

UNITED STATES INTERNATIONAL TRADE COMMISSION

STEEL CONCRETE REINFORCING BAR FROM TURKEY

Investigation No. 731-TA-745 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3577, February 2003)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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## STEEL CONCRETE REINFORCING BAR FROM TURKEY

### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on steel concrete reinforcing bar from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

### BACKGROUND

The Commission instituted this review on March 1, 2002 (67 F.R. 9465) and determined on June 4, 2002, that it would conduct a full review (67 F.R. 40965, June 14, 2002). Notice of the scheduling of the Commission's review 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 September 11, 2002 (67 F.R. 57628). The hearing was held in Washington, DC, on December 12, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

<sup>2</sup> Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg dissenting.

## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order concerning steel concrete reinforcing bar (“rebar”) from Turkey would be likely to lead to continuation or recurrence of material injury to a regional industry in the United States within a reasonably foreseeable time.<sup>1</sup>

### I. BACKGROUND

In April 1997, the Commission determined that an industry in the United States was being materially injured by reason of imports of rebar from Turkey that were being sold at less than fair value.<sup>2</sup> In making its determination, the Commission concluded that appropriate circumstances existed for a regional industry analysis with the region consisting of the U.S. producers in the “Eastern-Tier region.”<sup>3</sup> On April 17, 1997, the Department of Commerce (“Commerce”) issued an antidumping duty order on subject imports from Turkey.<sup>4</sup>

On March 1, 2002, the Commission instituted the present review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on rebar from Turkey would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>5</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review. In order to make this decision, the Commission first determines whether individual responses to the notice of institution are adequate. Next, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties – domestic interested parties (such as producers, unions, trade associations, or worker groups) and respondent interested parties (such as 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. 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.<sup>6</sup>

The Commission received individual responses from four domestic producers (representing a majority of total domestic rebar production in the Eastern-Tier region in 2001) and a joint response, which contained company specific information, on behalf of five Turkish producers (accounting for the majority

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<sup>1</sup> Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg dissenting. Chairman Okun and Commissioner Bragg join sections I-III.B. of these views.

<sup>2</sup> Steel Concrete Reinforcing Bars From Turkey, Inv. No. 731-TA-745 (Final) USITC Pub. 3034 (April 1997) (“USITC Pub. 3034”).

<sup>3</sup> The “Eastern-Tier” region consists of 22 contiguous states: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, plus Puerto Rico and the District of Columbia. USITC Pub. 3034 at 9.

<sup>4</sup> 62 Fed. Reg. 18748.

<sup>5</sup> 67 Fed. Reg. 9465 (March 1, 2002).

<sup>6</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

of rebar production in Turkey in 2001). On June 4, 2002, the Commission determined that both the domestic and respondent interested party group responses were adequate and determined that it should proceed to a full review pursuant to section 751(c)(5) of the Act.<sup>7</sup>

## 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.”<sup>8</sup> The Act defines the “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.”<sup>9</sup>

In its five-year review determination, Commerce defined the imported product covered by the existing antidumping duty order as all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes

all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes: (i) plain round rebar; (ii) rebar that a processor has further worked or fabricated; and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under subheadings 7213.10.00 and 7214.20.00.<sup>10</sup>

The subject merchandise is hot-rolled deformed rebar, designed specifically to enhance the tensile and shear-stress strength of concrete structures.<sup>11</sup> Rebar is sold to customers in various forms or stages of fabrication, but only stock deformed rebar, which is not further processed, is subject to the antidumping order.<sup>12</sup>

The starting point of the Commission’s like product analysis in a five-year review is the Commission’s like product determination in the original investigation.<sup>13</sup> In the original investigation, the

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<sup>7</sup> 19 U.S.C. § 1675(c)(5); See 67 Fed. Reg. 40965 (June 14, 2002) and Explanation of Commission Determination on Adequacy contained in Appendix A of the Confidential Staff Report, as revised by memoranda INV-AA-008 (Jan. 29, 2003) and INV-AA-013 (Feb. 11, 2003), (“CR”) and Public Report (“PR”).

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>10</sup> See 67 Fed. Reg. 45457 (July 9, 2002).

<sup>11</sup> CR at I-14; PR at I-10.

<sup>12</sup> CR at I-13; PR at I-10.

<sup>13</sup> In its like product determination, 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 or producer perceptions; and, where appropriate, (6) price. See Timken, 913 F. Supp. at 584. No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of 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, 96<sup>th</sup>

(continued...)

Commission determined that the domestic like product consisted of steel concrete reinforcing bars coextensive with Commerce's scope.<sup>14</sup> Petitioners agree with the Commission's definition of the like product in the original investigation.<sup>15</sup> Respondents have not raised an objection to this definition and no new facts have been presented to warrant a conclusion different from that reached by the Commission in the original investigation. We therefore find one like product consisting of rebar coextensive with Commerce's scope.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant domestic industry as the "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."<sup>16</sup> In defining the domestic industry, the 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.<sup>17</sup> Consistent with our definition of the domestic like product, we find that the domestic industry comprises all domestic producers of rebar.

We address below the one domestic industry issue that is raised in this review--whether appropriate circumstances exist to conduct a regional injury analysis.

### **1. Regional Industry Analysis**

#### **a. Background**

In the original investigation, the Commission found appropriate circumstances existed to conduct a regional industry analysis.<sup>18</sup> The Commission defined the region as the Eastern Tier consisting of 22 contiguous states plus the District of Columbia and Puerto Rico ("the region"). In so doing, the Commission rejected respondents' argument that Puerto Rico be excluded from the Eastern Tier. It determined that while there was no domestic producer of rebar in Puerto Rico, there had been shipments into Puerto Rico of both subject imports and rebar produced in the region. It further stressed that the record indicated that demand in Puerto Rico was not supplied by domestic producers outside the region.<sup>19</sup>

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<sup>13</sup> (...continued)

Cong., 1<sup>st</sup> Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

<sup>14</sup> USITC Pub. 3034 at 3-8.

<sup>15</sup> Petitioners' Prehearing Br. at 3.

<sup>16</sup> 19 U.S.C. § 1677(4)(A).

<sup>17</sup> See 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).

<sup>18</sup> Specifically, the Commission found that rebar has a low value-to-weight ratio and that relatively high inland transportation costs were associated with the shipment of rebar. It also noted that shipments were concentrated within a 250 mile radius. USITC Pub. 3034 at 10-11.

<sup>19</sup> USITC Pub. 3034 at 12-13. In considering alternative regions the Commission rejected arguments for the

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**b. General Considerations**

Section 752(a)(8) of the Act pertains specifically to a regional industry analysis in five-year reviews. The statute states that in a five-year review involving a regional industry:

the Commission may base its determination on the regional industry defined in the original investigation under this subtitle, another region that satisfies the criteria established in section 1677(4)(C) of this title, or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in review, the Commission shall consider whether the criteria established in section 1677(4)(C) of this title are likely to be satisfied if the order is revoked or the suspended investigation is terminated.<sup>20</sup>

The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) clarifies that “the Commission is not bound by any determination it may have made in the original investigation regarding the existence of a regional industry.”<sup>21</sup> However, the SAA also states that the Commission needs “sufficient evidence” to warrant revisiting its original regional industry determination.<sup>22</sup>

The Commission takes into account any effect that the order or suspension agreement may have had on the marketing and distribution patterns for the subject product in analyzing whether the market isolation and import concentration criteria are likely to be satisfied in the event of revocation or termination.<sup>23</sup> The Commission also takes into account any prior regional industry definition, any product

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<sup>19</sup> (...continued)

inclusion of Texas, Ohio, Indiana and Illinois in the Eastern-Tier region. With respect to Texas, the Commission found that the Texas market appeared to be separate and isolated from the region, with only limited shipments into Texas by Eastern-Tier producers and minimal shipments by Texas producers into the Eastern-Tier region. It noted that most of the imports from Turkey shipped to Texas remained in Texas. With respect to Ohio and Illinois, the Commission found that, although there were two domestic producers in Ohio and Illinois, there were limited shipments into the Eastern-Tier from these states. With respect to Indiana, the Commission found that there was no production of rebar in that state. Finally, it found that there were limited shipments of subject imports into Ohio, Illinois, and Indiana. USITC Pub. 3034 at 13-14.

<sup>20</sup> 19 U.S.C. § 1675a(a)(8).

<sup>21</sup> SAA, H.R. Rep. No. 103-316, vol. I at 887 (1994).

<sup>22</sup> SAA at 887. Specifically, the SAA states:

If there is sufficient evidence to warrant revisiting the original regional industry determination, the Commission may base its likelihood determination on: (1) the regional industry defined by the Commission in the original investigation; (2) another regional industry satisfying the criteria of amended section 771(4)(C); or (3) the United States industry as a whole.

Id. at 887-888.

<sup>23</sup> SAA at 888. The SAA specifically states:

Given the predictive nature of a likelihood of injury analysis, the Commission’s analysis in regional industry investigations will be subject to no greater degree of certainty than in a review involving a national industry. Because the issuance of an order or the acceptance of a suspension agreement may have affected  
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characteristics that lend themselves to a regional market, and whether any changes in the isolation of the region or import concentration are related to the imposition of the order or acceptance of the suspension agreement.<sup>24</sup>

In considering whether appropriate circumstances exist to use a regional industry analysis in the original investigation, the statute directs the Commission to take a series of steps. The statute provides that:

In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--

(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefitting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefitting from a countervailable subsidy. The term “regional industry” means the domestic producers within a region who are treated as a separate industry under this subparagraph.<sup>25 26</sup>

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<sup>23</sup> (...continued)

the marketing and distribution patterns of the product in question, the Commission’s analysis of a regional industry should take into account whether the market isolation and import concentration criteria in section 771(4)(C) are likely to be satisfied in the event of revocation or termination. Neither the Commission nor interested parties will be required to demonstrate that the regional industry criteria currently are satisfied.

Id.

<sup>24</sup> SAA at 888. Specifically, the SAA states:

The Commission should take into account any prior regional industry definition, whether the product at issue has characteristics that naturally lead to the formation of regional markets (*e.g.*, whether it has a low value-to-weight ratio and is fungible), and whether any changes in the isolation of the region or in import concentration are related to the imposition of the order or the acceptance of a suspension agreement.

<sup>25</sup> 19 U.S.C. § 1677(4)(C). The URAA changes to the regional industry provisions were not intended to affect substantive Commission practice. The definition of “regional industry” in the last sentence was added and technical language changes were made by the URAA. The URAA also amended the statute to require that Commerce “to the

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### c. Analysis

According to the SAA, the Commission should take into account in five-year reviews involving regional industries any prior regional industry definition and whether the subject product has characteristics that naturally lead to the formation of regional markets (e.g., whether the product has a low value-to-weight ratio and is fungible).<sup>27</sup> For the reasons discussed below, we have taken into account the Commission's prior regional industry definition in our analysis and determine that the record in this review supports a finding of a regional industry corresponding to that defined in the original investigation.

Rebar remains a low value-to-weight product and a fungible product, as the domestically produced product and subject imports are interchangeable. The relatively low value-to-weight ratio of rebar and relatively high transportation costs appear to limit the distances to which rebar is shipped. During the period of review, as during the period of the original investigation, the majority of producer shipments within the region were shipped to customers within 250 miles of the manufacturing plant and

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

maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.” 19 U.S.C. § 1673e(d). Therefore, Commerce will “exclude from the [antidumping duty] order, to the ‘maximum extent possible,’ those exporters or producers that did not export for sale in the region during the period of investigation.” SAA at 859 and 860.

<sup>26</sup> The Court of International Trade has described the steps taken by the Commission in a regional industry analysis as follows:

The statute sets up three prerequisites which must be satisfied before the Commission can reach an affirmative determination under a regional industry analysis. The Commission must determine that there is: (1) a regional market satisfying the requirements of the statute, (2) a concentration of dumped imports into the regional market, and (3) material injury or threat thereof to producers of all or almost all of the regional production, or material retardation to the establishment of an industry, due to the subsidized or dumped imports. The Commission will move on to the next step only if each preceding step is satisfied.

Texas Crushed Stone Co. v. United States, 822 F. Supp. 773, 777 (CIT 1993), aff'd, 35 F.3d 1535 (Fed. Cir. 1994) (“the ITC’s case-by-case approach represents a ‘legitimate policy choice made by the agency in interpreting and applying the statute.’” Id. at 1542), aff’g Crushed Limestone from Mexico, Inv. No. 731-TA-562 (Preliminary), USITC Pub. 2533 (July 1992) (“Limestone”). See also Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 920 (CIT 1981)(court cautioned against “[a]rbitrary or free handed sculpting of regional markets.”).

