UNITED STATES INTERNATIONAL TRADE COMMISSION

Grain-Oriented Silicon Electrical Steel From Italy and Japan

Investigation No. 701-TA-355 and 731-TA-659-660 (Review) (Remand)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3585)

VIEWS OF THE COMMISSION

By opinion and order dated December 24, 2002, Judge Richard K. Eaton of the U.S. Court of International Trade remanded the Commission's determinations involving subject imports of grain-oriented electrical steel ("GOES") from Italy and Japan.[1] Upon consideration of the remand order, we determine that the revocation of the countervailing duty order on GOES from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also determine that the revocation of the antidumping duty orders on GOES from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

I. PROCEDURAL HISTORY

On February 23, 2001, the Commission determined that revocation of the countervailing duty order on GOES from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3] The Commission also determined that revocation of the antidumping duty orders on GOES from Italy and Japan would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4] Italian and Japanese producers, exporters and importers of the subject merchandise appealed the Commission's determinations to the U.S. Court of International Trade ("Court"). On December 24, 2002, the Court remanded the Commission's determination on the grounds that the Commission did not apply the correct "likely" standard and that the Commission failed to specifically discuss each of the four factors outlined in 19 U.S.C. §1675a(a)(2)(A)-(D) and failed to discuss whether

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[1] Nippon Steel Corp., et al. v. United States, Slip Op. 02-153 (December 24, 2002)("Slip Op.").

[2] Chairman Deanna Tanner Okun and Vice Chairman Jennifer A. Hillman dissenting. Chairman Okun and Vice Chairman Hillman join section I of these views. They adopt their prior views with respect to likely material injury. See "Dissenting Views of Vice Chairman Okun and Commissioner Hillman." Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Review) USITC Pub. 3396 (February 2001) ("USITC Pub. 3396") at 21.

[3] USITC Pub. 3396 at 3.

[4] Id.

the likely volume of imports of subject merchandise would be significant in absolute terms or relative to U.S. production and consumption, pursuant to 19 U.S.C. § 1675a(a)(2). [5]

We have considered the record as a whole in light of the instructions in the Court's opinion. Because the Court did not remand the issues of the domestic like product and domestic industry or the conditions of competition, we adopt our prior views regarding these issues.[6] With respect to the issues of no discernible adverse impact and cumulation, the application of the term "likely" as meaning "probable" does not change our reasoning or conclusions of our prior views and we therefore adopt our prior views here. We therefore considered cumulated subject imports for the purposes of our determination. Below, we present our findings as to likely volume, likely price effects, and likely impact.

II. ANALYSIS

A. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[7] 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

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[5]The Court found that given these findings, it would be premature to address plaintiffs' substantial evidence arguments. Slip Op. at 15.

[6]For purposes of the Commission's determinations on remand in these reviews, we apply the term "likely" consistent with the Court's instruction and with other recent decisions of the Court of International Trade which address the meaning of the term "likely" as it is to be applied 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 denying stay of proceeding pending appeal) Slip Op. 02-152 at (December 20, 2002) (Restani, J.); and Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int'l Trade July 19, 2002) (remanding Review determination to Commission) (Wallach, J.).

[7]19 U.S.C. § 1675a(a)(2).

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.[8]

We are mindful that the Court has found that it was not apparent in our opinion whether we considered the four statutory volume factors and noted the importance of considering all relevant economic factors, including those set out in the statute, and of doing so in a way that their consideration is discernible. In this opinion, we clarify that we did consider these factors. Because of the nature of the GOES industry and market, we did not find, however, that all four factors were dispositive in our analysis. As outlined in footnotes 21, 54, and 55 below, the lack of inventories, absence of barriers to importation in other markets, and limited potential for product shifting, did not outweigh other factors which led us to conclude that the likely volume of imports would be significant if the orders were revoked. Capacity factors are addressed in this remand opinion where appropriate.

