

¹⁹ CR and PR at Table IV-6.

2. AGGREGATE ANALYSIS

Because I find that subject imports from the individual subject countries are likely to have no discernible adverse impact on the domestic industry in the event of revocation, I next consider whether imports from these countries, in the aggregate, are likely to have no discernible adverse impact.

I determine, based upon my above findings, that even if there is likely to be some increase in the volume of subject imports from Italy and Japan, the volume of these imports, even in the aggregate, would still be likely to have no discernible adverse impact on the domestic industry. As noted above, any potential increase in the volume of subject imports, and any resulting potential discernible adverse impact on the domestic industry as a result of these imports, would likely be either limited or offset by the factors discussed above. I find that the above assessment regarding factors in support of my findings that subject imports are individually likely to have no discernible adverse impact on the domestic industry in the event of revocation are equally persuasive in the context of an aggregate analysis.

Accordingly, I determine that, in the aggregate, subject imports from Italy and Japan are likely to have no discernible adverse impact on the domestic industry in the event of revocation.

II. NO LIKELY CONTINUATION OR RECURRENCE OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM ITALY OR JAPAN

Since I find that subject imports from Italy and Japan are likely to have no discernible adverse impact on the domestic industry, either individually or in the aggregate, it follows that revocation of the orders at issue would also not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Accordingly, and based upon all of the foregoing, I determine that revocation of the antidumping and countervailing duty orders on grain-oriented silicon electrical steel from Italy and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

**DISSENTING VIEWS OF
VICE CHAIRMAN OKUN AND COMMISSIONER HILLMAN**

I. Introduction

Based on the record in these five-year reviews, we determine that revocation of the orders covering imports of grain-oriented silicon electrical steel (GOES) from Italy and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, we respectfully dissent from the Commission's determination with respect to the subject imports. While we join the Commission's determinations with respect to background, legal standards, like product, the domestic industry, cumulation, and conditions of competition, we write to explain why revocation of the subject orders would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

II. Cumulation

We concur with the Commission's findings that: (1) it is not likely that subject imports from Italy and subject imports from Japan will have no discernible adverse impact on the domestic industry; and (2) there is likely to be a reasonable overlap of competition between GOES from Italy, GOES from Japan, and the domestic like product, if the orders are revoked. Moreover, we find that the subject imports will compete in the U.S. market under generally similar conditions of competition. Accordingly, we exercise our discretion to cumulate imports of GOES from Italy and Japan in our analysis.

III. Revocation of the Orders on GOES from Italy and Japan is not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time

A. Conditions of Competition

We concur with the discussion of conditions of competition presented in the views of the Commission majority. We find that these conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within a reasonably foreseeable time.

We observe that the prevailing conditions of competition in the U.S. market differ significantly from those during the period examined in the original investigations. Apparent U.S. consumption *decreased* by more than 25,000 short tons (9.2 percent) between 1990 and 1993, while apparent U.S. consumption *increased* by nearly *** short tons (***) percent) between 1997 and 1999, and increased by a further *** short tons between interim (January-September) 1999 and interim 2000.¹ Overall, demand in the United States for GOES has been strong, and is likely to continue to increase, in light of the demonstrated energy needs of the nation and the aging of the nation's transformers.

Supply conditions have changed as well. Following the expiration of the steel VRAs in 1992, subject imports *increased* by *** short tons and nonsubject imports *increased* by *** short tons in 1993. By 1993, the domestic industry had *** short tons of available capacity as well as *** short tons of inventory. In 1999 and 2000, in contrast, the domestic industry's chief import rival, Russia, was placed

¹ Table I-1, CR at I-3-5, PR at I-3-5.

under a quantitative restriction; U.S. producers had virtually no available capacity; and U.S. inventories fell to *** short tons, less than *** percent of total sales.²