<sup>27</sup> SAA at 888. The Commission has found, in the past, that “appropriate circumstances” exist for the Commission to engage in a regional industry analysis for products with low value-to-weight ratios and where high transportation costs make the areas in which the product is produced necessarily isolated and insular. See, e.g., Gray Portland Cement and Cement Clinker From Japan, Mexico, and Venezuela, Invs. Nos. 303-TA-21 (Review) and 731-TA-451, 461, and 519 (Review) USITC Pub. 3361 (October 2000) at 12; See also Limestone, USITC Pub. 2533; Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final) USITC Pub. 2502 (April 1992) (“Nepheline Syenite”); Gray Portland Cement and Cement Clinker from Venezuela, Inv. No. 731-TA-519 (Preliminary) USITC Pub. 2400 (July 1991) (“Venezuela Cement”); Gray Portland Cement and Cement Clinker from Japan, Inv. No. 731-TA-461 USITC Pub. 2376 (April 1991) (“Japan Cement,”); Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final) USITC Pub. 2305 (August 1990) (“Mexico Cement”).



the majority of importer shipments within the region were shipped to customers within 250 miles from the port of entry.<sup>28</sup>

U.S. producers reported inland transportation costs generally ranging from 6 to 20 percent of the delivered price for sales within the region and from 5 to 15 percent for sales outside the region.<sup>29</sup> Among importers of rebar from Turkey, the costs ranged from 2 to 18 percent of the delivered price for sales within the region, and from 12 to 18 percent outside the region.<sup>30</sup> The practice of “freight equalization” or “freight absorption” is still performed in the industry, making transportation costs important as a component of rebar sales by domestic producers.<sup>31</sup>

Respondents argue that Puerto Rico should be excluded from the region because regional producers have no interest in that market, as demonstrated by the lack of U.S. shipments into Puerto Rico even after the antidumping duty order went into effect.<sup>32</sup> Petitioners counter that Puerto Rico should continue to be included in the region. They note that there have been both direct and indirect shipments from Eastern-Tier producers to Puerto Rico during the period of review, which included sales of rebar to export companies for delivery to the ultimate purchaser in Puerto Rico as well as some rebar directly delivered to Puerto Rico.<sup>33</sup> They further stress that regional producers have marketed their product in Puerto Rico, sending marketing teams to Puerto Rico on at least four occasions. They assert that while petitioners are very interested in making sales to Puerto Rico, they have been unsuccessful in Puerto Rico “because Turkish producers have focused dumped rebar on Puerto Rico and have foreclosed opportunities for regional producers.”<sup>34</sup>

In considering alternative regions, the Commission has looked to whether there was competition between the imports and the domestic producers in the region, and in the proposed alternatives to the region. The Commission has not required actual competition but only that there were “no current or future limitations on sales by the petitioner in these states.”<sup>35</sup>

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<sup>28</sup> USITC Pub. No. 3034 at 11 and 12, n.61; CR/PR at II-2.

<sup>29</sup> CR/PR at V-1. During the original investigation, U.S. inland transportation costs for sales of rebar within the region varied from supplier to supplier, ranging between 5 and 15 percent of the total delivered cost of rebar. Based on official import data, transportation costs for imports from Turkey were estimated to be 11.1 percent of the value of imports on a c.i.f. basis. USITC Pub. 3034 at 11.

<sup>30</sup> CR/PR at V-1.

<sup>31</sup> Producer Questionnaires.

<sup>32</sup> Respondents’ Prehearing Br. at 4-6; Respondents’ Posthearing Br. at 9-13.

<sup>33</sup> Petitioners’ Posthearing Br. at 8; Ex. A at Question 2 at 2-7.

<sup>34</sup> Petitioners’ Posthearing Br. at Ex. A at Question 2 at 2-7.

<sup>35</sup> Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary) USITC Pub. 2415 (August 1991) at 20-22 (Commission included states to which petitioner did not ship, noting that there was evidence of actual marketing by petitioner in those states). See e.g., Certain Fresh Potatoes from Canada, Inv. No. 731-TA-124 (Preliminary), USITC Pub. 1364 (March 1983)(marketing of round white potatoes in the states of New Jersey, Delaware, and Maryland, even though there were no producers of the like product in those states, was enough to include those states in the region) (“Round White Potatoes”); Offshore Platform Jackets and Piles from the Republic of Korea and Japan, Inv. Nos. 731-TA-259 and 260 (Final), USITC 1848 at 8-10 (May 1986) (“Offshore Platform Jackets”) (The Commission found that the Gulf Coast region should be included in a national assessment for piles because actual competition was not required, only that “[t]here were no geographical features preventing such shipments in the future; but that geographical limitations on shipment from the Gulf Coast of offshore platform jackets intended for the West Coast

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In the original investigation, the Commission rejected respondents' argument that Puerto Rico be excluded from the Eastern-Tier region. In so doing, it determined that while there was no domestic producer of rebar in Puerto Rico, there had been shipments into Puerto Rico of both subject imports and rebar produced in the region.<sup>36</sup> It further stressed that the record indicated that demand in Puerto Rico was not supplied by domestic producers outside the region.<sup>37</sup>

Although circumstances have changed somewhat, we again define the region to include Puerto Rico. While no domestic production facility is located in Puerto Rico, and while domestic shipments from regional producers to Puerto Rico have declined since the original determination, there is evidence of other participation in the Puerto Rico market by regional producers as well as some direct shipments into Puerto Rico by domestic producers.<sup>38</sup> In particular, the record shows there have been shipments from Eastern-Tier producers to distributors in Florida which were then re-shipped to Puerto Rico,<sup>39</sup> as well as marketing efforts by some Eastern-Tier producers in Puerto Rico.<sup>40</sup> Finally, domestic producers outside the region currently do not supply significant demand for rebar in Puerto Rico. Although U.S. producers outside the region shipped \*\*\* short tons directly to Puerto Rico in 1998-2000, they reported \*\*\* shipments to Puerto Rico in 2001 and hence demand in that market is not supplied "to any substantial degree" by producers outside the region.<sup>41</sup> Therefore, based on the record in this review, we do not find "sufficient evidence" to revise the original regional industry determination.

For the above reasons, we determine that Puerto Rico should be included in the Eastern-Tier region.

## **2. Market Isolation Criteria**

### **a. Sales Of "All or Almost All" Within The Region**

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

required a West Coast production facility and, therefore, should be assessed as a separate regional industry").

<sup>36</sup> Regional producers' shipments to Puerto Rico as a share of their total U.S. shipments in the region were \*\*\* in 1996. Regional producers that provided shipments by state shipped \*\*\* short tons of rebar to Puerto Rico in 1996. Apparent consumption of rebar in Puerto Rico was estimated by Petitioners to be about 110,000-130,000 tons annually, and by a Puerto Rican importer to be about 100,000-150,000 tons per year. Confidential Version of Original Views at n.62.

<sup>37</sup> USITC Pub. 3034 at 12-13.

<sup>38</sup> Regional producers' shipments into Puerto Rico were \*\*\* short tons in 1997, \*\*\* short tons in 1998, \*\*\* short tons in 1999, \*\*\* short tons in 2000 and \*\*\* short tons in 2001. CR/PR at Table E-9. Regional producers' shipments to Puerto Rico as a share of their total U.S. shipments in the region were \*\*\* in 1999-2001.

<sup>39</sup> At the hearing, a representative of Gerdau AmeriSteel testified that his firm had shipments in 2001 and 2002, of 15,000 and 13,000 net tons, respectively, that were delivered to ports in Florida and then were re-shipped to the ultimate buyer in Puerto Rico. Hearing Transcript (Tr.) at 18-19. In their posthearing brief, petitioners stated that \*\*\* shipped \*\*\* for ultimate delivery to the buyer in Puerto Rico. Petitioners' Posthearing Br. at Ex. A, Question 8 at 21-22.

<sup>40</sup> At least one producer continued to market rebar in Puerto Rico during the period of review and has indicated that it continues to monitor the Puerto Rico market. Tr. at 71-72. Also, the Gerdau AmeriSteel Corporation, Jacksonville mill has been described in statements to its stockholders as serving "Florida, the nearby Gulf States, and Puerto Rico." See Petitioners Posthearing Br. at Ex. D.

<sup>41</sup> CR/PR at Table E-10.

Producers in the Eastern-Tier region shipped between \*\*\* and \*\*\* percent of their U.S. shipments of rebar within the region during 1997-2001.<sup>42</sup> While the regional producers' percentage of shipments within the region has declined somewhat since the original investigation,<sup>43</sup> we find this percentage satisfies the statutory market isolation criterion that "producers within such market sell all or almost all of their production of the domestic like product in question in that market" and that this criterion is likely to be satisfied if the order is revoked.<sup>44</sup>

### **b. Demand In Region Supplied By U.S. Producers Outside The Region**

The percentage of consumption in the Eastern-Tier region which was supplied by U.S. producers outside the region was less than 5 percent in 2001.<sup>45</sup> This percentage is the same as the percentage of regional demand supplied by producers outside the region during the original investigation.<sup>46</sup> The share of regional consumption supplied by U.S. producers outside the Eastern-Tier region during the entire review period was 8.9 percent in 1997, 6.8 percent in 1998, 6.2 percent in 1999, 5.9 percent in 2000, 4.7 percent in 2001, and 5.1 percent in January-September 2002.<sup>47</sup> We find that these percentages satisfy the statutory criterion that "demand in that market is not supplied to any substantial degree, by producers of the product in question located elsewhere in the United States," and that this criterion is likely to be satisfied if the order is revoked.<sup>48</sup>

## **3. Concentration of Imports**

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<sup>42</sup> CR at I-32; PR at I-24.

<sup>43</sup> During the original investigation, regional producers shipped about 90 percent of rebar production within the region. USITC Pub. 3034 at 14.

<sup>44</sup> See Gray Portland Cement and Cement Clinker From Japan, Mexico, and Venezuela, Invs. Nos. 303-TA-21 (Review) and 731-TA-45, 461, and 519 (Review) USITC Pub. 3361 (October 2000) at 12-14 (finding percentages of 80-85 percent to be sufficient in Japanese and Mexican Reviews); Texas Crushed Stone, 822 F. Supp. 773, aff'd, 35 F.3d 1535 (Fed. Cir. 1994); Cemex, S.A. v. United States, 790 F. Supp. at 292-294, aff'd, 989 F.2d 1202 (Fed. Cir. 1993)(In reviewing the regional industry analysis, the CIT held that "there is nothing in the statute, case law, or administrative practice to indicate Congressional intent to bind the ITC to a precise numerical percentage." However, the Court added that "the analysis required by the regional market provision is more readily quantifiable than the analysis under the regional injury provision."). See, e.g., Rebar from Turkey, USITC Pub. 3034 at 14 (April 1997)(about 90 percent found to be sufficient); Venezuela Cement, USITC Pub. 2400 at 7 and 27 (July 1991)(over 95 percent found to be sufficient); Japan Cement, USITC Pub. 2376 at 18, 44 (April 1991)(82.6 percent found to be sufficient); Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 at 9 (January 1987) (over 80 percent found to be sufficient); Fall Harvested Round White Potatoes, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 ("Round White Potatoes") at 7 (December 1983)(84 percent found to be sufficient); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Final), USITC Pub. 1310 ("Portland Hydraulic Cement") at 5 (October 1983) (92 percent found to be sufficient); Frozen French Fried Potatoes, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 at 7 (June 1982)(66 percent found not to be sufficient).

<sup>45</sup> CR at I-32; PR at I-24.

<sup>46</sup> USITC Pub. 3034 at 14.

<sup>47</sup> CR at I-32; PR at 24; CR/PR at Table C-2.

<sup>48</sup> 19 U.S.C. § 1677(4)(C)(i). This level is within the range the Commission previously considered sufficient to satisfy this criterion. See Texas Crushed Stone, 822 F. Supp. 773, aff'd, 35 F.3d 1235 (Fed. Cir. 1994); Cemex, S.A. v. United States, 790 F. Supp. 290, 292-294 (CIT 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

In the second step of the regional industry analysis, we determine whether the statutory requirement of concentration of imports within the pertinent region is likely to be satisfied. The statute does not define import concentration. The legislative history to the URAA indicates that “no precise mathematical formula is reliable in determining the minimum percentage which constitutes sufficient concentration.”<sup>49</sup> The SAA provides that concentration of imports will be found to exist “if the ratio of the subject imports to consumption is clearly higher in the regional market than in the rest of the U.S. market, and if such imports into the region account for a substantial proportion of total subject imports entering the United States.”<sup>50 51</sup> The SAA cautions that there is no “benchmark” for determining what constitutes a concentration; rather it should be decided on a case-by-case basis.<sup>52</sup> The courts have affirmed the Commission’s case-by-case approach to applying the statute.<sup>53</sup>

During the period of review, the ratio of subject imports within the region to total subject imports was 84.6 percent in 1997, 99.7 percent in 1998, 76.4 percent in 1999, 77.9 percent in 2000, and 67.8 percent in 2001. The ratio of subject imports from Turkey to consumption within the Eastern-Tier region was 2.7 percent in 1997, 0.3 percent in 1998, 0.9 percent in 1999, 4.2 percent in 2000, and 4.1 percent in 2001 and was much higher than the same ratio outside the region. The ratio of subject imports from Turkey to consumption outside the Eastern-Tier region was 0.3 percent in 1997, less than 0.05 percent in 1998, 0.2 percent in 1999, 1.0 percent in 2000, and 1.5 percent in 2001.<sup>54</sup>

Based on a comparison of the market share of subject imports from Turkey inside the region to the market share of subject imports from Turkey outside the region, and consideration of the proportion of total subject imports from Turkey that enter the Eastern-Tier region, we find that subject imports from Turkey would likely be sufficiently concentrated in the Eastern-Tier region. The pattern of these imports during the original investigation further indicates that such a concentration is likely if the order is

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<sup>49</sup> SAA at 860. The Commission historically has found concentration percentages higher than 80 percent of total imports subject to investigation to be sufficient. See, e.g., Portland Hydraulic Cement, USITC Pub. 1310 at 10; Offshore Platform Jackets, USITC Pub. 1848 at 10; Sugars and Syrups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (March 1980). While the requisite concentration has also been found at levels as low as 43 percent, the Commission has questioned whether concentration levels of 60-80 percent are sufficient. See, e.g., Round White Potatoes, USITC Pub. 1463 at 7; Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1088 at 11 and 12 (August 1980); Japan Cement, USITC Pub. 2376 at 20 and 21, 48-50, aff’d although remanded on other grounds, Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 615 (CIT 1993); Venezuela Cement, USITC Pub. 2400 at 10 and 11. Compare Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987) and Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA-293, 294, 296 (Final), USITC Pub. 1907 at 6 and 7, n.19 (November 1986).