In the original investigations, the Commission found that the volume of dumped and subsidized imports, measured by both quantity and value, was significant, and increased substantially during the period of investigation.[9] The Commission further found that market penetration of subject imports increased dramatically during the period of investigation.[10] The increases in volume and market share took place despite relatively high capacity utilization rates for both Italian and Japanese producers.[11] Upon issuance of the orders, the volume and market share of subject imports of GOES fell dramatically and have remained substantially below the levels they attained during the original investigation.[12]

The record indicates that subject producers have both the incentive and the capability to

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[8]19 U.S.C. § 1675a(a)(2)(A-D).

[9]Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 and 731-TA-659-660 (Final) USITC Pub. 2778 at I-15-17 (May 1994)("USITC Pub. 2778").

[10]USITC Pub. 2778 at I-15-17.

[11]Capacity utilization rates ranged from *** percent to *** percent for the Italian producer and *** percent to *** percent for Japanese producers during the original investigation. Confidential Staff Report ("CR") and Public Staff Report ("PR") at Tables IV-2 and IV-6.

[12]CR and PR at Table I-1.

significantly increase shipments of the subject product to the United States within a reasonably foreseeable time if the orders were revoked. In reaching this determination, we considered a number of factors affecting GOES supply and demand,[13] as well as the export orientation of the subject producers, the range of GOES products offered by Italian and Japanese producers, pricing in the United States and in third countries during the original and review periods, and patterns of shipments to other markets into which the subject imports are sold.

A primary incentive for subject imports to return to the U.S. market if the orders were revoked lies in the importance of exports to these subject producers and the higher prices commanded in the U.S. GOES market compared to other export markets. As during the original investigations, subject producers in Italy and Japan continue to be export-oriented.[14] [15] Subject producers have demonstrated considerable flexibility to switch between export markets as a substantial portion of their exports that were being shipped to the United States have made their way to other markets following imposition of the orders.[16]

During the period of review, the Italian subject producer, AST, exported well over *** of its total shipments.[17] Although its total exports were *** percent less in 1999 than they were in 1992, the year exports peaked during the original period of investigation, the lower level of exports reflects the Italian subject producer's loss of sales in the U.S. market because of its inability to compete at fair prices in the

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[13]See discussion of conditions of competition at USITC Pub. 3396 at 13-16.

[14]Exports of Italian GOES to other countries accounted for *** percent in 1997, *** percent in 1998, and *** percent in 1999 of Italian GOES shipments. CR and PR at Table IV-2. At the same time, exports of Japanese GOES to other countries accounted for *** percent in 1997, *** percent in 1998, and *** percent in 1999 of Japanese GOES shipments, well above levels during the original investigation period. CR and PR at Table IV-6.

[15]CR and PR at Tables IV-2 and IV-6. In 1999, exports of subject merchandise from the cumulated countries to third country markets totaled *** short tons, which is equivalent to *** percent of U.S. apparent consumption and *** percent of U.S. production for the same year. In interim 2000, exports to third-country markets totaled *** short tons which is equivalent to *** percent of U.S. apparent consumption and *** percent of U.S. production for the same period. Compare CR and PR at Table I-1 with CR and PR at Tables IV-2 and IV-6.

[16]CR and PR at Tables IV-2, IV-5, and IV-6.

[17]CR and PR at Table IV-2.

U.S. market following imposition of the orders.[18]

While Japanese subject producers' exports to the U.S. market decreased dramatically after the imposition of the orders, their already heavy reliance on export markets intensified during the period of review and they continued to export the *** of their total shipments.[19] Furthermore, ***.[20] [21] [22] Finally, we note that the Japanese home market has contracted, both in absolute size and as a percent of total shipments, thereby requiring Japanese subject producers to focus on their export shipments in order to maintain their high capacity utilization rates.[23]

Subject producers have the incentive to export to the U.S. market if the orders were revoked. The record indicates that U.S. prices for GOES are higher than third-country prices, which makes the U.S. market particularly attractive.[24] [25] As will be discussed more fully below, in competition between

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[18]CR and PR at Table IV-2.