B. Likely Volume, Price Effects, and Impact of Subject Imports

1. Likely Volume of Subject Imports

During the period examined in the Commission's original investigations, the volume of subject imports from Italy increased from *** short tons (\$***) in 1990 to *** short tons (\$***) in 1993, increasing as a share of the U.S. market from *** percent to *** percent by quantity and from *** percent to *** percent by value. The volume of subject imports from Japan increased from *** short tons (\$***) in 1990 to *** short tons (\$***) in 1993, increasing as a share of the U.S. market from *** percent to *** percent by quantity and from *** percent to *** percent by value.³ The Commission majority found the individual volumes to be significant.⁴

Since reaching their peak in 1993, subject imports from Italy and Japan dropped off substantially and have been at very low levels since 1995.⁵ Although the reduction in volume appears to be in large part due to the imposition of the antidumping and countervailing duty orders in 1994, we do not find that the likely volume of subject imports would be significant if the orders were revoked.

First, neither the Italian nor Japanese producers have significant excess capacity that could be used to increase shipments to the U.S. market. Despite several increases in its capacity,⁶ Italian manufacturer AST reported high capacity utilization rates between 1997 and 1999, ranging between *** and *** percent. AST reported capacity utilization of *** percent for January-September 2000.⁷ AST reported that, as of December 2000, it was not accepting any new orders for delivery through May 2001.⁸ Japanese capacity has remained relatively steady between 1993 and 1999 at a level of approximately *** short tons annually. With the exception of one year (1998), the Japanese industry operated at very high capacity utilization during the period reviewed. Its capacity utilization was *** percent in interim 2000.⁹

² Table I-1, CR at I-3-5, PR at I-3-5.

³ Table I-1, CR at I-3-5, PR at I-3-5.

⁴ *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-15 and I-16. In separate views, Commissioner Newquist found the cumulated volume to be significant, while Commissioner Crawford found the Japanese volume to be significant but not the Italian volume. *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-22 and at I-28-29.

⁵ Figure I-1, CR at I-6, PR at I-6.

⁶ AST increased its capacity from *** short tons in 1993 to *** short tons in 1997, and to *** short tons in 1999. Table IV-2, CR at IV-6, PR at IV-4.

⁷ AST asserts that it has been operating at full practical capacity for at least the last five years, and that any apparent excess capacity indicated in its questionnaire response reflects changes in product mix. AST's Prehearing Brief at 25.

⁸ AST's Prehearing Brief at 26-29. *See also* CR at D-14, PR at D-6.

⁹ Table IV-6, CR at IV-13, PR at IV-5. The Japanese industry operated at *** percent capacity utilization or better in 1997 and 1999, and at *** percent in 1998. *Id.*

We do not find it likely that the subject producers would increase production capacity in the event of revocation. The subject producers have indicated that they have no plans to increase production and have detailed the significant time and expense required to add substantial new capacity.¹⁰

Second, the subject producers do not maintain significant inventories of GOES that could be used to increase market share in the United States. AST reported no inventories of GOES in Italy.¹¹ Inventories of GOES in Japan have been declining, and by September 2000 had fallen to *** short tons.¹² There were *** inventories of GOES from Italy or from Japan reported by any U.S. importer.¹³

Third, the record contains no indication that there are any barriers to the importation of the subject merchandise into countries other than the United States.

Fourth, we do not find that there is any significant potential for product-shifting by the subject producers in favor of increased production of GOES. The domestic industry argued that the subject producers could produce more GOES by switching some of their productive capacity from production of non-oriented electrical steel (NOES) to production of GOES.¹⁴ Although the two types of products, as well as other steel products, share a number of common production steps, there is a substantial production bottleneck presented by box annealing, which is specific to GOES production.¹⁵ Therefore, we do not find a likelihood of significant product shifting in favor of GOES production within a reasonably foreseeable time.

Thus, none of the factors enumerated in the statute¹⁶ support a finding of significantly increased subject import volumes upon revocation of the orders.

We also have examined the argument of the domestic industry that Italy and Japan would shift GOES exports from other markets to the United States if the orders are revoked. Both Italian and Japanese producers export a substantial portion of their production,¹⁷ thus presenting at least the possibility that they could shift GOES exports to the U.S. market. Producers in both countries have increased their exports to the other NAFTA countries since the orders were imposed. Although we view data on relative prices between different markets with caution, it does appear that U.S. prices for GOES are generally higher than

¹⁰ CR at II-19 and II-21-23, PR at II-10 and II-11.