<sup>50</sup> SAA at 860.

<sup>51</sup> Prior to the URAA, the Commission considered the import penetration ratio only in particular circumstances where imports outside the region were widely dispersed or the regional industry was a significant portion of the national industry. This Commission practice was affirmed by Texas Crushed Stone, 35 F.3d 1535 (Fed. Cir. 1994). See also Japan Cement, Inv. 731-TA-461 (Final), USITC Pub. 2376 (April 1991) at 21, n.47 (the Commission “would not consider it of much weight if Southern California represented but a very small share of overall U.S. consumption”).

<sup>52</sup> SAA at 860. See also Mitsubishi Materials, 820 F. Supp. at 614-615 (CIT 1993).

<sup>53</sup> Texas Crushed Stone, 35 F.3d 1535 (Fed. Cir. 1994); Cemex, 790 F. Supp. at 292-294 (CIT 1992), aff’d, 989 F.2d 1202 (Fed. Cir. 1993).

<sup>54</sup> CR at I-32; PR at I-24.

revoked.<sup>55</sup> In particular, the evidence does not indicate that Turkish producers' shipping patterns are likely to shift upon revocation to concentration levels that are not sufficient to meet this criterion. Therefore, we proceed on a regional industry basis to the issue of whether there is a likelihood of continuation or recurrence of material injury if the antidumping duty order on subject imports from Turkey is revoked.

### III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER ON REBAR FROM TURKEY IS REVOKED

#### A. Legal Standard In A Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order or terminate a suspended investigation unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order or termination of a suspended investigation “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>56</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>57</sup> Thus, the likelihood standard is prospective in nature.<sup>58 59 60</sup> The statute states that

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<sup>55</sup> In the original investigation, the Commission found that the percentage of subject imports from Turkey into the United States entering the Eastern-Tier region was 78 percent in 1994, 68.4 percent in 1995, and 80.1 percent in 1996. It also found that the ratio of subject imports from Turkey to consumption in the Eastern-Tier region was 7.9 percent in 1994, 8.4 percent in 1995, and 5.2 percent in 1996. The Commission noted that the ratio of Turkish imports to consumption outside the Eastern-Tier region, was 1.8 percent in 1994, 2.9 percent in 1995, and 1.0 percent in 1996. Based on a comparison of the market share of subject imports in the region to the market share of subject imports outside the region, as well as consideration of the proportion of total subject imports that entered the region, the Commission found that rebar from Turkey was concentrated in the region. USITC Pub. 3034 at 16.

<sup>56</sup> 19 U.S.C. § 1675a(a).

<sup>57</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>58</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>59</sup> We are cognizant of the recent decisions in the Court of International Trade which define the term “likely” in five-year reviews. Usinor Industeel, S.A. v. United States, Slip Op. 02-39 at 25 (Ct. Int’l Trade April 29, 2002) (remanding review determination to Commission) & Slip Op. 02-75 (July 30, 2002) (denying Commission motion to amend and order for interlocutory appeal and for stay of proceeding pending appeal) & Slip Op. 02-152 at (December 20, 2002) (Restani, J.) (Usinor Industeel); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (continued...)

“the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>61</sup> 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].”<sup>62 63</sup>

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 or the suspended investigation is terminated.”<sup>64</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>65</sup>

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.<sup>66</sup> 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.

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<sup>59</sup> (...continued)

(remanding Review determination to Commission) (Wallach, J.) (Usinor); and Nippon Steel Corp., et al. v. United States, Slip Op. O2-153 (December 24, 2002) (“Nippon”)(remanding determination to Commission).

<sup>60</sup> In reaching their determination, Vice Chairman Hillman, Commissioner Miller, and Commissioner Koplan apply the “likely” standard as not meaning “possible” consistent with the recent decisions in the Court of International Trade cited in footnote 59.

<sup>61</sup> 19 U.S.C. § 1675a(a)(5).

<sup>62</sup> 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.

<sup>63</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioner Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. 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.

<sup>64</sup> 19 U.S.C. § 1675a(a)(1).

<sup>65</sup> 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. Commerce has made no duty absorption findings.

<sup>66</sup> 19 U.S.C. § 1675(e).

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.”<sup>67</sup> In this case, a few respondent interested parties did not provide questionnaire responses and/or participate in this review. Accordingly, we have relied on the facts available in this review, which consist primarily of the information collected by the Commission since the institution of this review, and information submitted by the domestic producers and respondent parties in this review.

For the reasons stated below, we determine that revocation of the antidumping duty order on rebar from Turkey would be likely to lead to continuation or recurrence of material injury to the Eastern-Tier regional industry within a reasonably foreseeable time.<sup>68</sup>

## **B. All or Almost All Standard in Regional Industry Injury Analysis**

Under a regional industry injury analysis, producers of “all or almost all” of the production in the region must be materially injured or threatened with material injury by reason of the subject imports.<sup>69</sup> There is no specification in the statute or prior Commission determinations as to what percentage of domestic production constitutes “all or almost all” in the context of a regional injury analysis. The Court of International Trade has held that, for determining the “all” criterion, “a numerical analysis would not be appropriate under the regional injury provision . . . [because] numerous factors must be considered and a quantitative analysis is inappropriate.”<sup>70</sup> The Court of International Trade has held that the “Commission did not err in failing to apply a fixed percentage test of eighty to eighty-five percent” in determining whether a regional industry was injured.<sup>71</sup>

Generally, after determining whether the aggregate regional data show material injury, the Commission next examines individual producer data “as appropriate to determine whether anomalies exist that an aggregate analysis would disguise.”<sup>72</sup> In examining individual producer data, the Commission is “not required to adopt the pure plant-by-plant inquiry” and “[u]se of either a straight aggregate or pure

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<sup>67</sup> SAA at 869.

<sup>68</sup> Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg dissenting.

<sup>69</sup> 19 U.S.C. § 1677(4)(C).

<sup>70</sup> Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 616 and 617 (CIT 1993); Cemex, S.A. v. United States, 790 F. Supp. 290, 294 (CIT 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

<sup>71</sup> Mitsubishi Materials, 820 F. Supp. at 616 and 617 (CIT 1993); Cemex, 790 F. Supp. at 294 (CIT 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

<sup>72</sup> Rebar from Turkey, USITC Pub. 3034 at 23 and nn.141-142. Accord Mitsubishi Materials, 820 F. Supp. at 617 and 618 (CIT 1993); compare, Mitsubishi Materials Corp. v. United States, 918 F. Supp. 422, 427 (CIT 1996) (aggregate analysis of regional producers sufficient to satisfy the “all or almost all” standard where industry conditions were common to each regional producer); Cemex, 790 F. Supp. at 294-296 (“to the extent that some safeguard is required to assure that the ‘all or almost all’ standard is met, it was satisfied by examination of data regarding individual plants.”) (CIT 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

plant-by-plant method in determining injury in a regional analysis is not mandated by statute or case law.”<sup>73</sup>

While neither the statute nor the legislative history provides specific guidance on how the “all or almost all” requirement should be applied to the prospective likelihood of continuation or recurrence of material injury analysis in a five-year review, the CIT has approved the Commission’s application of this standard in an affirmative threat determination.<sup>74</sup> For purposes of our regional industry analysis in this review, we consider the performance of individual regional producers as well as the performance of the regional industry in the aggregate.

### C. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>75</sup> The following conditions of competition in the rebar industry are relevant to our determination.

Rebar is a highly fungible, commodity product, and rebar of the same grade and dimensions is generally interchangeable regardless of origin. Virtually all rebar produced, sold, or consumed in the United States meets common ASTM product-quality standards. Domestic and foreign producers rely on similar or identical production equipment and processes, and rebar is sold in common sizes and lengths.<sup>76</sup> The majority of both domestic producers and importers reported that domestic rebar and imported rebar from Turkey are always used interchangeably.<sup>77</sup>

Differing rebar sizes and lengths tend to predominate in different uses. A considerable portion of small rebar (sizes 3-5) is applied to light construction applications (e.g., residences, swimming pools, patios, and walkways). Heavy construction applications (e.g., high-rise buildings, commercial facilities, industrial structures, bridges, roads, etc.) utilize all sizes and lengths, but the larger sizes (sizes 6 and above) and longer (e.g., 60 foot) lengths are exclusively used in heavy construction applications.<sup>78</sup> Rebar

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<sup>73</sup> Mitsubishi Materials, 820 F. Supp. at 618 (CIT 1993); Cemex, 790 F. Supp. at 294 and 296 (CIT 1992), aff’d, 989 F.2d 1202 (Fed. Cir. 1993).

<sup>74</sup> In affirming the Commission’s affirmative threat determination on remand in Japanese Cement, the Mitsubishi Materials court stated:

This Court does not need to determine, however, whether the Commissioners’ analysis in this regard was sufficient to satisfy the all or almost standard because their use of aggregate data in this case was appropriate. The factors supporting imminent threat to all or almost all of the industry are based on industry conditions common to each and every domestic producer in the Southern California market.

918 F. Supp. at 427 (CIT 1996).

<sup>75</sup> 19 U.S.C. § 1675a(a)(4).

<sup>76</sup> CR at I-18; PR at I-13.

<sup>77</sup> CR at II-12; PR at II-7.

<sup>78</sup> CR at I-19; PR at I-13.



is thus sold in a continuum of sizes, and there is overlap in the sizes generally sold of subject imports and the domestic product.<sup>79</sup> There are no broadly accepted substitutes for rebar in its intended application.<sup>80</sup>

Since all rebar is used in concrete reinforcement, demand for rebar is closely tied to the level of construction activity.<sup>81</sup> While opinions among questionnaire responses differ on whether the market is cyclical, it is generally agreed that construction in the United States and the overall demand for rebar depends upon the aggregate economy.<sup>82</sup> During the period of review, the overall demand for rebar generally increased within the Eastern-Tier region.<sup>83</sup> Apparent consumption of rebar within the region rose by 36 percent, from 2.6 million tons in 1997 to 3.6 million tons in 2001.<sup>84</sup> During January-September 2002, apparent consumption within the region was 4 percent lower than in the same period in 2001.

Since the original investigation, there has been some consolidation of the producers comprising the regional industry into 6 firms operating 12 plants.<sup>85</sup>

As at the time of the original investigation, price is an important factor in purchasing decisions. In their questionnaire responses, price was ranked as the most important factor in purchasing decisions by 12 of 18 unrelated purchasers and one of the top three factors by all 18 purchasers.<sup>86</sup> The majority of regional producers indicated that prices are determined on a transaction-by-transaction basis.<sup>87</sup> During the period of review, regional producers' shipments were to firms that were either end-users exclusively or end-users that also distribute, as well as to distributors.<sup>88</sup> The majority of importers' shipments of the subject product were to distributors.<sup>89</sup>

Rebar imports are generally excluded from federal and state projects subject to "Buy American" laws. The record does not establish what percentage of rebar is subject to "Buy American" or domestic preference policies.<sup>90</sup> However, the record indicates that domestic suppliers typically charge the same prices for all products, regardless of any "Buy American" or domestic preference policies.<sup>91</sup>

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<sup>79</sup> In 2001, rebar from Turkey was concentrated in size Nos. 3, 4, and 5 \*\*\*, while U.S. product was concentrated in size Nos. 4, 5, and 6 \*\*\*. CR/PR at Tables III-2, IV-2.

<sup>80</sup> CR at II-8-9; PR at II-5.

<sup>81</sup> Major end-use products requiring rebar include bridges, parking structures, highways, retaining walls, culverts, slabs, foundations, airport runways, and grain silos. CR at II-7; PR at II-4.

<sup>82</sup> CR/PR at II-1

<sup>83</sup> CR at II-8; PR at II-5.

<sup>84</sup> CR at II-8; PR at II-5. Apparent consumption in the region was 2.6 million tons in 1997, 2.9 million tons in 1998, 3.5 million tons in 1999, 3.5 million tons in 2000, and 3.6 million tons in 2001. CR/PR at Table I-8.

<sup>85</sup> CR at III-3; PR at III-2.

