Grain-Oriented Silicon Electrical Steel From Italy and Japan

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

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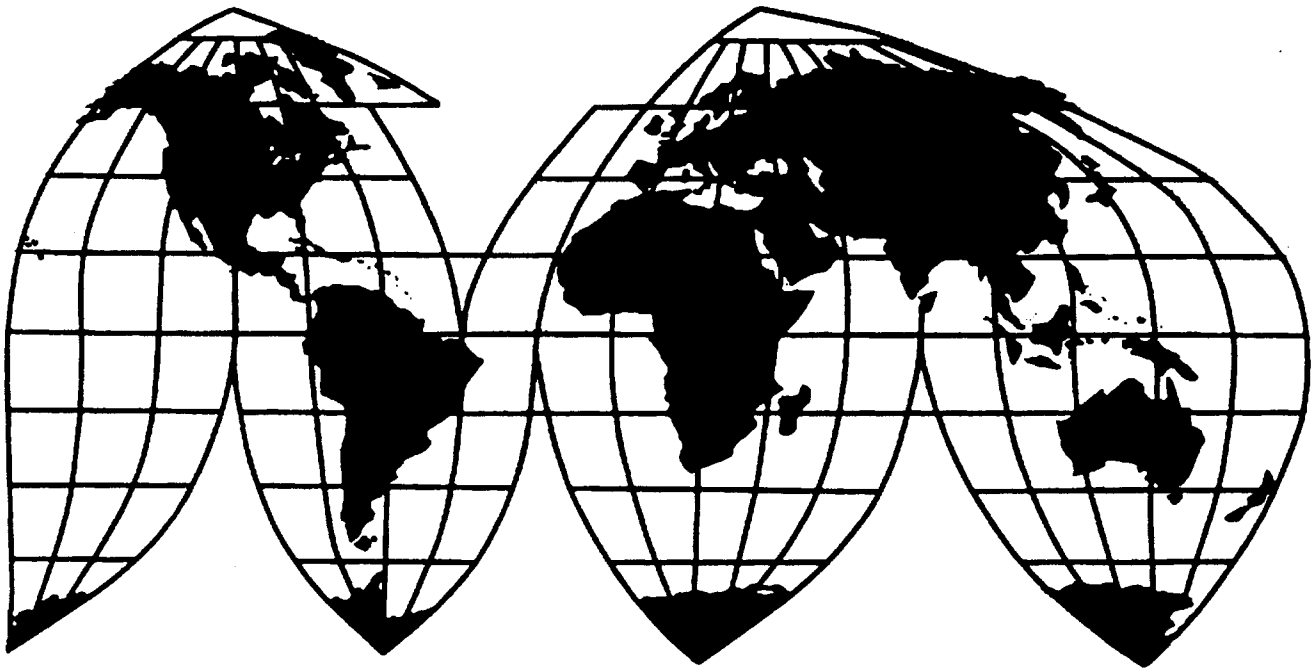
U.S. International Trade Commission



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VIEWS OF THE COMMISSION

By opinion and order dated December 17, 2003, Judge Richard K. Eaton of the U.S. Court of International Trade remanded for the second time the Commission's determination involving subject imports of grain-oriented silicon electrical steel ("GOES") from Italy and Japan.[1] Upon consideration of the second remand order, we determine that the revocation of the antidumping and countervailing duty orders would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] [3] [4]

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.[5] The Commission

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[1]Nippon Steel Corp., et al. v. United States, Slip Op. 03-168 (December 17, 2003) ("Slip Op. 03-168").

[2]Chairman Deanna Tanner Okun, Vice Chairman Jennifer A. Hillman, and Commissioner Daniel R. Pearson dissenting. See "Dissenting Views of Chairman Okun, Vice Chairman Hillman, and Commissioner Pearson."

[3]Commissioner Charlotte R. Lane did not participate in the original or review investigations, or in the first remand determination. She has reviewed the record and adopts and explains the findings of the Commission majority as indicated herein.