[19]CR and PR at Table IV-6.

[20] CR and PR at Table IV-5.

[21]Japanese shipments to Asian and to other foreign markets have been erratic with significant annual increases and declines despite Japanese respondents' claims of robust demand for GOES in many of those markets. CR and PR at Tables IV-5 and IV-6, and Japanese Producers' Post-Hearing Brief at Appendix D. See also AST's Posthearing Br. at Ex. A (***).

[22]The record indicates that there are no barriers to the importation of the subject merchandise into countries other than the United States. CR at IV-4 and IV-10; PR at IV-3-4. Nevertheless, because of the higher prices commanded in the U.S. market compared to other markets, we believe that subject producers still have the incentive to ship to the United States.

[23]CR and PR at Table IV-6.

[24]Petitioners' Prehearing Br., Exs. 11, 12. Japanese producers of GOES reported sales prices for comparable ***. CR at V-17 and V-18; PR at V-9 and V-10.

[25]Respondents argue that differences in prices in the United States and the neighboring markets of Canada and Mexico can be explained by substantial differences between GOES products sold in the respective markets or differences in the channels of distribution. AST argues that lower prices for GOES in Canada and Mexico reflect sales to stampers as opposed to sales to transformer manufacturers in the United States. AST Posthearing Br. at 10-12. However, the customer base in the United States is composed of both transformer producers and stampers and slitters, thus U.S. prices also reflect a product mix ***.

Japanese subject producers argue that lower prices for GOES sold in Canada and Mexico can be attributed to the fact that subject producers *** sell a semi-finished product to slitters/stampers in Canada and Mexico, while U.S. GOES producers sell a fully-processed product directly to transformer producers in the U.S. market. See Japanese Producers' Posthearing Br. at 12 & App. A. As for the differences between "semi-processed" in the other two markets and the "finished" U.S. product, "semi-processed" GOES is merely conventional GOES that requires slitting, a relatively minor process. See CR at I-13-I-comparable domestic and subject GOES products in other foreign markets, the subject products have been priced below the U.S. product.[26]

While parties have argued that some U.S. purchasers have moved to or expanded their operations in Mexico and Canada, and as a result these subject import volumes will not return to the United States, U.S. apparent consumption has increased since the original investigation and the U.S. market remains the largest market for GOES in the world.[27] Further, in the past, Japan traditionally has shipped only high permeability GOES to the U.S. market, which commands a substantially higher price than conventional GOES.[28] And, while Italy was ***.[29]

Certain transformer producers moved all or part of their U.S. operations to Canada and Mexico following imposition of the countervailing and antidumping duty orders in the United States, in order to continue to take advantage of the subject producers' lower GOES prices. U.S. GOES producers have competed against these subject producers for sales in both Mexico and Canada of all varieties of GOES products.[30]

Because of the heightened competition between domestic GOES purchasers and their competitors in Canada and Mexico, largely transformer producers, U.S. purchasers and importers indicate that U.S. customers would seek out subject imports if revocation occurs.[31] For a variety of reasons, subject

15; II-8 at n.22, II-22 at n.57; PR at I-10-11, II-4, n.22, II-11, n.57. The record shows sales of GOES that are not semi-finished. Petitioners' Posthearing Br. at Ex. 1 at 64-66; Petitioners' Prehearing Br. at Exs.11, 12. In any event, the record indicates that prices for various grades of the subject product sold in Canada and Mexico are below current domestic prices for competing domestic grades. Petitioners' Posthearing Br. at Ex. 1 at 64-66.

[26]See, for example, Petitioners' Prehearing Br. at pp. 82-83, n.28.

[27]CR and PR at Table I-1; Tr. at 90, 107.