¹¹ AST's Prehearing Brief at 25-26.

¹² Tables IV-2 and IV-6, CR at IV-6 and IV-13, PR at IV-4 and IV-5.

¹³ CR at IV-3, PR at IV-3.

¹⁴ Hearing Transcript at 51-52 (testimony of Michael Kerwin, Economist, Georgetown Economic Services, L.L.C.).

¹⁵ *See, e.g.*, Hearing Transcript at 154 (testimony of Giancarlo DiSchino, Quality Manager for Electrical Steel, Acciai Speciali Terni, S.p.A.); Hearing Transcript at 164 (testimony of Mitsuru Tsukakoshi, Group Manager, Electrical Steel Sheet Export Department, Electrical Sheet Sales Division, Nippon Steel Corporation).

¹⁶ 19 U.S.C. § 1675(a)(2)(A)-(D).

¹⁷ Japan exports more than *** percent of its GOES production, and that percentage has been increasing in recent years (reaching *** percent of total shipments for the first three-quarters of 2000). Since 1994, the most substantial growth market for Japanese GOES has been ***. Table IV-5, CR at IV-10, PR at IV-4; Japanese Posthearing Brief at App. D. *See also* Japanese Posthearing Brief at App. B (Canada and Mexico have increased from *** percent of Japanese GOES exports in 1997 to *** percent in 2000). Japanese exports include high-permeability GOES (both domain-refined and non-domain-refined) as well a smaller portion of conventional GOES.

AST's exports are declining as a share of its total shipments, although they still account for more than *** of total shipments. AST's exports to Canada and Mexico represent *** percent of its exports. AST's exports are principally conventional GOES, but it does produce and export a smaller volume of high-permeability non-domain-refined GOES. Table IV-3, CR at IV-7, PR at IV-4.

those in either Canada or Mexico. While a price differential may result in some shifting in favor of increased exports to the U.S. market, we do not believe any shift will be significant, for several reasons.

First, increased Italian and Japanese exports to Canada and Mexico have occurred at the same time as some U.S. transformer manufacturers shifted production to those countries, in part to be able to obtain subject GOES without being subject to the orders. A substantial portion of Japanese exports to Canada and Mexico are to large, multinational producers such as ***. We do not believe that the subject producers would jeopardize important transnational accounts simply to arbitrage price differentials between national markets.^{18 19}

Second, U.S. consumption of high-permeability GOES fell substantially between the original investigation and current review period, in part due to the movement of some transformer demand out of the United States and in part due to a shift in demand in favor of lower-cost conventional GOES.²⁰ Thus, there is less demand for the main product type -- high permeability GOES -- that Japan (which has *** the larger industry of the two subject countries) exported to the United States during the original investigation and that Japan currently exports to the other NAFTA countries.

Third, as described in the section on Conditions of Competition, we expect robust U.S. demand for GOES in the foreseeable future. Thus, the U.S. market could absorb additional GOES imports without displacing existing domestic suppliers.

With respect to whether the industries in Italy or Japan would shift GOES from non-NAFTA markets to the United States, we note that world-wide demand for GOES is increasing. As global demand for electricity rises and governments seek to upgrade their electrical infrastructure, the world-wide demand picture for GOES in the foreseeable future is bright. Demand for electricity – and thus for products such as GOES that support electricity production and transmission – is expected to grow fastest in developing countries in Asia, such as China, and Central and South America.²¹ We do not find it likely that the subject producers would risk their access to other markets in order to sell significantly more GOES into the United States.