<sup>86</sup> CR at II-10; PR at II-6. During part of the original investigation, there were 8 firms operating 13 plants; however, AmeriSteel's Tampa, Florida plant had closed in September 1995. USITC Pub. 3034 at Table III-1.

<sup>87</sup> CR at V-4; PR at V-3.

<sup>88</sup> CR at I-19, II-1; PR at I-13, II-1.

<sup>89</sup> CR at I-19, II-1; PR at I-13, II-1.

<sup>90</sup> CR at II-11; PR at II-6-7. Petitioners estimate that rebar subject to Buy American requirements constitutes \*\*\* percent of sales. Petitioners' Prehearing Br. at 12.

<sup>91</sup> Tr. at 16; Petitioners' Prehearing Br. at 11-12.

During the period of review, the regional producers' share of regional consumption declined as imports from countries other than Turkey dramatically increased their regional market share.<sup>92</sup> Regional imports from all other sources climbed sharply from 1997 to 1998, reaching a peak in 1999 before declining steadily thereafter. This decline in imports in the latter part of the period can be attributed to the filing of an antidumping petition against many of those imports from other sources in 2000, and the imposition of antidumping duty orders on imports from eight of the countries in 2001.<sup>93</sup>

During the period of review, there have been a number of antidumping and safeguard actions concerning Turkish exports of rebar to third countries. An antidumping duty order on imports of rebar from Turkey was issued by the government of Singapore in 1995. This order was terminated on January 21, 2003, following a sunset review.<sup>94</sup> The Canadian government issued an antidumping duty order on March 1, 2000, concerning imports of Turkish rebar, which is not scheduled for expiry review until January 11, 2005.<sup>95</sup> The Canadian government is also currently conducting a safeguard investigation concerning rebar from Turkey (among other countries). On August 19, 2002, the Canadian International Trade Tribunal issued its recommendation that duties be applied pursuant to Canadian safeguard provisions, specifically recommending duty rates on Turkish rebar of 15 percent for the first year, 12 percent for the second year, and 7 percent for the final year.<sup>96</sup> There was a provisional safeguard action instituted on March 28, 2002, by the European Union ("EU") concerning rebar from Turkey resulting in a quota of 737,083 tons and a duty of 14.9 percent on imports in excess of that quota. This action was terminated on January 27, 2003, and the duties collected are to be refunded. However, the Commission of the European Communities indicated that it will continue to monitor the level of rebar imports from Turkey.<sup>97</sup> Finally, an antidumping duty order was issued by the government of Egypt on October 21, 1999. The order is the subject of an ongoing World Trade Organization dispute resolution proceeding, and a report was adopted by the dispute resolution body on October 11, 2002. The order remains in effect.<sup>98</sup>

Imports of rebar from Turkey have also been the subject of a recent section 201 safeguard action in the United States.<sup>99</sup> <sup>100</sup> The remedy resulting from this proceeding with respect to rebar was the imposition of an additional tariff of 15 percent for the period of March 20, 2002, through March 19, 2003, an additional tariff of 12 percent for the period of March 20, 2003, through March 19, 2004, and an additional tariff of 9 percent for the period of March 20, 2004, through March 20, 2005.<sup>101</sup>

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

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<sup>92</sup> CR/PR at I-2 and Table C-2.

<sup>93</sup> CR/PR at IV-1.

<sup>94</sup> CR at IV-5; PR at IV-4.

<sup>95</sup> CR at IV-8; PR at IV-6.

<sup>96</sup> CR at IV-8; PR at IV-6.

<sup>97</sup> CR at IV-8; PR at IV-6.

<sup>98</sup> CR at IV-7; PR at IV-6.

<sup>99</sup> Steel, Inv. No. TA-201-73, USITC Pub. 3479 (December 2001); 67 Fed. Reg. 10593 (Mar. 7, 2002).

<sup>100</sup> As a developing country, Turkey would ordinarily not be subject to a section 201 remedy. However, Turkey was included for purposes of rebar. See 67 Fed. Reg. 10553, 10589 (Mar. 7, 2002).

<sup>101</sup> See 67 Fed. Reg. 10553, 10589 (Mar. 7, 2002).

#### D. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is 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.<sup>102</sup> 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.<sup>103</sup>

In the original investigation, the Commission found that both the volume of subject imports into the Eastern-Tier region and their market share were significant.<sup>104</sup> In so doing, the Commission determined that the volume of subject imports into the region increased from 1994 to 1995,<sup>105</sup> although apparent consumption in the region declined. It further found that the regional market share held by subject imports increased from 1994 to 1995 before declining in 1996.<sup>106</sup> With respect to the decline in subject imports from 1995 to 1996, the Commission found that the changes in volume and market share of subject imports were related to the pendency of the investigation and reduced the weight accorded to the data for the period after the filing of the petition in making its determination.<sup>107</sup>

Following imposition of the order, the volume of subject imports from Turkey into the region declined dramatically.<sup>108</sup> Thereafter, the volume of subject imports into the region generally climbed, and in interim 2002 was close to the annual volume level for regional shipments of imports in 1995, before the petition was filed.<sup>109</sup> The increase in subject imports in the latter part of the review period coincided with decreasing dumping margins on subject imports from Turkey.<sup>110</sup> Additionally, Turkish producers have

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<sup>102</sup> 19 U.S.C. § 1675a(a)(2).

<sup>103</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>104</sup> USITC Pub. 3034 at 28-29.

<sup>105</sup> The volume of U.S. shipments of subject imports within the region based on importers' questionnaire responses was: 157,926 short tons in 1994, 159,275 short tons in 1995, and 110,867 short tons in 1996. USITC Pub. 3034 at 28 n.176. The volume of subject imports within the region based on official import statistics was: 167,277 short tons in 1994, 222,021 short tons in 1995, and 116,222 short tons in 1996. USITC Pub. 3034 at 28, n.176.

<sup>106</sup> The regional market share held by subject imports by quantity was: 7.9 percent in 1994, 8.4 percent in 1995, and 5.2 percent in 1996. Regional market share by value for subject imports was: 7.5 percent in 1994, 7.9 percent in 1995, and 5.2 percent in 1996. USITC Pub. 3034 at 28 n.178.

<sup>107</sup> USITC Pub. 3034 at 29. See 19 U.S.C. § 1677(7)(I).

<sup>108</sup> The volume of subject imports into the region fell to just 8,968 short tons in 1998, the year immediately after the imposition of the order. CR/PR at Table IV-1.

<sup>109</sup> CR/PR at IV-1, Tables I-1 and IV-1. The volume of subject imports from Turkey into the region was: 32,082 short tons in 1999, 148,477 short tons in 2000, and 145,607 short tons in 2001. The volume of subject imports from Turkey into the region was 93,807 short tons in January-September 2001 compared to 155,187 short tons for the same period in 2002. CR/PR at Table IV-1.

<sup>110</sup> Indeed, Turkish producers themselves indicated that they were able to maintain volumes into the region while  
(continued...)

indicated that increased subject imports in latter 2000 and 2001 occurred as a result of “the threatened and then real United States Safeguard action.”<sup>111</sup>

Several factors support the conclusion that subject import volume is likely to be significant if the order is revoked. First, there is considerable production capacity in Turkey to produce rebar, and that capacity increased over the period of review.<sup>112</sup> At the same time, there is substantial unused capacity in Turkey. Although Turkish producers reported relatively high capacity utilization rates during the period of review, in 2001 there were 671,304 short tons of unused capacity, which is equivalent to 18.8 percent of regional apparent consumption. In interim 2002, there were 446,215 short tons of unused capacity which is equivalent to 16.6 percent of regional apparent consumption for the same period.<sup>113 114</sup>

The Turkish industry’s ability to maintain high capacity utilization rates is due in part to its heavy reliance on its export markets. As they were at the time of the original investigation,<sup>115</sup> Turkish producers continue to be significantly export-oriented. Total exports to all countries other than the United States accounted for between \*\*\* and \*\*\* percent of total shipments of Turkish production during the period of review. Moreover, there is an incentive for Turkish producers to shift their exports to the U.S. regional market if the order is revoked because the record indicates that U.S. prices for rebar are higher than third-country prices.<sup>116</sup> In addition, the average unit values (“AUVs”) of Turkish exports to the United States were higher than the AUVs of their exports to third country markets in 2001 and interim 2002, a further indication that Turkish producers would have an incentive to shift exports to the U.S. market.<sup>117</sup> Moreover, the increasing imports from Turkey despite an order in place and the recent 201 safeguard action underscore the importance of the U.S. regional market to Turkish producers and indicate that revocation of the order likely would result in a further and significant increase in subject imports. Further, as we found in our description of the conditions of competition, Turkish rebar exports are subject to several antidumping and safeguard actions in third countries. We find that some Turkish exports to these countries likely would be directed to the U.S. regional market if the order was revoked.<sup>118 119</sup> In addition, while U.S.

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<sup>110</sup> (...continued)

at the same time maintaining “low or zero margins.” Respondents’ Posthearing Br. at 8. See also Respondents’ Prehearing Br. at 2-3.

<sup>111</sup> Respondents’ Prehearing Br. at 7.

<sup>112</sup> Foreign producer capacity reported by the 6 responding firms was: 4.7 million short tons in 1997, 4.7 million short tons in 1998, 4.8 million short tons in 1999, 4.8 million short tons in 2000, and 5.3 million short tons in 2001. Foreign producer capacity was reported to be 3.7 million short tons in January-September 2001 compared to 4.0 million short tons in January-September 2002. CR/PR at Table IV-5.

<sup>113</sup> CR/PR at Tables I-8 and IV-5.

<sup>114</sup> We also note that inventories of Turkish rebar are not insignificant. CR/PR at Table IV-5.

<sup>115</sup> USITC Pub. 3034 at Table VII-2.

<sup>116</sup> CR at II-6; PR at II-4.

<sup>117</sup> CR/PR at Table IV-6. While we are cautious in our use of AUVs because of the potential product mix issues, the concern is less so with respect to rebar, a highly fungible commodity product.

<sup>118</sup> We note that there is some potential for product shifting by Turkish producers but do not view this potential to product shift as critical to our affirmative determination. Foreign Producer Questionnaires; CR/PR at Table E-15.

<sup>119</sup> Respondents argue that their export markets are more attractive than the U.S. regional market, which makes it unlikely that they will increase shipments to the U.S. regional market if the order was revoked. However, as the record shows, despite the so-called attractiveness of other markets, Turkish producers have been increasing their

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importers' inventories of rebar from Turkey were not significant during the review period, Turkish producers reported substantial end-of-period inventories: 237,446 short tons for 2001 and 225,138 short tons for interim 2002.<sup>120</sup>

Accordingly, based on the Turkish industry's substantial production capacity and unused capacity relative to regional production and apparent regional consumption, its reliance on export markets, the attractiveness and importance of the U.S. regional market to Turkish producers, the existence of barriers to the importation of the subject merchandise into countries other than the United States and Turkish subject producers' trade patterns during and after the original investigation, we find that the likely volume of subject imports would be significant absent the antidumping duty order.<sup>121</sup>

### **E. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to domestic like products and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.<sup>122</sup>

In the original determination, the Commission found that price is a significant factor in purchasing decisions for rebar, which is a highly fungible, commodity product.<sup>123</sup> In addition, the Commission found that subject imports had a significant depressing or suppressing effect on prices for the domestic like product. Noting that the evidence of underselling was somewhat mixed, the Commission pointed out that this underselling was most significant where domestic producers competed most directly with subject imports. The Commission also found that prices for the domestic like product were significantly higher than those for the imported product during 1994 to mid-1995, before declining sharply to move roughly in tandem with import prices for the rest of the period. The Commission determined that this decline in domestic prices, exacerbated by downward pressure from the low-priced LTFV imports, supported a finding that subject imports depressed prices in the regional industry to a significant degree. It further found that there was evidence of lost sales due to the lower priced imports and that domestic prices

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<sup>119</sup> (...continued)

exports to the U.S. regional market during the last several years. CR/PR at Table IV-1.

<sup>120</sup> CR/PR at Table IV-5.

<sup>121</sup> Respondents argue that volumes of subject imports would not be significant given that the majority of subject imports are shipped to Puerto Rico. Contrary to the assumption underlying this argument, we do not find it likely that the increased imports would be limited to supplying Puerto Rico. The record indicates a great deal of variation in the percentages of subject imports entering Puerto Rico during the period, even with the order in place. CR/PR at Table E-12. Further, respondents' argument also ignores the likely increase in subject imports into the region outside of Puerto Rico and its likely adverse effects on the regional industry, as well as the effects on the efforts of regional producers to supply Puerto Rico itself.

<sup>122</sup> 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.

<sup>123</sup> USITC Pub. 3034 at 29-30.

recovered somewhat with the decline in subject imports at the end of the period of investigation.<sup>124</sup> Finally, with respect to price suppression, the Commission found that the regional industry was unable to raise prices in the face of rising costs due to the low-priced imports.<sup>125</sup>

We find that the significantly increased volumes of subject imports of rebar from Turkey that would likely enter the region would likely have significant negative price effects for the domestic like product. As discussed above, rebar is a commodity product for which price is an important purchasing factor. Moreover, price is set on a transaction by transaction basis and there is a relatively high degree of substitutability between the subject imports and the domestic like product.