[28]Japanese Producers' Posthearing Br. at 8; Tr. at 160, 211, 212.

[29]See AST's Posthearing Brief at A-1.

[30]CR at II-2-7; PR at II-2-3; Petitioners' Posthearing Br. at Ex. 1 at 43-47; Tr. at 61-62, 64-65, 90-91.

[31]For example, as one purchaser explained *** Purchasers' Questionnaire at 11, Question II-2b. See also *** Purchasers' Questionnaire at 7, Question II-2b; ***; *** Purchasers' Questionnaire at 31, Question VI-9; *** Importers' Questionnaire at 32, Question III-E-11; *** Importers' Questionnaire at 5, Question II-3 *** at 5, Question II-4a & b ***, and at 10, Question II-14 ***; *** Importers' Questionnaire at 10, Question II-13b; and *** Importers' Questionnaire at 11, Question II-14b and at 5,

producers are in a good position to respond to this demand. We note that subject producers are supplying purchasers in Canada and Mexico that also maintain production facilities in the United States.[32] Subject producers' infrastructure in the United States for the sale of their product remains intact[33] and much of the subject product destined for Canada and Mexico currently is shipped through the United States, such that there would not be significant logistical impediments to effectuating such a change.[34] Finally, since most U.S. sales are made on a short-term contract or spot basis, subject producers would be able to increase their sales to U.S. customers within a reasonably foreseeable time if the orders were revoked.[35] [36]

There exists significant demand in the United States for both conventional and high-permeability GOES. As during the original period of investigation, transformer manufacturers evaluate GOES purchases based on the total ownership costs (TOC); however, *** stated in its questionnaire that there is now greater emphasis on price as a first consideration.[37] Since the original investigation period, demand in the U.S. market for conventional GOES has increased based on economic efficiencies sought by transformer producers.[38] At the same time, other purchasers of GOES indicated that they expected demand for high-permeability GOES to increase.[39] Thus, despite respondents' arguments to the contrary,[40] conditions in the U.S. market do not preclude an increase in subject imports from Japan if the

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Question II-4b ***.

[32]CR at II-4-6, II-22-23; PR at II-2-3, II-11.

[33]There are two Japanese-owned electrical steel service centers in the United States that were built to process Japanese electrical steel in the U.S. market and are reported to be operating at low levels of capacity. AST, the Italian producer, has an affiliated company, AST USA, that remains active in the U.S. market, currently handling TIB sales. Petitioners' Posthearing Br. at 10, Exs. 4 and 5.

[34]CR at IV-2-3; PR at IV-1.

[35]CR at V-5-6; PR at IV-4.

[36]The record also indicates that subject producers' sales to third-country markets ***. Petitioners' Posthearing Br. at Ex. 1 pp. 40-42.

[37]CR at II-30; PR at II-15.

[38]CR at II-29-30; PR at II-15-16.

[39]CR at II-27; PR at II-14.

[40]See, for example, Nippon Prehearing Brief, at page 50. In arguing minimal competition between subject Japanese imports and domestic GOES, Nippon focuses on its behavior and competition in the U.S. market only during the period of review when Japanese subject GOES was subject to the antidumping order, and does not consider a scenario where competition is not restricted by the order.

order was lifted. Japanese subject producers sold significant amounts of low-priced high-permeability GOES in the United States during the period of the original investigations despite the prevalence of conventional GOES in the U.S. marketplace.[41] In addition, Japanese subject producers have substantial capacity to produce both conventional GOES, which is now in greater demand in the U.S. market, and high-permeability GOES,[42] and, Japanese subject producers export considerable amounts of both types of GOES.[43] Indeed, in 2000, *** percent of Japanese shipments to Canada and Mexico were of conventional GOES.[44] With regard to subject imports from Italy, during both the original investigation and the period of review, subject imports from Italy consisted of conventional GOES.[45] Consequently, subject imports from Italy also would likely increase to meet the increased demand for conventional GOES in the higher priced U.S. market.[46] [47]

Subject producers in Italy and Japan also have the capability to increase shipments to the U.S.