[4]Commissioner Pearson did not participate in the original or review investigations, or in the first remand determination. Commissioner Pearson adopts section I-IV-B of the review views and the dissenting views of Chairman Okun and Vice-Chairman Hillman. 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.

[5]USITC Pub. 3396 at 3.

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.[6] 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 determinations on the grounds that the Commission did not apply the correct "likely" standard; that the Commission failed to specifically discuss each of the four factors outlined in 19 U.S.C. §1675a(a)(2)(A)-(D); and that the Commission failed to discuss whether 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).[7]

On remand, the Commission again found that revocation of the countervailing duty order on GOES from Italy, and the antidumping duty orders on GOES from Italy and Japan would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. On December 17, 2003, the Court issued an opinion remanding the Commission's remand determination.[8] Although the Court found that the Commission had complied with its instructions regarding "likely" and the four enumerated

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[6]USITC Pub. 3396 at 3.

[7]Nippon Steel Corp., et al. v. United States, Slip Op. 02-153 (December 24, 2002) at 15. The Court found that given these findings, it would be premature to address plaintiffs' substantial evidence arguments. *Id.*

[8]Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-355 and 731-TA-659-660 (Remand) (Review), USITC Pub. 3585 (March 2003).

statutory factors, the Court found that several of the Commission's findings either required further explanation or were not supported by substantial evidence. Accordingly, the Court remanded the Commission's no discernible adverse impact, cumulation, likely volume, likely price and likely impact findings for reconsideration. The Court instructed the Commission to "revisit the evidence cited for its findings with respect to cumulation and likelihood of continuation or recurrence of material injury and satisfy its obligations with specific reference to the evidence it claims supports its conclusions and adequate explanations of its findings based on this evidence."[9] The Court further ordered that the Commission address certain evidence it believed "fairly detracts" from the weight of the evidence supporting the Commission's determinations.[10]

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 the Commission's prior views regarding these issues. As instructed by the Court we have reconsidered the Commission's determinations regarding no discernible adverse impact, cumulation, likely volume, likely price effects, and likely impact.

II. CUMULATION

A. Legal Framework

Subsection 752(a)(7) of the Tariff Act of 1930 provides –

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[9]Slip Op. 03-168 at 56.

[10] *Id.*

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[11]

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The Act precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry in the event of revocation.[12]

As stated in the original review determination,[13] we do not find in this remand that subject imports from Italy and Japan are likely to have no discernible adverse impact on the domestic industry if the orders regarding those countries were revoked. We further find that there is a reasonable overlap of likely competition among the subject imports and between subject imports and the domestic like product. We also adopt the Commission's finding, which has not been appealed, that there are no significant differences in the conditions of competition between the

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[11]19 U.S.C. § 1675a(a)(7).

[12]19 U.S.C. § 1675a(a)(7).

[13]USITC Pub. 3396 at 9.

subject countries.[14] We therefore exercise our discretion to cumulate subject imports from Italy and Japan.

B. No Discernible Adverse Impact

The Commission's "no discernible adverse impact" analysis is focused on the subject imports from each country and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.[15] In its opinion, the Court ordered the Commission to reconsider its findings under the "no discernible adverse impact" provision with respect to subject imports from both countries. In reconsidering its findings with respect to subject imports from Italy, the Court instructed the Commission to take into account the Italian producer's interim 2000 capacity utilization data and evidence of the inability of the Italian producer to increase production capacity. In reconsidering its findings with respect to subject imports from Japan, the Court instructed the Commission to consider Japanese subject producers' interim 2000 data, the [[

]], and evidence with respect to Japanese producers' inability to increase production capacity.[16] We have considered the record as a whole in light of the instructions in the Court's opinion and find that the record does not support the conclusion that subject imports from Italy or Japan are likely to have no discernible adverse impact on the

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[14]USITC Pub. 3396 at 10.

[15]See Potassium Permanganate from China and Spain, Invs. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 at 6 n.32 (Oct. 1999).

[16]Slip Op. 03-168 at 18.

domestic industry if the orders are revoked.