The evidence collected in this review indicates there was significant underselling of the imported product even with the order in place. According to the record, the imported product undersold the domestic product in 15 out of 22 regional quarterly comparisons by margins ranging from 0.6 percent to 26.6 percent.<sup>126</sup>

During the period of review, the average unit cost of goods sold (COGS) for the domestic like product also generally declined along with average unit sales revenue,<sup>127</sup> but average unit COGS generally declined at a slower rate than average unit revenue. Thus, gross profitability on a unit basis was flat or declining throughout most of the period, suggesting that prices are being suppressed relative to costs.<sup>128</sup> Increased shipments of lower-priced imports are likely to have further significant price suppressing effects.

In light of the importance of price in the rebar market, the interchangeability of subject imports and the domestic like product, the negative price effects of low-priced imports in the original investigation, the underselling by subject imports during the period of review, coupled with the incentive to enter the higher priced U.S. market and the incentive to avoid antidumping duties in other markets, we find a likelihood of negative price effects from the subject imports. We determine that, if the order was revoked, significant volumes of subject imports likely would significantly undersell the domestic like product to gain market share and likely would have significant depressing or suppressing effects on the prices of the domestic like product within a reasonably foreseeable time.

## **F. Likely Impact of Subject Imports**

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 develop a derivative or more advanced version of the domestic like product.<sup>129</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of

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<sup>124</sup> USITC Pub. 3034 at 30-31.

<sup>125</sup> USITC Pub. 3034 at 31.

<sup>126</sup> CR at V-6; PR at V-4.

<sup>127</sup> CR at III-16; PR at III-5.

<sup>128</sup> CR at III-16; PR at III-5.

<sup>129</sup> 19 U.S.C. § 1675a(a)(4).

competition that are distinctive to the industry.<sup>130</sup> 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 order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>131</sup>

In the original determination, the Commission found that subject imports had a significant adverse impact on the regional rebar industry. Financial information showed that the regional industry experienced declining performance over the period of investigation despite expanding regional consumption.<sup>132</sup> The Commission also found that the regional industry's financial performance substantially weakened over the period of investigation. The Commission noted that several regional producers closed regional plants, filed for bankruptcy, and/or temporarily shut plants to reduce high inventories. Moreover, the Commission determined that firms that competed most directly with subject imports experienced the most serious financial decline. In contrast, the Commission found that the financial performance of non-regional producers, which did not face the same degree of direct competition with subject imports, was significantly better than that of the Eastern-Tier producers.<sup>133</sup> Given the overall significant decline in financial performance of the regional industry, and generally of the individual regional producers, which the Commission found was largely attributable to the significant volume and adverse price effects of the subject imports, the Commission concluded that the producers of "all or almost all" of production within the region were materially injured by reason of subject imports of rebar from Turkey.<sup>134</sup>

Immediately following the filing of the petition and imposition of the order, the regional industry's condition improved. Indeed, between 1996 and 1998, operating income and operating margins increased for the regional industry overall and for all or almost all of the individual regional producers as the volume of subject imports fell.<sup>135</sup> However, further improvement in the regional industry's condition was inhibited by the increase in imports from all sources. Regional imports from all other sources climbed sharply from 1997 to 1998, reaching a peak in 1999 and declining steadily thereafter due to the filing of an antidumping petition against many of those imports from other sources in June 2000, and the imposition of the antidumping duty orders on imports from eight of the countries in May and July 2001.<sup>136</sup> As a result,

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<sup>130</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews 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. In the final results of its expedited sunset review of the antidumping duty order on rebar from Turkey, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping at weighted-average margins of 9.84 percent for Colakoglu, 18.68 percent for Ekinciler, 18.54 percent for Habas, 41.80 percent for Izmir Demir Celik, Sanaayi A.S., 30.16 percent for Izmir Metalurji Fabrikasi Turk A.S. and 16.06 percent for all others." 67 Fed. Reg. 45457, 45458 (July 9, 2002).

<sup>131</sup> 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.

<sup>132</sup> USITC Pub. 3034 at 32.

<sup>133</sup> USITC Pub. 3034 at 32 -33.

<sup>134</sup> USITC Pub. 3034 at 33.

<sup>135</sup> CR/PR at Table III-9 and Table E-7; Original CR and USITC Pub. 3034 at Table VI-1 and Table E-8.

<sup>136</sup> CR/PR at IV-1, I-2, Table C-2.

regional producers lost market share and their capacity utilization rates fell from 79.4 percent in 1997 to 77.4 percent in 1999 despite increasing regional apparent consumption.<sup>137</sup> Operating income and operating margins decreased for the regional industry overall and for 7 of 12 of the individual regional producers between 1997 and 1999.<sup>138</sup> Regional producers reporting operating income losses increased from \*\*\* in 1998 to 6 in 2000 and 2001 as imports from all sources surged.<sup>139</sup>

The condition of the regional industry then again improved following the imposition of antidumping duty orders on imports from eight countries in 2001.<sup>140</sup> Capacity utilization rates increased from 77.4 percent in 1999 to 82.7 percent in 2001.<sup>141</sup> Operating income and operating margins improved for the regional industry overall and for 7 of 12 regional producers between 2000 and 2001.<sup>142</sup> Moreover, 3 regional producers showed losses in January-September 2002 compared to 4 regional producers for the same period in 2001.<sup>143</sup> Although the profitability of the regional industry has not returned to the levels in 1997 and 1998, the condition of the regional industry has improved and as such, the regional industry is not currently in a weakened state as contemplated by the statute.<sup>144</sup> However, despite some recovery by the industry during the review period, subject imports by the end of the period had returned to pre-order volume levels at significant levels of underselling.

While we have analyzed the statutory factors regarding the aggregate data for the regional industry, we also examined the performance of individual regional producers to look for anomalies as a safeguard “to assure that the ‘all or almost all’ standard [was] met.”<sup>145</sup> Although there is some variation in the financial performance among the regional producers, there is nothing in the record to indicate that “all or almost all” of the regional producers would not be adversely affected by the significant increase in aggressively priced imports if the order was revoked.<sup>146</sup> We further note that respondents have not argued that regional producers representing “all or almost all” of the production in the region would not experience the continuation or recurrence of material injury if the order is revoked.

We have concluded that revocation of the antidumping duty order would likely lead to a significant increase in the volume of subject imports that would undersell the domestic like product and significantly suppress or depress U.S. prices. We also find that the volume and price effects of the subject imports would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the regional industry. This reduction in the industry’s production, shipments, sales, market

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<sup>137</sup> CR/PR at Table I-1.

<sup>138</sup> CR/PR at Table III-9 and Table E-7.

<sup>139</sup> CR/PR at Table III-9.

<sup>140</sup> See Certain Steel Concrete Reinforcing Bars from Indonesia, Poland, and Ukraine, Invs. Nos. 731-TA-875, 880, and 882 (Final) USITC Pub. 3425 (May 2001) and Certain Steel Concrete Reinforcing Bars from Belarus, China, Korea, Latvia, and Moldova, Invs. Nos. 731-TA-873-874, 877-879 (Final) USITC Pub. 3440 (July 2001).

<sup>141</sup> CR/PR at Table III-1.

<sup>142</sup> CR/PR at Table III-9 and Table E-7.

<sup>143</sup> CR/PR at Table III-9.

<sup>144</sup> 19 U.S.C. § 1675a(1)(C). See SAA at 885. (“The term ‘vulnerable’ relates to the 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 in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.”)

<sup>145</sup> Cemex, 790 F.Supp. at 296. CR/PR at Tables III-11, III-12 and E-1 through 7.

<sup>146</sup> Cemex, 790 F.Supp. at 296. CR/PR at Tables III-11, III-12 and E-1 through 7.



share, and revenues 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.

Accordingly, based on the record in this review, we conclude that, if the antidumping duty order is revoked, subject imports from Turkey would be likely to have a significant adverse impact on the regional industry within a reasonably foreseeable time.

### **CONCLUSION**

For the above-stated reasons, we determine that revocation of the antidumping duty order on rebar from Turkey would be likely to lead to continuation or recurrence of material injury to the U.S. regional rebar industry within a reasonably foreseeable time.

## **DISSENTING VIEWS OF CHAIRMAN DEANNA TANNER OKUN AND COMMISSIONER LYNN M. BRAGG**

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on steel concrete reinforcing bars (“rebar”) from Turkey would not be likely to lead to continuation or recurrence of material injury to a regional industry in the United States within a reasonably foreseeable time. Therefore, we respectfully dissent from the Commission’s affirmative determination in this review. While we join the Commission’s discussion of, and conclusions regarding, the background, legal standards, domestic like product, and regional industry at issue in this review, we write to explain why revocation of the subject order on rebar from Turkey would not be likely to lead to continuation or recurrence of material injury to the regional industry within a reasonably foreseeable time.

### **I. OVERVIEW**

Although the technical requirements for employing a regional industry analysis are met in this review, we observe that since the period examined in the original investigation, both ongoing and more recent developments in the regional market (including Puerto Rico) have increasingly limited the extent and nature of competition between rebar from Turkey and the domestic like product, diminishing any likelihood of continuation or recurrence of material injury. Specifically, the character and degree of competition between regional rebar production and imports of rebar from Turkey have been and will be influenced by geography, product mix, corporate consolidation, and “Buy American” considerations. We are satisfied that these considerations, despite any future moderate increase in subject import volume and some underselling by subject imports (both tempered by the U.S. safeguard action on rebar),<sup>1</sup> indicate that revocation of the antidumping duty order on rebar from Turkey would not be likely to have a significant impact on the regional industry.

Regional production of rebar includes a substantial volume of rebar in larger sizes, is sold throughout the Eastern Tier mainland, primarily to end users (including a large and growing customer base of related fabricators), and benefits from a substantial volume of public work sales largely under “Buy American” restrictions. Within the regional market, the domestic producers’ viability has been enhanced by a substantial degree of consolidation. Further, downstream consolidation has taken place as well, with related fabricators now accounting for an even more substantial share of regional shipments than during the original investigation, thus improving the regional industry’s ability to retain essential customers.

Rebar from Turkey is concentrated in smaller sizes and sold primarily in Puerto Rico and secondarily in Florida (and generally through distributors). Although Turkey has maintained a presence in the regional rebar market despite the existence of the antidumping duty order, it is no longer the single dominant import source; it is one of several dozen suppliers, eight of which recently became subject to antidumping duty orders to remedy practices which caused material injury. Moreover, imports of rebar from most of the largest foreign sources, Turkey included, are subject to a safeguard action, with additional duties of 15 percent in 2002-2003; 12 percent in 2003-2004; and 9 percent in 2004-2005.

While rebar producers in Turkey have some available capacity, they already are operating at high levels of capacity utilization, particularly since the closure of Turkish producer Ekinciler. Similarly, Turkish rebar inventories are non-existent in the United States and limited in Turkey. Further, while

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<sup>1</sup>Commissioner Bragg did not rely on the existence of safeguard measures, or the imposition of antidumping duties as a result of previous rebar investigations, in reaching her negative determination.

barriers to the importation of the rebar from Turkey in other markets have shifted over time, on balance they are not expected to be more significant than at the time of the original order. Finally, product shifting into low-value rebar from higher valued products, some of which enter the U.S. market on favorable terms compared to other import sources, does not appear likely. Thus, we conclude that the likely volume of subject imports within the region will not be significant.

Direct price-based competition between regional rebar production and rebar from Turkey is tempered by differences in geographical focus, product mix, and customer base, as well as “Buy American” limitations. In addition, recent regional price increases by producers and importers of rebar from Turkey suggest a reversal in the trend of low regional prices that has prevailed since 1999. The impact of the eight antidumping duty orders and the U.S. safeguard action, moreover, will continue to influence regional rebar prices for a reasonably foreseeable time. Thus, while we are mindful of underselling with the antidumping duty order in place, we find that revocation of the order is not likely to lead to significant regional price effects, in view of our conclusion that the likely volume of subject imports within the region will not be significant.

Further, the regional industry overall is performing more favorably. In the most recent periods, regional producers have increased sales, gained market share, and improved their aggregate financial performance. Regional producers have benefitted from long-term demand growth, declining costs, and consolidation and integration, in addition to antidumping duty orders on eight countries that were engaged in materially injurious dumping, and an additional global safeguard action against imports of rebar. When combined with the more recent increase in prices, it is clear that the regional industry is not vulnerable.

Finally, we have considered whether revocation of the subject order would be likely to lead to continuation or recurrence of material injury to producers of “all or almost all” of the production in the region. We have examined the performance of individual regional mills to look for anomalies, and concluded that, over the period of review, many regional producers, representing a large share of regional production, have been able to maintain a strong financial performance based on regional sales, irrespective of the overall financial performance of the regional industry. The strong performance of several of the largest mills in the region (particularly \*\*\*), suggests that revocation of the subject order would not be likely to lead to continuation or recurrence of material injury to producers of “all or almost all” of the production in the region.

## **II. CONDITIONS OF COMPETITION**

The following conditions of competition in the regional rebar market are relevant to our determination and develop with greater specificity points made in our overview.