We note that AST, along with GOES producers in France and Germany, are all owned by ThyssenKrupp. Despite the fact that ThyssenKrupp could export GOES produced in Germany and France to the United States without being subject to the orders, it has not sought to increase its exports from those

¹⁸ We note that any shift by transformer manufacturers to greater production in the United States upon revocation would not negatively affect the U.S. industry, as this represents business the U.S. GOES producers currently do not possess. We also note that ABB, which is the *** U.S. purchaser of GOES and accounts for more than *** percent of U.S. GOES consumption, already has signed an agreement for the years 2001 and 2002 that states that “***.” See ABB’s Posthearing Brief at Exhibit 6. Companies such as ABB and ***, however, indicated that they would *not* shift transformer production back to the United States if the orders under review were revoked. CR at II-5-6 and PR at II-2-3.

¹⁹ Our conclusion is not altered by the fact that a portion of the Japanese and Italian exports to Canada and Mexico physically enter the United States under various temporary entry customs provisions before being routed to Canada or Mexico. All of these temporary entries are destined for specific customers in the Canadian and Mexican markets. CR at IV-2 n.1, PR at IV-1-2 n.1.

²⁰ In the original investigations, *** percent of U.S. shipments of Japanese imports (which accounted for *** percent of U.S. consumption) and *** percent of U.S. producers’ domestic shipments were high-permeability GOES. By contrast, over the current review period, *** percent of U.S. producers’ domestic shipments and very small quantities of Japanese and non-subject imports were high-permeability GOES. Confidential Staff Report INV-R-078 (May 12, 1994) at II-49, appendix C, and appendix D; Table I-1, CR at I-3-5, PR at I-3-5; and Table III-3, CR at III-3, PR at III-1.

²¹ See EIA, DOE, *International Energy Outlook 2000 – Transportation Energy Use*, Japanese Prehearing Brief at Exh. 19.

counties substantially.²² This fact buttresses the conclusion that it is not likely that a significant increase in imports from Italy would occur upon revocation.

Based on the foregoing, we do not find it likely that the volume of subject imports would increase substantially if the orders are revoked. We conclude that the likely volume of imports of the subject merchandise would not be significant if the subject orders are revoked, either in absolute terms or relative to production or consumption in the United States.

2. Likely Price Effects of Subject Imports

During the original investigations, the Commission majority noted that the Italian M-6 product undersold domestic M-6 product in 27 of 30 comparisons by as much as 15.9 percent (higher than the 5-10 percent price differential several purchasers indicated would be necessary to offset certain non-price differences), and concluded that such underselling, combined with decreasing prices, suppressed and depressed domestic prices of GOES to a significant degree. The Commission majority also noted that Japanese prices fell faster than those for the domestic like product, that underselling in the reported pricing data was concentrated in the final two years of the period examined, and that information from purchasers suggested “pervasive” underselling.²³

Over the period examined in these reviews, domestic prices for conventional GOES (items 1-3) declined consistently throughout the period from 1997-2000. There were no sales of Japanese conventional GOES reported, and the limited sales of Italian GOES were higher than the U.S. price in two of the three possible comparisons. Domestic prices for high-permeability GOES (item 4) were stable in 1997 and 1998, then declined modestly in 1999 and 2000. There were no direct price comparisons for high-permeability GOES. In aggregate, the average unit values (AUVs) of GOES imports from Italy and Japan rose between 1997 and 1999 (although Japanese AUVs fell in 2000), while domestic AUVs fell steadily but not dramatically. Domestic producers’ unit COGS and unit SG&A fell over the period examined, declining in the aggregate at a faster pace than the decline in domestic AUVs.²⁴ In July 2000, domestic producers announced price increases of five percent to take effect January 1, 2001. They report that they have been able to collect a portion of this increase to date.²⁵

We have considered the likely degree of underselling by GOES from Italy and Japan and whether imports of such merchandise are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of the domestic like product. Given our expectation of a modest increase in the volume of subject imports, as described above, we would expect subject imports to have an effect on U.S. prices for GOES. However, in the absence of significant volumes we would not

²² CR at II-18, PR at II-9; AST’s Posthearing Brief at A-1.

²³ *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-15 and I-17, *but see also Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at II-29. Commissioner Newquist cumulated the price effects of the subject imports and found them to be significant, pointing to stagnant or declining sales prices and “fairly consistent” underselling. *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-22. Commissioner Crawford found limited price effects from GOES from Italy and from Japan because of domestic producer price competition, available capacity, and poor Italian-U.S. and Japanese-U.S. product substitutability. *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-27-30.