Before addressing the specific facts of this case, we note that we interpret the "no discernible adverse impact" provision of the statute to be a limited exception to the Commission's ability to cumulate subject imports in five-year reviews. We further note that the statute uses the phrase "no discernible adverse impact." In other words, the issue is whether imports will have no "noticeable" or "detectable" adverse impact. In applying this standard, it would be inappropriate to consider whether imports are likely to have a "significant" adverse impact, which is the appropriate standard for our ultimate analysis of whether the domestic industry is likely to be materially injured if the order is revoked.[17] The use of the lower "discernible" threshold indicates that Congress did not intend for the Commission to conduct a complete likely material injury analysis, or even an abbreviated one; rather, we understand the provision to essentially require us to identify those subject countries that are not likely to present any identifiable harm to the domestic industry such that they should be precluded from being cumulated with other subject countries.[18]

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[17] See, e.g., Stainless Steel Plate from Sweden, Inv. No. AA1921-114 (Review), USITC Pub. 3204 at 22 (July 1999) (The Commission rendered a negative determination, finding that "the subject imports are not likely to have a significant adverse impact on the domestic industry as a whole in the reasonably foreseeable future if the finding is revoked.")

[18]While the Commission may consider the same factors in determining no discernible adverse impact and likely volume, the substantial evidence necessary to support an affirmative material injury determination is greater than that which is necessary to find whether there will not be no discernible adverse impact from imports from a particular country. See Usinor Industeel, S.A. v. United States, Slip. Op. 03-118 (Sept. 8, 2003) at 6-7. As the Court stated in Neenah Foundry Co. et al., V. United States, the "consideration of trends in re cumulation is not the equivalent of an injury analysis itself." Slip Op. 03-168 01-77 (June 25, 2001) at 15. The Neenah court added that "cumulation of imports from the countries with relatively-small likely

Italy: In the original investigations, the volume of subject imports from Italy increased substantially between 1991 and 1993, rising from [[ ]] short tons in 1991 to [[ ]] short tons in 1993 - an increase of [[ ]] percent.[19] As a result, the U.S. market share of subject imports from Italy, although modest, steadily increased.[20] The increases in volume and in market share took place despite [[ ]] capacity utilization rates for the Italian producer, including a capacity utilization rate of [[ ]] percent in 1992.[21] In 1993, exports of subject merchandise from Italy to countries other than the United States accounted for [[ ]] percent of total exports.[22] Moreover, in the original investigations, the Commission found that subject imports from Italy directly competed with the domestic like product.[23] The Commission further found that subject imports from Italy undersold the domestic like product in 27 of 30 possible price comparisons.[24]

As the Commission previously found, and the Court affirmed, the record indicates that: (1) following imposition of the orders, subject imports from Italy fell dramatically, but continued

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volume and price impact would not only be appropriate, a refusal to do so without some additional justification could constitute an abuse of discretion." Id at 15.

[19]Confidential Staff Report ("CR") and Public Staff Report ("PR") at Table 1-1.

[20]The market share of subject imports from Italy increased from [[ ]] percent in 1991, to [[ ]] percent in 1992, and to [[ ]] percent in 1993. CR and PR at Table I-1.

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

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

[23]USITC Pub. 2778 at I-15.

[24]USITC Pub. 2778 at I-15.

to enter the U.S. market; and (2) that subject imports from Italy have maintained a continuing presence in the U.S. market.[25] Thus, the Italian subject producer has maintained at least some channels of distribution and contacts necessary for its product to enter and compete in the U.S. market.

The record indicates that the Italian subject producer has both the incentive and capability to increase shipments of the subject product within a reasonably foreseeable time despite high rates of capacity utilization. In reaching this determination, we have considered a number of factors affecting GOES supply and demand,[26] as well as the export orientation of the Italian subject producer, the range of products offered by the Italian producer, pricing, and the patterns of shipments to other markets into which the subject imports from Italy are sold.

In the original determination and first remand determination, the Commission found that a primary incentive for subject imports from Italy to return to the United States was in the importance of export markets to the Italian subject producer, and the higher prices commanded in the United States.[27] We reach the same conclusion for the second remand. Indeed, the Court found that the record supports the Commission's findings that the Italian producer is export-oriented and that prices are higher in the U.S. market than in other markets.[28]

During the period of review, the Italian producer, AST, exported well over [[ ]]

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[25]USITC Pub. 3396 at 9; Slip Op. 03-168 at 16.