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[41]USITC Pub. 2278 at I-16, I-10, II-30.

[42]CR and PR at Table IV-8.

[43]CR and PR at Table IV-7.

[44]Japanese Respondents' Posthearing Br. at Appendix B.

[45]CR at Tables IV-2 and IV-3; CR at II-18; PR at II-9. The vast majority of the Italian subject producers' GOES shipments is conventional GOES. CR and PR at Table IV-3. AST argues that if the orders were revoked, the likely volume of imports from Italy may be discerned from the pattern of GOES exports from German and French GOES producers owned by AST's majority shareholder, Thyssen Krupp. AST's Prehearing Br. at 31. Information, provided by AST, supporting this assertion is very limited, despite the fact that AST itself has access to this data. For example, to ascertain as to whether this claim is credible, the factual background necessary to understand the total GOES production volumes of these companies, their domestic markets and their product mix, as well as the export statistics provided by AST would be necessary.

[46] Nonsubject countries supplied 97.7 percent of the total quantity of U.S. imports of GOES during the period of review. As indicated in the conditions of competition in our original views in these reviews, the largest foreign source is Russia. USITC Pub. 3396 at 16. The record indicates that the imports from Russia are of a lower quality than the U.S. product and GOES from major foreign suppliers and that the quantity of Russian GOES exported has been controlled by a quota as part of the overall bilateral steel agreement to control Russian steel exports to the United States. As far as the other nonsubject countries, the record indicates that a modest ability may exist among these countries to increase the supply of GOES to the United States. CR at II-23-24; PR at II-11.

[47]Finally, although Japanese subject producers argue that they would not shift GOES shipments from "ample demand" in Asian and other foreign markets, as noted herein, Japanese shipments to these markets have not been consistent from year to year and the U.S. market has commanded higher prices.

market if the orders were revoked. Although subject producers indicate that they have no plans to increase capacity within the foreseeable future, existing GOES production capacity in both countries is substantial.[48] While apparent increases in production capacity in both Italy and Japan are stated to be due to product mix shifts and other factors, and as such do not reflect actual capacity increases,[49] both the Italian and Japanese GOES producers reported capacity levels during the period of review either *** or at *** higher than during the original investigation period when they were able to increase significantly both their volume and market share. In 1999, the last full year for which data were available, the total capacity for both countries was *** total U.S. consumption and U.S. production of GOES for the same period.[50] Subject producers in both Italy and Japan divide this considerable production capacity between high-permeability GOES and conventional GOES.[51]

At the same time, subject producers have appreciable unused capacity that could be used to produce subject merchandise for the U.S. market if the orders were revoked. Although the Italian subject producer reported relatively high capacity utilization rates during the period of review, its capacity utilization rates declined from *** percent in 1997 to *** percent in 1999.[52] At the same time, Japanese capacity utilization rates fluctuated from *** percent in 1997, to *** percent in 1998, and *** percent in 1999.[53] In 1999, subject producers from Italy and Japan had *** short tons of unused capacity, which

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[48]CR and PR at Tables IV-2 and IV-6.

[49]CR and PR at Tables IV-5, IV-12.

[50]CR and PR at Tables I-1, IV-2, and IV-6.

[51]In 1999, the Italian subject producer's production of high-permeability GOES was equivalent to over *** of its conventional GOES production. CR and PR at Table IV-4. The record indicates that the Italian producer recently increased its production of high-permeability GOES by *** percent. See Petitioners' Prehearing Br. at Ex. 3. The record also indicates that this increase in the production of Italian high-permeability GOES corresponds with *** in the United States. See AST's Posthearing Brief at A-1.