²⁴ Tables V-1-3, CR at V-9-12 (pricing), PR at V-6; Table IV-1, CR at IV-1 (AUVs), PR at IV-2; and Table III-9, CR at III-10-11 (costs and expenses), PR at III-4.

²⁵ CR at V-14, PR at V-7.

anticipate significant price effects. Moreover, an expanding U.S. market for GOES would, in our view, permit the introduction of some additional import supply without having a detrimental impact on the U.S. pricing environment.

We note also that the increasing presence of imported finished transformers incorporating GOES already represents a substantial source of price discipline in the U.S. market. A majority of the transformer imports are from Canada and Mexico; as noted above, exports of Japanese or Italian GOES to those markets have increased.²⁶ Thus, GOES from the subject countries may already be having an indirect effect on domestic prices via finished transformer imports into the United States. We are not convinced that, if the subject producers were to shift a portion of GOES sales away from those other markets to the U.S. market, any downward pressure on U.S. prices would be substantially greater.

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

3. Likely Impact of Subject Imports

In the original investigations, the Commission majority found that increased market penetration and price underselling by subject imports from Italy and from Japan contributed to the deteriorating condition of the domestic industry, coming at the expense of domestic capacity utilization, employment, and sales. Reductions in revenue, production, and capacity utilization, and increased per-unit costs, reflected the declines in the domestic industry's market share and shipment volume. Price suppression prevented the domestic industry from recovering increased costs, and resulted in operating losses in 1992.²⁷

The record indicates that domestic producers have increased their capacity and, more noticeably, their production since the imposition of the orders. Capacity utilization is substantially higher than *** percent, and in recent years has been fully *** percentage points higher than in the early 1990s. Demand is up, and U.S. producers have gained *** percentage points of market share since 1993. Shipment volumes are up, even though average unit values are about the same as they were in the early 1990s. Inventory levels have evaporated, and worker productivity is up. As a result, the domestic industry is posting operating income of more than *** per short ton, as opposed to operating losses of *** per short ton during 1992 and 1993.²⁸

²⁶ U.S. imports of transformers increased by 72.2 percent between 1997 and 1999, and were 39.3 percent higher in the first nine months of 2000 than in the first nine months of 1999. Over this period, imports from Canada and Mexico accounted for more than 60 percent of U.S. transformer imports. CR at II-28 and n.77, PR at II-14-15 and n.77.

²⁷ *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-15-17. Commissioner Newquist did not address impact separately. Commissioner Crawford found that the domestic industry could have increased its output and sales significantly, and thereby increased its revenue significantly, had GOES from Japan been fairly traded, but would not have been able to achieve significant increases had GOES from Italy been fairly traded. She noted that substantially-smaller presence of Italian GOES in the U.S. market and the ability of nonsubject countries to provide the conventional GOES imported from Italy. She found that there were no nonsubject imports of high permeability GOES, so purchasers had no alternative sources of supply other than domestic producers. *Grain-Oriented Silicon Electrical Steel from Italy and Japan*, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Publication No. 2778 (May 1994), at I-29 and at I-30-31.

²⁸ Table I-1, CR at I-3-5, PR at I-3-5.

The domestic industry performance since 1997 has continued to advance. Volume-based indicators (output, sales, and inventory ratios) have improved, while value-based sales indicators have declined less rapidly than have costs and expenses. As a result, the domestic industry's operating income margin increased from *** percent in 1997 to *** percent in 1999, and was *** percent in interim 2000, compared to *** percent in interim 1999.²⁹

Based on the above facts, combined with the likelihood that GOES demand will continue to increase from its already-elevated levels in the reasonably foreseeable future, we do not find the domestic industry producing GOES to be in a vulnerable condition.

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

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

IV. Conclusion

For the foregoing reasons, we determine that revocation of the subject orders on GOES from Italy and Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

²⁹ Table I-1, CR at I-3-5, PR at I-3-5. ***. See Table III-9, CR at III-10-11, PR at III-4.