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

[27]USITC Pub. 3396 at 18; USITC Pub. 3585 at 4.

[28]Slip Op. 03-168 at 16, 39.

of its total GOES shipments.[29] AST's reported aggregate exports to third-country markets during January 1997- September 2000 equaled [[ ]] percent by quantity of U.S. apparent consumption of GOES during this period.[30] Moreover, AST has shown that it possesses the ability to shift among its export markets with changing economic conditions.[31] AST has demonstrated considerable flexibility in switching between export markets as demonstrated by the fact that a substantial portion of its exports that were previously shipped to the United States have been directed to other markets following imposition of the orders.[32]

AST also has the capability to increase its shipments to the U.S. market if the orders were revoked. Although AST indicates that it has no plans to increase capacity, its existing GOES production capacity is already substantial.[33] While apparent increases in production capacity are stated to be due to product mix shifts and other factors and do not reflect actual capacity increases, Italian production capacity was [[ ]]over the review period than during the original investigations when subject imports from Italy increased both their volume and market share.[34] In 1999, the last full year for which data were available, AST's total production capacity

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

[30]CR at II-20 n.52.

[31]See AST's Posthearing Brief at Ex. A ([[ ]]).

[32]CR and PR at IV-2.

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

[34]Italian production capacity increased by [[ ]] percent between 1993 and 1997. CR at IV-4. It was [[ ]] short tons in 1991, 1992, and 1993. Italian production capacity was [[ ]] short tons in 1997, [[ ]] short tons in 1998, and [[ ]] short tons in

was equivalent to [[ ]] percent of total U.S. consumption and [[ ]] percent of U.S. production of GOES for the same period.

While AST's unused capacity alone was not and did not need to be the basis for the Commission's original no discernible adverse impact determination, the Italian subject producer possesses appreciable available capacity that could be used to produce subject merchandise for the U.S. market if the orders were revoked. In the original investigations, the Italian subject producer reported relatively high capacity utilization levels, including a level of [[ ]] percent in 1992, during a period in which the Commission found the volume of subject imports to be significant as indicated above.[35] Although the Italian subject producer reported relatively high capacity utilization rates during the period examined, its capacity utilization rates declined from [[ ]] percent in 1997 to [[ ]] percent in 1999.[36] In 1999, the Italian subject producer had [[ ]] short tons of unused capacity, which was equivalent to [[ ]] percent of U.S. apparent consumption and [[ ]] percent of U.S. production for the same year.[37]

The Court instructed us to clearly address and explain certain evidence and its effect on our determination that subject imports from Italy would not have no likely discernible adverse impact on the domestic industry if the orders were revoked. The first evidence cited by the Court requiring further explanation is the Italian subject producer's capacity utilization rate of [[ ]]

1999. CR and PR at Table IV-2.

[35]CR and PR at Table IV-2; USITC Pub. 2778 at I-15.

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

[37]CR and PR at Tables I-1 and IV-2.

percent for interim 2000, which it believed indicated that it is unlikely that the Italian producer will increase its exports to the United States within the reasonably foreseeable future. Even assuming that the Italian subject producer's capacity utilization rate would remain at such a level within the reasonably foreseeable future following revocation of the orders and that all of its capacity is committed long-term to specific customers, the Italian subject producer continues to have unused capacity of some [[ ]] short tons in interim 2000. We find that this degree of unused capacity could be used to produce at very least a *discernible* volume, that could be directed to the United States following revocation of the orders.[38] [39]

Moreover, the record indicates that Italian GOES production capacity is not fully committed to specific customers within the reasonably foreseeable future. AST indicated that as the date of the filing of its brief, nearly [[ ]] metric tons or [[ ]] percent of its GOES capacity was committed for the year 2001 via long-term contracts.[40] In other words, at least [[ ]] percent of Italian capacity to produce the subject product remains uncommitted for 2001 alone. This represents a significant amount of Italian production capacity that could be directed to the U.S. market following revocation of the orders. Moreover, many of AST's "long-

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[38]Although AST insists that it is operating at full capacity, the record indicates that it is quite possible for a GOES producer to operate above 100.00 percent capacity. CR and PR at Tables III-1 and IV-6. Additionally, by its own account, production capacity is a somewhat fluid figure due to shifts in product mix and other factors. CR and PR at IV-5.