In 1999, Japanese subject producers' production of conventional GOES was equal to *** of its production of high-permeability GOES. Japanese subject producers' production of their combined high-permeability GOES products totaled *** short tons while their production of conventional GOES totaled *** short tons. CR and PR at Table IV-8.

[52]CR and PR at Table IV-2.

[53]CR and PR at Table IV-6.

was equivalent to *** percent of U.S. production and *** percent of U.S. apparent consumption for the same year.[54] [55] [56] Moreover, there is incentive for subject producers to maximize and sustain the utilization of available capacity due to the high-fixed costs associated with GOES production.[57]

In these reviews, based on subject producers' substantial production capacity and unused capacity relative to U.S. production and U.S. apparent consumption, and the incentive to ship to the U.S. market as seen in their reliance on export markets, and demonstrated ability to shift between their export markets, the attractiveness, size and stability of the U.S. market, in particular the higher prevailing prices (as discussed more fully below), and subject producers' trade patterns during and after the original investigations, we find that the likely volume of subject imports would be significant in terms of U.S. production and U.S. apparent consumption if the countervailing and antidumping duty orders were revoked.

B. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if orders under review are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject

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[54] See CR and PR at Tables I-1, IV-2, and IV-6. As a general matter, inventories are not a factor in the GOES industry; any inventories that are maintained are produced to order. We note that the Italian producer reported no inventories of GOES in Italy, and that Japanese producers' inventories, while not insignificant, have been declining. There were *** inventories reported by any U.S. importer. CR at II-19, II-22, IV-3; PR at II-10, II-11, IV-3; CR and PR at Tables IV-2, and IV-6; Tr. at 155-156 (Italian subject producer produces GOES to order, not for inventory). Japanese Respondents' Prehearing Br. at 47 at n.24. As such, we do not view existing inventories or likely increases of inventories as dispositive in reaching our determination.

[55] We also note that while there may be some limited potential for product shifting by subject producers we do not view this potential to product shift is not dispositive in our affirmative determination. While both Italian and Japanese producers use the same machinery and equipment for GOES as well as other steel products, potential for product shifting is limited by box-annealing capacity. CR at IV-8, IV-15; PR at IV-4, IV-5; CR and PR at Tables IV-4 and IV-8.

[56] We note the responding Japanese producers reported a capacity utilization rate of *** percent in interim 2000, and the responding Italian producer reported a capacity utilization rate of *** percent. While the capacity utilization rate of the Japanese producers, in particular, was high in interim 2000, we note that the reported capacity utilization rates fluctuated over the period of review, and we find that they will likely fluctuate for the foreseeable future. CR and PR at Tables IV-2 and IV-6.

[57] See e.g., CR at II-14; PR at II-7; Tr. at 16.

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.[58]

In the original investigations, the Commission found that the domestic industry suffered significant, adverse price effects caused by the competition with the low-priced subject imports from each country.[59] Specifically, the Commission found evidence of pervasive underselling by the subject imports, resultant lost sales and price depression in the U.S. industry.[60] For the following reasons, we find that the significantly increased volumes of the cumulated subject imports would likely have significant adverse price effects on the domestic like product.

Because of the minimal levels of subject imports during the period of review, we have little data with which to compare the current prices of the subject GOES imports with the domestic like product. As discussed in the conditions of competition, the domestic like product and subject imports are substitutable. Moreover, as at the time of the original investigations, price is an important factor in purchasing decisions. It follows, therefore, that if the orders were revoked, subject imports will enter the U.S. market at highly competitive prices in order to obtain sales and increase market share. This is consistent with expectations of several responding importers and purchasers.[61]

The available pricing data indicate that domestic prices have fallen during these reviews and are at lower levels than prices during the original investigations.[62] This decrease in price levels is notable

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[58]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 . . ., 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.

[59]USITC Pub. 2778 at I-15-17.

[60]USITC Pub. 2778 at I-15-17.