Demand for rebar, which is used for reinforcing concrete, depends upon the overall level of construction activity in the United States. Major end uses include bridges, parking structures, highways, retaining walls, culverts, slabs, airport runways, and grain silos.<sup>2</sup> Larger-sized rebar (size 6 and greater) is used exclusively in heavy construction applications. In contrast, a “considerable portion” of smaller-sized rebar (sizes 3-5) is used in light construction applications (e.g., residences, swimming pools, patios, and walkways).<sup>3</sup>

Apparent consumption of rebar in both the Eastern Tier and the U.S. market as a whole has grown markedly since the mid-1990s, and most market participants feel that demand in general has

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<sup>2</sup>CR at II-7-8, PR at II-4-5.

<sup>3</sup>CR at I-19, PR at I-13.

increased, despite recent softening.<sup>4</sup> Three regional producers also provided demand forecasts indicating either flat demand in 2003 (in the case of \*\*\*) or decreasing demand (in the case of \*\*\*).<sup>5</sup>

With respect to supply, the regional industry is undergoing significant restructuring. Since the original investigation, Nucor acquired Auburn Steel in 2001 and Birmingham Steel in 2002, while AmeriSteel's parent, Gerdau, merged with Co-Steel of Canada to create Gerdau AmeriSteel in 2002.<sup>6</sup> Overall, the number of companies producing rebar within the Eastern Tier has shrunk from eight (in addition to minor or bankrupt producers) to six, with three companies (Gerdau AmeriSteel, Nucor, and CMC) representing fully \*\*\* percent of 2001 reported regional production.<sup>7</sup> Despite increased regional capacity, capacity utilization has fluctuated in a generally upward trend between 77 percent and 84 percent for mills inside the region (compared to only 68-72 percent for mills outside the region).<sup>8</sup>

Imports of rebar from Turkey have diminished relative to the size of the regional market since the period examined in the original investigation, reflecting among other things the closure of two Turkish mills<sup>9</sup> and lower levels of unused capacity in Turkey.<sup>10</sup> Indeed, since the mid-1990s, both subject imports from Turkey and regional rebar production have supplied a reduced share of the Eastern Tier market, reaching low points in 1998 and 1999, respectively.<sup>11</sup> These trends reflect in large part the growing presence of nonsubject imports.<sup>12</sup> In mid-2001, however, the United States imposed antidumping duties on rebar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.<sup>13</sup> The eight antidumping duty orders cover countries that accounted for 68 percent of rebar imports into the region in 2000 (declining to 10 percent in 2001).<sup>14</sup> In March 2002, President Bush announced additional duties on rebar of 15 percent in 2002-2003; 12 percent in 2003-2004; and 9 percent in 2004-2005, as a result of a

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<sup>4</sup>CR/PR at Tables I-1 and C-2 (Eastern Tier consumption increased by \*\*\* percent between 1996 and 2001 but was 4 percent lower in interim 2002 than in interim 2001) and Tables I-2 and C-1 (U.S. market consumption increased by 56 percent between 1996 and 2001 but was 3 percent lower in interim 2002 than in interim 2001).

<sup>5</sup>Domestic Interested Parties' Posthearing Brief at A-30.

<sup>6</sup>CR/PR at Table I-4. *See also* "Bigger bar players are leaving less pie for others," American Metal Markets, December 6, 2002.

<sup>7</sup>Gerdau AmeriSteel alone controls \*\*\* percent of regional production. CR/PR at Table I-4.

<sup>8</sup>CR/PR at Table III-1. At the Commission's hearing, one witness indicated that none of the consolidations had specifically discussed rationalization, but that some reduction in capacity was likely. Hearing transcript at 55-56 (testimony of Mr. Muhlhan).

<sup>9</sup>Respondent Interested Parties' Prehearing Brief at 2.

<sup>10</sup>Original Report (USITC Pub. 3034) at Table VII-2; CR/PR at Table IV-5.

<sup>11</sup>CR/PR at Tables I-1 and I-8. We note that recent increases in the share of the regional market accounted for by rebar from Turkey have not come at the expense of the regional industry. *Id.*

<sup>12</sup>CR/PR at Table I-8.

<sup>13</sup>CR at I-9, PR at I-7. *See also* Certain Steel Concrete Reinforcing Bars from Indonesia, Poland, and Ukraine, Invs. Nos. 731-TA-875, 880, and 882 (Final), USITC Pub. 3425, May 2001 *and* Certain Steel Concrete Reinforcing Bars from Belarus, China, Korea, Latvia, and Moldova, Invs. Nos. 731-TA-873-874, and 877-879 (Final), USITC Pub. 3440, July 2001.

<sup>14</sup>Official import statistics of the Department of Commerce.

global safeguard action.<sup>15</sup> The safeguard action covers countries (including Turkey) that accounted for 70 percent of rebar imports into the region in 2001 (and 63 percent in January-September 2002).<sup>16</sup> Thus, the coverage of these two separate actions is substantial.

With respect to interchangeability, rebar is considered to be a commodity item. It is an unsophisticated product with limited but large volume applications, sold almost entirely to common industry specifications on the basis of price.<sup>17</sup> Nonetheless, there are both product and marketing distinctions between U.S. and Turkish rebar, as discussed below, which affect competition within the region and the likelihood of material injury within a reasonably foreseeable time.

First, Turkey continues to maintain a substantial presence in Puerto Rico, while U.S. producers (regional or otherwise) sell extremely limited volumes of rebar into Puerto Rico.<sup>18</sup> This is an important change in the competitive environment that prevailed at the time of the original investigation. During 1994-96, regional producers accounted for \*\*\* percent of the \*\*\* short tons of annual U.S. shipments to Puerto Rico.<sup>19</sup> In fact, regional producers shipped a greater volume of rebar to Puerto Rico in 1996 than they did to 15 of the 22 regional States and the District of Columbia.<sup>20</sup> The vast majority (\*\*\* percent in 1996) of U.S. shipments to the island were accounted for by \*\*\* (the rest were by \*\*\*).<sup>21</sup> In contrast, the record in this review indicates that regional producers reported \*\*\* tons of direct shipments to Puerto Rico in 1997, \*\*\* tons in 1998, and \*\*\* tons thereafter, volumes comparable only to the District of Columbia (\*\*\* tons in 1999 and \*\*\* tons in 2000).<sup>22 23</sup> The reason for this marked change is that the U.S. mill in \*\*\* no longer ships rebar to Puerto Rico.<sup>24</sup> In recent years, only \*\*\* shipped rebar from within the region directly to Puerto Rico (and not since \*\*\*).<sup>25 26</sup> Thus, while we find the technical requirements for

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<sup>15</sup>67 Fed. Reg. 10553, 10589 (Mar. 7, 2002).

<sup>16</sup>Official import statistics of the Department of Commerce.

<sup>17</sup>*See, e.g.*, CR at I-14-15, PR at I-10-11 (ASTM standards); CR at II-10 and Table II-1, PR at II-6 and Table II-1 (most purchasers “always” or “frequently” base purchasing decisions on price; price is number one purchase factor for 12 of 18 responding purchasers); CR at I-18 generally, PR at I-13 generally.

<sup>18</sup>*Compare* CR/PR at Table E-9 *with* CR/PR at Table E-12.

<sup>19</sup>Original CR at III-19 (Table III-7).

<sup>20</sup>Original CR at III-19 (Table III-7).

<sup>21</sup>Original CR at III-18.

<sup>22</sup>CR/PR at Table E-9. Indeed, regional producers reported greater domestic shipment volumes to 19 States *outside* the region during 1997-2001 than to Puerto Rico. CR/PR at Table E-9.

<sup>23</sup>Moreover, unlike the 22 States and the District of Columbia, only Puerto Rico received more direct U.S. shipments from outside the region (\*\*\* tons) than from inside the region (\*\*\* tons) during 1997-2001. CR/PR at Tables E-9 and E-10.

<sup>24</sup>*See, e.g.*, CR at D-4, PR at D-3 (describing \*\*\*’s market area as being “in the northeast.”).

<sup>25</sup>CR at III-10, PR at III-2.

<sup>26</sup>We note that CMC reported contacts in Puerto Rico, at least four marketing trips since 1997, and having arranged for the shipment of \*\*\* short tons during that time through an “export company” for Buy American jobs. Gerdau AmeriSteel submitted a spreadsheet indicating shipments of \*\*\* short tons during 2001-2002. Domestic Interested Parties’ Posthearing Brief at A-19-22, exhibits C and D. Consideration of these arrangements does not alter our view that competition between regional rebar and

(continued...)

employing a regional industry analysis are met in this review, we note that the extent of meaningful geographical overlap between subject imports and rebar produced by the regional mills has diminished even further since the original investigation, further reducing direct competition.

Second, subject imports of rebar are far more concentrated in the smaller size ranges (3-5) used for light construction applications (\*\*\*) percent) than domestic rebar (just over \*\*\*) percent). The difference in product mix is particularly pronounced for the smallest (size 3) rebar, a product which is conservatively estimated to constitute \*\*\* percent of rebar imports from Turkey.<sup>27</sup> In contrast, size 3 rebar constitutes only \*\*\* percent of regional production, and most regional producers do not even produce the product.<sup>28</sup>

Third, approximately \*\*\* of domestic regional shipments are to end users, while more than \*\*\* of importers' regional sales of rebar from Turkey are to distributors.<sup>29</sup> Moreover, internal consumption and transfers to related firms (mostly fabricators) by regional producers are significant – in 2001, they were more than \*\*\* short tons (\*\*\*) percent of regional mills' regional shipments), while their commercial sales within the region were just under \*\*\* short tons.<sup>30</sup> This is proportionately higher than during the original investigation, when only \*\*\* percent of U.S. producers' U.S. shipments within the region were internally consumed or transferred.<sup>31</sup> Although the nature and extent of the benefits of such relationships are not undisputed, we find on balance that the increasing degree of integration between major regional producers and regional fabricators (as opposed to sales, such as most Turkish imports, that reach fabricators indirectly through distributors) has established a more reliable and durable customer base for regional producers and diminishes the likely future level of subject imports, as well as the impact of direct competition between subject imports and the domestic like product sold within the region.<sup>32</sup>

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<sup>26</sup>(...continued)

rebar from Turkey in Puerto Rico is highly attenuated and will continue to be so. *See, e.g.*, Hearing transcript at 72 (“And we continue to keep track of the Puerto Rican market. It’s just the price level is so low that it -- you know, to put -- we’re always saying, if you want to put a \$40 bill on a ton of steel and ship it over there and sell it, you can do that; but, it doesn’t make economic sense, because it’s below our cost of production.”) (Testimony of Mr. Fritsch).

<sup>27</sup>*Compare* CR/PR at Table III-2 *with* CR/PR at Table IV-2. We consider the figure of \*\*\* percent to represent a conservative estimate because the reported data are understated, primarily with respect to imports into Puerto Rico. *Compare* Table E-11 *to* Table E-12. We note that smaller size rebar is prevalent in Puerto Rico. Hearing transcript at 95, 108, and 125 (testimony of Mr. Dalbeler).

<sup>28</sup>CR/PR at Table E-13. Seven of twelve responding regional mills manufacture no size 3 rebar, two produce only coiled size 3 rebar, and three produce straight size 3 rebar. Based on regional shipments by regional producers, the five regional producers whose product range includes straight or coiled size 3 rebar accounted for \*\*\* percent of within-region shipments in 2001. *Compare* CR/PR at Table E-2 *with* CR/PR at Table E-13.

<sup>29</sup>CR at II-1, PR at II-1.

<sup>30</sup>CR/PR at Table III-3.

<sup>31</sup>Original CR at II-1 n.1.

<sup>32</sup>According hearing testimony, “The Commercial Metals Group, our company, and Gerdau AmeriSteel are the only producers that have significant fabrication operations. Owning a fabrication operation does not insulate us from injury caused by dumped imports. Our rebar fabricating plants are independent profit centers. They pay the same price for their reinforcing bar as do (un)affiliated

(continued...)

Finally, “Buy American” provisions and related domestic sourcing requirements by customers are widespread in the regional market. Twenty-one of 25 purchasers reported that they buy domestic rebar as a result of legal or nonlegal domestic preferences, with 17 indicating that formal “Buy American” provisions apply to at least some of their purchases (for four of these companies, 65 percent or more of their purchases were covered by “Buy American” provisions).<sup>33</sup> We note that Domestic Interested Parties assert that “Buy American” provisions do not insulate domestic regional producers from price-based competition.<sup>34</sup> We agree that, when considered in isolation, the overall impact of such restrictions is less certain, however, we find that such restrictions nonetheless likely will operate to diminish direct competition between regional production of rebar and rebar from Turkey.

We find that the foregoing conditions of competition provide an adequate basis upon which to assess the likely effects of revocation within a reasonably foreseeable time.

### **III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON REBAR FROM TURKEY IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME**

For the reasons stated below, and in light of the preceding discussion regarding the conditions of competition in the regional market, we determine that revocation of the antidumping duty order on rebar from Turkey would not be likely to lead to continuation or recurrence of material injury to the regional industry within a reasonably foreseeable time.