[39]At the very least, these volumes will likely displace some domestic shipments, resulting in some loss in the domestic industry's capacity utilization and profitability. See our discussion in the Likely Impact section, infra.

[40]AST's Prehearing Brief at 26-27.

term"contracts are in fact short-term contracts, as tonnage representing [[ ]] percent of AST's production capacity [[ ]].[41] If the orders were revoked, we find that AST would likely shift its uncommitted production to the U.S. market, which has higher prices than other export markets. Indeed, the Commission previously found[42] and the Court affirmed[43] that the U.S. market commands higher prices than other export markets.

The Court also directs us to consider the fact that AST has no plans to add additional capacity. We do not place great weight on AST's statements about no plans to add capacity, due to AST's already substantial and uncommitted capacity that could be directed to the U.S. market within the reasonably foreseeable future if the orders were revoked.[44] We find these volumes to be particularly significant given that the applicable standard is whether subject imports are likely to have no *discernible* adverse impact.

In sum, we note the Italian industry's substantial production capacity and unused capacity relative to U.S. production and apparent U.S. consumption, its reliance on exports, the

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[41]AST's Prehearing Brief at 26-27; Petitioner's Posthearing Brief at Ex. 1 p.41.

[42]USITC Pub. 3585 at 5.

[43]Slip Op. at 39.

[44]The Court also indicated that according to the Staff Report the fact that AST's capacity utilization rate during the most recent period remained high suggests "that there is *little ability* of AST to increase exports to the United States in response to an increase in demand." Slip Op. 03-168 at 17 citing CR at II-19 (emphasis in the original). We note that the quote itself is not evidence, but the opinion of Commission staff about AST's ability to increase exports to the United States. In any event, we believe that other information on the record concerning the ability of AST to shift its GOES among various markets, as well as other factors discussed above, provides a more complete and accurate picture of AST's likely capacity and utilization, and leads to an opposite conclusion.

substitutability of the Italian product with the domestic like product, higher prices in the U.S. market, and the Italian subject producer's trade patterns during the original investigations discussed above. Based on these facts, we do not find that the likely subject imports from Italy would be likely to have no discernible adverse impact on the domestic industry if the orders were revoked.

Japan: In the original investigations, the volume of subject imports from Japan increased substantially between 1991 and 1993, rising from [[ ]] short tons to [[ ]] short tons in 1993, an increase of [[ ]] percent.[45] At the same time, the U.S. market share of subject imports from Japan fluctuated from [[ ]] percent in 1991 to [[ ]] percent in 1992, and to [[ ]] percent in 1993.[46] These increases in volume and market share took place despite [[ ]] capacity utilization rates for the Japanese subject producers.[47] In 1993, exports of subject merchandise from Japan to countries other than the United States accounted for [[ ]] percent of total Japanese shipments.[48] Moreover, in the original investigations, the Commission found that subject imports from Japan directly competed with the domestic like product.[49] The Commission further found that subject imports from Japan undersold the

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

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

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

[48]1994 Staff Report at Table 15.