[61] Six of 13 purchasers indicated that revocation of the orders on Italian GOES would lead to lower GOES prices. Ten of 14 responding purchasers reported that revocation of the orders on Japanese GOES would lead to more competition in the U.S. GOES market. CR at II-43; PR at II-23-24.

[62]CR at V-15-17; PR at V-8-9.

since it occurred at a time of increasing demand.[63] The falling prices of U.S. GOES are due to a number of factors, including downstream competition from increased U.S. imports of both transformers and laminated/stamped GOES, declining average unit costs of U.S. GOES producers, and increased U.S. imports of GOES from non-subject countries compared with the original investigations.[64] While U.S. producers have attempted to raise prices, they have been relatively unsuccessful in their attempt.[65]

Even a relatively small amount of lower-priced imports from subject countries would further suppress prices as domestic producers attempt to compete with the increased volume of low-priced subject imports and are pressured by their customers for further price reductions. As indicated in the conditions of competition, several large purchasers have manufacturing facilities in both Canada and Mexico as well as the United States.[66] The record indicates these purchasers are buying subject GOES from Italy and Japan for their facilities in Mexico and Canada at prices that are lower than prevailing U.S. prices.[67] The record indicates further that these purchasers are currently seeking to obtain prices from domestic producers for GOES for their U.S. facilities comparable to prices for the subject product shipped to their Canadian and/or Mexican operations.[68] The pressure exerted by large U.S. purchasers on domestic producers to reduce their prices would not only continue but this pressure would likely increase substantially as lower-priced subject imports became readily available without the orders in place. Additionally, because of the heightened competition between domestic GOES purchasers and their

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[63]CR at II-25; PR at II-12-13.

[64]CR at V-13; PR at V-7; CR and PR at Table I-1; Tr. at 61-62, 90-91.

[65]CR at V-13-14; PR at V-7.

[66]USITC Pub. 3396 at 14-15.

[67]Petitioners' Posthearing Br. at Ex. 1 pp. 61-68. Average unit values for U.S. imports of GOES from Japan under temporary importation under bond ("TIB") provisions in 1999 of $0.49 per pound, were substantially lower than the AUV of $0.97 per pound for imports for consumption. Similarly, data for U.S. imports from Italy show the AUVs of TIB imports were $0.43 per pound in 1999, while the AUVs for imports for consumption were at $0.59 per pound. Petitioners' Prehearing Br. at 84, Ex. 6 at Table 1. While we recognize that there may not be direct comparisons, they are consistent with other price comparisons on the record and give an indication of the aggressive low prices at which the unfairly traded imports likely would be sold in the U.S. market if the orders were revoked.

[68]Id.

competitors in Canada and Mexico, U.S. purchasers and importers indicate that U.S. customers would seek out the lower-priced subject imports if revocation occurs.[69] For example, *** stated that prices in Canada and Mexico are lower due to open competition; and that if the orders were revoked, prices in the United States will drop to price levels known in Canada and Mexico.[70] U.S. producers have stated that the prices in Canada and Mexico are below prices charged during the original investigations and for at least certain, but higher-volume products, ***.[71]

As explained in the likely volume section, there is an incentive for the low-priced, subject imports to return to the U.S. market since subject producers would receive a higher price for the product in the U.S. market relative to third country markets, even while they undersold the U.S. product to increase sales. In light of the importance of price in the GOES market, the interchangeability of subject imports and the domestic like product, the negative price effects of low-priced imports in the original investigations, the underselling by subject imports during the original period of investigation, coupled with the incentive to enter the higher priced, large and stable U.S. market, we find a likelihood of negative price effects from the subject imports. We determine that, if the orders were 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.

C. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the orders were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the

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[69] See *** Purchasers' Questionnaire at 11, Question II-2b; *** Purchasers' Questionnaire at 7, Question II-2b; *** Purchasers' Questionnaire at 31, Question VI-9; *** Importers' Questionnaire at 32, Question III-E-11; *** Importers' Questionnaire at 5, Questions II-3 and II-4 a & b, and at 10, Question II-14; *** Importers' Questionnaire at 10, Question II-13b; and *** Importers' Questionnaire at 11, Question II-14b and at 5, Question II-4b.