#### **1. Likely Volume**

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant

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<sup>32</sup>(...continued)

companies.” (Hearing transcript at 15, testimony of Mr. Fritsch). Upon further questioning, it was determined that both CMC and Gerdau AmeriSteel’s downstream fabricating operations can purchase from other suppliers. However, while CMC’s fabricating divisions “do purchase foreign bar where it is necessary,” Gerdau AmeriSteel’s fabrication division does not. (Hearing transcript at 80-81, testimony of Mr. Fritsch and Mr. Muhlhan).

<sup>33</sup>CR at II-11, PR at II-7.

<sup>34</sup>They contend that rebar from Turkey is concentrated in small sizes used for pool and patio applications, not government infrastructure projects; customers do not inform producers about the ultimate use of the purchased rebar; there are cost and public interest exemptions to “Buy American” transactions; and “Buy American” sales only constitute a small portion of total sales. Domestic Interested Parties’ Prehearing Brief at 9-12; hearing transcript at 16 (testimony of Mr. Fritsch). In response to a question posed at the hearing, however, the Domestic Interested Parties reported that 61.5 percent of U.S. rebar consumption in 1998 (the last year for which data are available) was for public works. Domestic Interested Parties’ Posthearing Brief at A-31 citing the Concrete Reinforcing Steel Institute. *Compare to* the original investigation (64 percent of rebar sales were for use in “public works” (typically governed by “Buy American” provisions); purchasers prefer not to hold two separate sets of inventory). Original Report (USITC Pub. 3034) at II-1.

either in absolute terms or relative to production or consumption in the United States.<sup>35</sup> 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.<sup>36</sup>

In the original determination, the Commission majority found the volume of subject imports to be significant, observing that the volume and market share of subject imports increased between 1994 and 1995, before declining in 1996 (virtually ceasing after August of that year). The regional market share of rebar from Turkey was 7.9 percent in 1994; 8.4 percent in 1995; and 5.2 percent in 1996, while regional U.S. producers held 85.5 percent; 85.9 percent; and 84.1 percent, respectively. The Commission majority reduced the weight it accorded to the period after the filing of the petition, and pointedly did not cite as significant the increase in the volume of subject imports.<sup>37</sup>

The record indicates that since 1996 the volume of U.S. imports of rebar from Turkey into the Eastern Tier region has fluctuated, falling to 70,792 short tons in 1997; and to 8,968 and 32,082 short tons in 1998 and 1999, respectively. In 2000 and 2001, however, the regional volumes of U.S. imports of rebar from Turkey were 148,477 and 145,607 short tons, respectively.<sup>38</sup> Between 1997 and 1999, rebar from Turkey accounted for 2.7 percent, 0.3 percent, and 0.9 percent of regional consumption, respectively, then increased to 4.2 percent in 2000 and 4.1 percent in 2001.<sup>39</sup> In January-September 2002, regional rebar imports from Turkey reached 155,187 short tons, or 5.8 percent of the regional market.<sup>40</sup> For the reasons discussed below, we find that if the antidumping duty order on rebar from Turkey were revoked, any increase in the volume of such imports entering the Eastern Tier region likely would be moderate, but would not reach significant levels.

First, a substantial share of any increased exports from Turkey to the United States is likely to enter outside the Eastern Tier region. Between 1997 and 2001, U.S. imports of rebar from Turkey entering outside the Eastern Tier (almost exclusively through Houston/Galveston, Texas), grew far more rapidly than such imports entering within the Eastern Tier,<sup>41</sup> even though all such imports were subject to the subject antidumping duty order.<sup>42</sup>

Second, within the Eastern Tier, a substantial volume of rebar from Turkey is imported into Puerto Rico. Between 1997 and 2001, 44.3 percent of such within-region imports were into Puerto Rico, compared to 27.4 percent into the State of Florida and 28.3 percent into the remaining 21 States and the

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<sup>35</sup>19 U.S.C. § 1675a(a)(2).

<sup>36</sup>19 U.S.C. § 1675a(a)(2)(A-D).

<sup>37</sup>Original Views (USITC Pub. 3034) at 28-29 and nn.178 and 181. The Commission majority acknowledged that market penetration by the subject imports was concentrated in smaller sizes and in Puerto Rico (approximately 60-80 percent of rebar imports from Turkey within the region were into Puerto Rico). *Id.* at 28 n.179.

<sup>38</sup>CR/PR at Table I-1.

<sup>39</sup>CR/PR at Table I-1.

<sup>40</sup>CR/PR at Table C-2.

<sup>41</sup>CR/PR at Table E-12.

<sup>42</sup>Respondent Interested Parties' Posthearing Brief at 10.



District of Columbia.<sup>43</sup> There is no indication that the concentration of subject imports into Puerto Rico will shift markedly, while the volume of shipments by regional mills into Puerto Rico has remained highly restricted. Despite the inclusion of Puerto Rico as part of the Eastern Tier region, competition between regional rebar production and rebar from Turkey is and likely will remain highly attenuated.

Third, regional mills benefit from both substantial sales to related fabricators and “Buy American” preferences, thus reducing to an extent the likely degree of direct competition between rebar from Turkey and regional rebar production. At the same time, subject imports from Turkey are likely to compete against imports of rebar from nonsubject countries. Indeed, we note that the increase in regional market share held by rebar from Turkey since 1999 has been entirely at the expense of imports from other sources, rather than the regional industry.<sup>44</sup> While such imports from other sources accounted for less than 4 percent of the regional market in 1994-95, they increased to 27.6 percent of the regional market in 1999 and still held 17.6 percent of the regional market as of January-September 2002.<sup>45</sup>

Our analysis of the rebar industry in Turkey also leads us to conclude that if the antidumping duty order on rebar from Turkey were revoked, any increase in the volume of such imports entering the Eastern Tier region likely would be moderate, but would not reach significant levels. The Turkish industry is operating at historically high levels of capacity utilization. Despite increasing capacity to 5.3 million short tons in 2001 from 4.7 million short tons in 1997, capacity utilization levels have fluctuated in a generally-upward trend between 78 percent and 89 percent.<sup>46</sup> In 2001 and January-September 2002, capacity utilization levels were 87.4 percent and 88.8 percent, respectively - markedly higher than during the period examined during the original investigation (75.7 - 82.3 percent).<sup>47</sup> Moreover, we note that the apparent increase in Turkish capacity does not reflect the reduction in capacity related to the relatively recent closure in 2000 of Ekinciler, which removed an estimated 700,000 tons of rebar capacity from the Turkish industry.<sup>48</sup> Based on the record in the original investigation, Ekinciler was one of the Turkish mills \*\*\*. In 1996, rebar accounted for \*\*\* percent of the Ekinciler’s sales - \*\*\* among Turkish producers - and exports to the United States accounted for \*\*\* percent of the Ekinciler’s total exports - \*\*\* among Turkish producers.<sup>49</sup> Finally, \*\*\* of the producers in Turkey reported plans for a permanent future expansion in capacity.<sup>50</sup> In light of the Turkish industry’s high levels of capacity utilization, particularly following the closure of Ekinciler, we do not view apparent increases in capacity or existing unused capacity as likely to lead to a significant increase in subject imports into the U.S. regional market within a reasonably foreseeable time.

Inventories of rebar in Turkey have fluctuated markedly since 1997, from a low of 84,297 short tons in 1998 to more than 200,000 short tons in 1999, 2001, and January-September 2002.<sup>51</sup> As a ratio to

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<sup>43</sup>CR/PR at Table E-12.

<sup>44</sup>CR/PR at Table C-2.

<sup>45</sup>CR/PR at Table C-2; Original Report (USITC Pub. 3034) at Table C-3.

<sup>46</sup>CR/PR at Table IV-5.

<sup>47</sup>Compare CR/PR at Table IV-5 with Original Report (USITC Pub. 3034) at Table VII-2.

<sup>48</sup>See CR at IV-5, PR at IV-4, and hearing transcript at 113 (testimony of Mr. Dalbeler). In addition, we note that since the period examined in the original investigation, Izmir Metalurji Fabrikasi Turk A.S. has ceased all steel production. Respondent Interested Parties’ Prehearing Brief at 2.

<sup>49</sup>CR at IV-5, PR at IV-4. Original CR at Table VII-1.

<sup>50</sup>CR at II-5, PR at II-3.

<sup>51</sup>CR/PR at Table IV-5.

production, inventories of rebar in Turkey peaked in 1999 at 5.4 percent and have fluctuated thereafter.<sup>52</sup> Relative to U.S. regional producers, Turkish producers maintained a lower ratio of inventories to production throughout 1997-2001 and in January-September 2002.<sup>53</sup> Moreover, in the United States, reported importer inventories of rebar from Turkey have been \*\*\* since 1997.<sup>54</sup> On balance, we view existing inventories in Turkey, including recent increases in the absolute level of such inventories, as generally consistent with overall production and sales levels, and not as an indicator of any likely significant increase in regional imports within a reasonably foreseeable time.

The existence of barriers to the importation of rebar from Turkey into countries other than the United States is an important consideration, since the Turkish rebar industry is export-oriented.<sup>55</sup> In late 1999, Egypt imposed an antidumping duty order on rebar from Turkey; Turkish volume, more than 240,000 metric tons in 1998, has since declined to zero. In March 2000, Canada imposed an antidumping duty order on rebar from Turkey; Turkish volume declined from 106,664 metric tons in 1998 to 73,505 metric tons in 2001, but then increased to 156,608 metric tons in 2002 (partial).<sup>56</sup> In 2003, however, Singapore revoked an antidumping duty order that had been in place since 1995. The volumes of Turkish rebar exported to Singapore (430,236 metric tons in 1994, and as much as 852,497 metric tons in 1997) were substantially greater than those exported to Egypt or Canada.<sup>57 58</sup> Thus, while barriers to the importation of the rebar from Turkey in other markets have shifted over time, on balance they are no more significant than at the time of the original order, and do lead us to conclude that a significant increase in imports into the region is likely.

Finally, we do not find there to be a significant potential for product shifting by the subject producers in favor of increased production of rebar. First, only two Turkish producers reported producing

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<sup>52</sup>CR/PR at Table IV-5.

<sup>53</sup>U.S. regional mills held inventories equivalent to 7.8 - 9.2 percent of their production in 1997-2001, and 7.4 percent in January-September 2002. CR/PR at Table III-7. Turkish mills held inventories equivalent to 2.3 - 5.4 percent of their production in 1997-2001, and 4.8 percent in January-September 2002. CR/PR at Table IV-5.

<sup>54</sup>CR/PR at Table IV-4.

<sup>55</sup>See CR/PR at Table IV-5 (exports accounted for \*\*\* percent of total shipments by the Turkish rebar industry between 1997 and 2001). Exports to the United States are a relatively small share of the Turkish industry's total shipments, however, ranging from \*\*\* percent to \*\*\* percent between 1997 and 2001. CR/PR at Table IV-5.

<sup>56</sup>Canada currently is considering, but has not enacted, a safeguard measure on rebar similar to that of the United States. Because the Government of Canada has not taken any final action on this matter, we cannot consider the proposed safeguard measure as an import barrier.

<sup>57</sup>Respondent Interested Parties' Posthearing Brief at Exhibit A; Domestic Interested Parties' Posthearing Brief at Exhibits A (pp. 9-15), L, and M; and Sailer letters of January 6, 2003, and February 5, 2003.

<sup>58</sup>We note that the EU instituted a provisional safeguard action effective March 28, 2002, on rebar, including such product from Turkey, imposing a duty of 14.9 percent on imports in excess of the established quota. The provisional action was terminated with respect to rebar, however, on January 27, 2003. Duties collected under the provisional safeguard are to be refunded, although monitoring is to continue. Memorandum INV-AA-013 (February 11, 2003).

products other than rebar.<sup>59</sup> Second, there is no clear incentive to shift production into rebar from other products, since as noted above rebar is a low value product.<sup>60</sup>

Based on the record in this review, we conclude that any increase in the volume of subject imports likely would be moderate if the antidumping duty order on rebar from Turkey were revoked. On balance, we find that, in the absence of the antidumping duty order, the likely volume of rebar from Turkey, both in absolute terms and relative to production and consumption in the United States, would not be significant.

## 2. Likely Price Effects

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

In its original determination, the Commission majority found that imports of rebar from Turkey suppressed and depressed prices in the domestic regional market to a significant degree. They reasoned that price was an important factor in purchasing decisions for this commodity. They noted declining U.S. prices, mixed underselling (more pronounced for smaller sizes and in Puerto Rico), and late period price increases that were insufficient to cover rising costs (prices increased in 1996 and further increases were announced in 1997).<sup>62</sup>

The record in this review indicates that domestic mills' regional rebar prices remained reasonably strong until late 1998.<sup>63</sup> Regional rebar prices then generally declined through the first quarter of 2001, stabilized at lower levels for several quarters, then dipped again in January-March 2002.<sup>64</sup> Over this time period, however, raw material costs also dropped substantially.<sup>65</sup> Since March 2002, however, domestic

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<sup>59</sup>CR/PR at Table E-15.