[70] CR at D-9, D-12; PR at D-4.

[71] CR at D-5; PR at D-4; Petitioners' Prehearing Br., p. 83.

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.[72] 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.[73] 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 orders at issue, and whether the industry is vulnerable to material injury if the orders were revoked.[74]

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[72] 19 U.S.C. § 1675a(a)(4).

[73] Section 752(a)(6) of the Act states that the Commission may consider the magnitude of the margin of dumping in making its determination in a five-year review investigation. 19 U.S.C. § 1675(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year review investigations as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Commerce found the following sunset margins in its expedited reviews of the antidumping duty orders: *Italy:* ILVA S.p.A., Acciai Speciali Terni, S.r.I. and All Others, 60.79 percent; *Japan:* Kawasaki Steel Corporation, Nippon Steel Corporation and All Others, 31.08 percent. 65 Fed. Reg. 41433, 41434 (July 5, 2000). Commerce made no duty absorption determinations. CR at I-10; PR at

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

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

[74] The SAA states that in assessing whether the domestic industry is vulnerable to injury if an 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

In the original investigations, the Commission found the U.S. GOES industry to be materially injured as a result of the increased volumes and market shares of the subject imports. Specifically, the Commission determined that as a result of the increasing volumes of low-priced subject imports "the domestic industry has suffered lower sales, production, capacity utilization, employment, and profitability than otherwise would have prevailed."[75]

Following imposition of the orders, the domestic industry's performance improved significantly. The domestic industry had a *** operating margin of *** percent in 1993.[76] By 1997, just three years after the imposition of the orders, with a dramatic decrease in subject imports in the U.S. market, the domestic industry had a *** operating margin of *** percent.[77] Other indicators also improved. Since 1994, the industry has both modernized existing capacity and added needed additional capacity.[78] Production increased and capacity utilization increased fairly steadily through 1997-1999.[79] As these facts indicate, the domestic industry has returned to a relatively healthy state and is not currently in a vulnerable condition as contemplated by the statute's vulnerability criterion.[80]

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

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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.

[75]USITC Pub. 2778 at I-17.

[76]CR and PR at Table I-1.

[77]CR and PR at Tables I-1 and III-7.

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

[79]CR and PR at Table III-1.

[80]19 U.S.C. § 1675a(1)(C). See SAA at 885 (The term 'vulnerable' relates to susceptibility to material injury by reason of dumped or subsidized imports. This concept is derived from existing standards for material injury. If the Commission finds that the industry is in a weakened state, it should consider whether the industry will deteriorate further upon revocation of an order.).

industry and would likely cause the domestic industry to lose market share.[81] Moreover, the loss in market share and subsequent decrease in capacity utilization would be more severe in this capital intensive industry, in light of the need to maintain high capacity utilization to recoup investment.

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

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

CONCLUSION

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

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[81]As we found in the conditions of competition section of our views in these reviews, demand for GOES will likely increase somewhat over the next several years as demand for electricity increases. Although the domestic industry is reporting relatively high capacity-utilization rates, we find that the domestic industry will have sufficient capacity to supply this modest increase in demand, as domestic producers have made significant investments both to add capacity and to improve existing capacity. Moreover, the record indicates that in the fourth quarter of 2000, domestic producers show excess capacity. CR at II-15; PR at II-7-8. Petitioners' Prehearing Br. at 95-97; Petitioners' Posthearing Br. Ex. 1 at 10-12. Nevertheless, whether or not the domestic industry would be able to supply all of U.S. demand, lower-priced subject imports would still have negative price effects on the domestic industry as the domestic industry would be forced to lower prices in order to compete with subject imports.