<sup>60</sup>Domestic Interested Parties stress the potential for product shifting. Domestic Interested Parties' Posthearing Brief at A-28 (noting that rebar producers switch to wire rod with little re-tooling, and that the rebar market would become relatively more attractive in the absence of an antidumping duty order). The Domestic Interested Parties do not address adequately questions raised at the hearing about Turkey's relatively favorable position in U.S. wire rod and bar markets following recent trade actions, or the Turkish argument that there is no revenue incentive to switch from wire rod production to rebar. *See, e.g.*, hearing transcript at 90, 101-102, 131-132 (testimony of Mr. Sailer and Mr. Dalbeler).

<sup>61</sup>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.

<sup>62</sup>Original Views (USITC Pub. 3034) at 29-32.

<sup>63</sup>CR/PR at Tables V-1, V-3, and V-5.

<sup>64</sup>CR/PR at Tables V-1, V-3, and V-5.

<sup>65</sup>CR/PR at Table III-10. Raw material costs for regional producers decreased from \$150/ton in 1997 to \$109/ton in 2001, and were \$115/ton in January-September 2002.

mills' regional rebar prices have risen markedly.<sup>66</sup> Regional price comparisons with Turkish rebar are sporadic, but with the order in place, within-region sales of rebar from Turkey were priced lower than within-region domestic sales in 15 of 22 quarterly comparisons.<sup>67</sup> Like domestic regional prices, Turkish regional prices generally have risen in 2002 and are significantly higher than at the end of 2001.<sup>68</sup>

We considered whether there is likely to be significant underselling by rebar from Turkey and whether such imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the regional price of rebar. As noted in the discussion of the market, rebar is, in general, an unspecialized commodity product, and price is an important consideration for purchasers. Further, in the regional market rebar from Turkey has been priced lower than domestic rebar, even with the antidumping duty order in place. In light of our conclusion that any increase in subject imports into the region likely would be moderate, we find that revocation of the antidumping duty order on rebar from Turkey likely would have some effect on the regional price of rebar, but that any effect would be limited, not only in the absence of a significant increase in subject import volume, but also for the reasons discussed below.

As noted in our discussion of the conditions of competition and the character of the subject import volume, rebar from Turkey traditionally has been most focused on smaller (including size 3) rebar and on sales to Puerto Rico. Indeed, we note that the prevalence of sales of rebar from Turkey into Puerto Rico is important, given the different pricing dynamic on the island. According to witness testimony, clients compare the price of Turkish rebar with the price of domestic rebar for mainland sales, but this is not the case for sales in Puerto Rico.<sup>69</sup> In contrast to U.S. importers of rebar from Turkey, regional rebar producers focus on sales of larger product - many do not even produce size 3 rebar - to mainland customers, a significant portion of which are related fabricators. Moreover, significant within-region sales that are made by regional producers benefit from Buy American or other domestic sourcing preferences.<sup>70</sup>

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<sup>66</sup>For size 3 rebar, within-region domestic prices increased from \$263.03 per short ton in January-March 2002 to \$286.34 per short ton in July-September 2002. CR/PR at Table V-1. For size 4 rebar, within-region domestic prices increased from \$248.61 per short ton in January-March 2002 to \$267.38 per short ton in July-September 2002. CR/PR at Table V-3. For size 5 rebar, within-region domestic prices increased from \$243.68 per short ton in January-March 2002 to \$259.96 per short ton in July-September 2002. CR/PR at Table V-5.

<sup>67</sup>CR at V-6, PR at V-4.

<sup>68</sup>CR/PR at Tables V-1, V-3, and V-5.

<sup>69</sup>See hearing transcript at 118 (observing that in Puerto Rico Turkish rebar prices are not compared to prices from U.S. mills, rather they are compared to prices of rebar from Brazil or the Dominican Republic). (Testimony of Mr. Dalbeler).

<sup>70</sup>CR/PR at Table III-2 (substantial shipments of larger-size rebar); CR/PR at Table E-13 (7 of 12 regional mills do not even produce size 3 rebar); CR/PR at Table E-9 (regional mills concentrate on the mainland, with substantial shipments not only to Florida but also to Alabama, Georgia, Massachusetts, Mississippi, North Carolina, Pennsylvania, Tennessee, and Virginia); CR/PR at Table III-3 (internal consumption and transfers to related firms constitute a significant portion of regional mills' Eastern Tier shipments); and CR at II-11, PR at II-7 (21 of 25 purchasers report that their purchasing decisions reflect "Buy American" or other domestic sourcing considerations). See also Original Report (USITC Pub. 3034) at II-1, II-4, and nn.16 and 17.

Finally, as noted previously, in March 2002, President Bush announced a safeguard action on rebar, including rebar from Turkey.<sup>71</sup> This action, which followed the imposition of antidumping duty orders against unfairly traded rebar imports from eight countries, already has served to firm up prices in the regional rebar market and will continue to influence prices of rebar from Turkey for a reasonably foreseeable time.

Therefore, on the basis of the record in this review, we find that revocation of the antidumping duty order on rebar from Turkey would not be likely to lead to significant underselling by the subject imports or to significant price depression or suppression within a reasonably foreseeable time.

### 3. Likely Impact

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 develop a derivative or more advanced version of the domestic like product.<sup>72</sup> 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.<sup>73</sup> As instructed by the statute, we also have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>74</sup>

In the original determination, the Commission majority focused on the declining financial performance of the domestic regional industry in the face of expanding regional consumption. Regional producers' operating margins decreased from 3.9 percent in 1994 to 0.3 percent in 1996 (compared to

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<sup>71</sup>67 Fed. Reg. 10553, 10589 (Mar. 7, 2002). The safeguard action has resulted in additional duties on rebar of 15 percent in 2002-2003; 12 percent in 2003-2004; and 9 percent in 2004-2005.

<sup>72</sup>19 U.S.C. § 1675a(a)(4).

<sup>73</sup>19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews 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. In the final results of its expedited sunset review of the antidumping duty order on rebar from Turkey, Commerce determined that revocation of the order would likely lead to a continuation or recurrence of dumping at weighted-average margins of 9.84 percent for Colakoglu, 18.68 percent for Ekinciler, 18.54 percent for Habas, 41.80 percent for Izmir Demir Celik Sanayi A.S., 30.16 percent for Izmir Metalurji Fabrikasi Turk A.S. and 16.06 percent for "all others." 67 Fed. Reg. 45457, 45458 (July 9, 2002). We note that both Ekinciler and Izmir Metalurji Fabrikasi Turk A.S. have ceased all steel production. Respondent Interested Parties' Prehearing Brief at 2.

<sup>74</sup>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.

nonregional producers which experienced an increase in operating margins from 6.3 percent to 8.9 percent). Regional producers closed regional rebar plants, filed for bankruptcy, and temporarily shut plants to work down high inventories.<sup>75</sup>

Since 1996, the end of the period examined in the original investigation, the regional industry's performance generally has improved, although irregularly. In terms of market share, regional mills continued to hold a substantial share of the regional market in 1997, but saw their market share fall from 78.9 percent in 1997 to 65.3 percent in 1999, before recovering to 67.0 percent in 2000, 70.0 percent in 2001, and to 71.5 percent in January-September 2002. Regional mills' capacity increased from \*\*\* million short tons in 1996 to 3.6 million short tons in 2001, an increase of \*\*\* percent. Regional mills' production and regional shipments likewise increased by \*\*\* percent and by \*\*\* percent, respectively, between 1996 and 2001. Capacity utilization declined between 1996 and 1999, but by 2000 had surpassed pre-investigation levels. Overall employment levels have declined, but productivity rates have soared. Average unit values for regional shipments were higher in 1997 and 1998 than in 1996, but decreased during 1999-2001 and into 2002. Unit costs, however, also declined markedly after 1996. Regional producers saw their operating margins increase in 1997 and 1998 to 8.9 percent and 10.2 percent, up from 0.3 percent in 1996, then decrease to 2.4 percent by 2000, before recovering to 5.2 percent in 2001 and 3.8 percent in interim 2002. Thus, regional operating margins were comparable to or higher than those throughout the period 1994-1996 for every period except the year 2000.<sup>76</sup> Based on the regional industry's recent overall performance, we do not find the regional industry to be vulnerable.<sup>77 78</sup>

As discussed in detail above, both ongoing and more recent developments in the regional market (including Puerto Rico) have increasingly limited the extent and nature of competition between rebar from Turkey and the domestic like product. In view of the combined effects of differences in product mix, geographical concentration, customer base, and "Buy American" restrictions, we do not view the likely volume of subject imports from Turkey into the Eastern Tier region or their likely price effects to be significant.

Further, we have considered whether revocation of the subject order would be likely to lead to continuation or recurrence of material injury to producers of "all or almost all" of the production in the region. We have examined the performance of individual regional mills to look for anomalies, and

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<sup>75</sup>Original Views (USITC Pub. 3034) at 32-33 and n.210.

<sup>76</sup>CR/PR at Tables I-1 and C-2.

<sup>77</sup>19 U.S.C. § 1675a(a)(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 and threat of material injury . . . . If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.").

<sup>78</sup>We have taken into account whether any improvement in the state of the regional industry is related to the order. While the regional industry experienced some improvement, the record suggests that many factors influenced the state of the industry. Increasing demand (as measured by apparent regional consumption) and declining costs initially helped the regional industry's financial performance in 1997 and 1998. The regional industry's market share declined in 1998, while capacity utilization and unit sales values followed in 1999 and operating income margins in 1999-2000, as import volume from sources other than Turkey increased markedly. These trends have stabilized or reversed in recent years, however, reflecting generally lower costs and higher demand levels, the regional industry's own efforts to adjust through restructuring, the application of antidumping duty orders on rebar from eight countries, and the subsequent U.S. safeguard action on rebar.

concluded that, over the period of review, many regional producers, representing a large share of regional production, have been able to maintain a strong financial performance, based on sales within the region, irrespective of the overall financial performance of the regional industry. In 1997, seven of 11 regional mills, representing \*\*\* percent of regional mill sales, generated operating income margins in excess of 3.9 percent (the highest average operating income margin for the regional industry during the period examined in the original investigation).<sup>79</sup> In 1998, this figure was 9 mills representing \*\*\* percent regional mills sales; in 1999, 8 mills representing \*\*\* percent; in 2000, 4 mills representing \*\*\* percent; in 2001, 5 mills representing \*\*\* percent; and in January-September 2002, 5 mills representing \*\*\* percent.<sup>80</sup>

Our analysis of these data do not reveal anomalies; rather, we observe that the strongest performers within the region and the least strong performers have been fairly consistent (large producers \*\*\* fall into the former category, smaller producers \*\*\* fall into the latter category).<sup>81</sup> We note, however, that \*\*\*.<sup>82</sup>

Further, the performance of \*\*\* facility is particularly relevant because of its \*\*\* and because it is one of only five regional mills that actually produce the size 3 rebar that is so prevalent among imports of rebar from Turkey.<sup>83</sup> As discussed, imports of rebar into the Eastern Tier region are concentrated in Puerto Rico and, to a lesser extent, Florida.<sup>84</sup> There are no U.S. mills in Puerto Rico and only one U.S. mill in Florida – Gerdau AmeriSteel’s Jacksonville facility.<sup>85</sup> Since 1997, Gerdau AmeriSteel’s Jacksonville facility has not operated below \*\*\* percent capacity utilization.<sup>86</sup> Since 1997 Gerdau AmeriSteel’s Jacksonville facility has not reported operating margins below \*\*\* percent, ranking \*\*\* in the region in each year or partial year.<sup>87</sup>

In light of the continued strong performance of many regional mills, (particularly \*\*\*), our consideration of the issue of whether revocation of the order on rebar from Turkey would be likely to lead to continuation or recurrence of material injury to “all or almost all” of the producers in the region supports our conclusions regarding likely volume, likely price effects, and likely impact.

Therefore, based on the record in this review, we conclude that revocation of the subject order 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

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<sup>79</sup>CR/PR at Table III-11 (individual mill performance) and CR/PR at Table I-1 (regional industry performance in 1994-96).

<sup>80</sup>CR/PR at Table III-11.

<sup>81</sup>CR/PR at Table III-11.

<sup>82</sup>CR at III-24 n.12, PR at III-5 n.12.

<sup>83</sup>CR/PR at Table E-13.

<sup>84</sup>Since 1994, regional imports of rebar from Turkey have been concentrated in Puerto Rico and Florida (\*\*\* percent of reported regional shipments during 1994-96 and 71.7 percent of regional imports by port during 1997-2001). Original CR at IV-5 (Table IV-2) and CR/PR at Table E-12; *see also* Original Report (USITC Pub. 3034) at IV-3-4.

<sup>85</sup>CR/PR at Table I-4. This mill accounted for \*\*\* percent of regional production in 2001. CR at Table I-4. The State of Florida accounted for \*\*\* percent of regional mills’ within region shipments in 2001 and Puerto Rico for \*\*\*. CR/PR at Table E-9.

<sup>86</sup>CR/PR at Table E-1. The mill attained \*\*\* capacity utilization in three of the review years. CR/PR at Table E-1.

<sup>87</sup>CR/PR at Table III-11.

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 this review, we conclude that, if the subject order were revoked, subject imports would not be likely to have a significant adverse impact on the regional industry within a reasonably foreseeable time.

#### **IV. CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty order on rebar from Turkey would not be likely to lead to continuation or recurrence of material injury to the regional industry within a reasonably foreseeable time.