[49]USITC Pub. 2778 at I-16. The Commission found that both Japanese high-permeability *and* conventional grades competed with the domestic like product.

domestic like product to a significant degree.[50]

As the Commission previously found in the original review determination and as the Court affirmed, the record indicates that (1) following imposition of the orders, subject imports from Japan fell dramatically but continued to enter the U.S. market; and (2) the continuing presence of subject imports from Japan indicates that the Japanese subject producers have maintained at least some channels of distribution and contacts, which supports the finding that Japanese subject producers have maintained sufficient channels of distribution to compete in the U.S. market if the orders were revoked.[51] Furthermore, the Court found that the record supports the Commission's finding that the Japanese product is substitutable and competes with the domestic like product. We adopt these findings for purposes of our second remand determination.[52]

The record also indicates that Japanese subject producers have both the incentive and capability to increase shipments of the subject product within a reasonably foreseeable time so as to not have no discernible adverse impact on the domestic industry. In reaching this determination, we have considered a number of factors affecting GOES supply and demand,[53] as well as the export orientation of Japanese subject producers, the range of products offered by the Japanese GOES industry, pricing, and the patterns of shipments to other markets into which the

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

[51]USITC Pub. 3396 at 9; Slip Op. 03-168 at 14.

[52]CR at II-37, Slip Op. 03-168 at 45.

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

subject imports from Japan are sold.

In both the original and remand determinations, the Commission found that a primary incentive for subject imports to re-enter the U.S. market lies in the importance of exports to Japanese subject producers and the higher prices commanded in the United States.[54] We again reach this conclusion. Moreover, the Court found that the record supports the Commission's findings that the Japanese subject producers are export-oriented[55] and that GOES prices are higher in the U.S. market than in other markets.[56]

While Japanese subject producers' exports to the U.S. market decreased dramatically after the imposition of the orders, their already heavy reliance on exports intensified during the period of review and they continued to export nearly [[ ]] of their total GOES shipments.[57] [[

]].[58] Furthermore, [[

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[54]USITC Pub. 3396 at 19 and USITC Pub. 3585 at 5.

[55]Slip Op at 14, 16.

[56]Slip Op. 03-168 at 38.

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

[58]CR at II-23 n.58; PR at II-11 n. 58.

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

Finally, we note that the Japanese home market has contracted, both in absolute size and as a percentage of total shipments, thereby requiring Japanese subject producers to focus on their export shipments in order to maintain their high capacity utilization rates.[60]

Japanese subject producers also have the capability to increase their shipments to the U.S. market if the orders were revoked. Although Japanese subject producers indicate that they have no plans to increase existing capacity, current Japanese GOES production capacity is substantial. Japanese subject producers' reported capacity levels during the period of review were [[ ]] of the levels they experienced during the original investigation period when they were able to increase significantly both their U.S. shipment volume and market share.[61] In 1999, Japanese production capacity was equivalent to [[ ]] percent of total U.S. consumption and [[ ]] percent of U.S. production of GOES for the same period.[62]

While Japanese producers' unused capacity alone was not the basis for the Commission's no discernible adverse impact determination, nor did it need to be, Japanese subject producers possess unused capacity that also could be used to produce subject merchandise for the U.S. market if the orders were revoked. Japanese capacity utilization rates fluctuated from [[ ]] percent in 1997 to [[ ]] percent in 1998, and then to [[ ]] percent in 1999.[63] In 1999, Japanese subject producers had [[ ]] short tons of unused capacity, which was equivalent to

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

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

[62]CR and PR at Tables I-1; IV-6.

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

[[ ]] percent of U.S. production and [[ ]] percent of U.S. apparent consumption for the same year. 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.[64]

The Court instructed us to clearly address and explain certain evidence and its effect on our determination that subject imports from Japan would not likely have no discernible adverse impact on the domestic industry if the order were revoked. First, the Court instructs us to consider Japanese subject producers' capacity utilization rate of [[ ]] percent for interim 2000.[65] While the capacity utilization rate for Japanese subject producers was particularly high in interim 2001, the reported capacity utilization rates for Japanese subject producers fluctuated over the period of review. We find that Japanese capacity utilization rates will fluctuate within the foreseeable future due to a number of factors. Japanese subject producers' home market contracted throughout the period of review, accounting for [[ ]] percent of total Japanese shipments in 1997 and [[ ]] percent in 1999.[66] This trend will likely continue as Japanese home market shipments were lower in interim 2000 than in interim 1999.[67] Furthermore, as indicated above, Japanese subject producers rely extensively on their export markets to maintain high capacity utilization rates that are critical in this capital intensive industry. The record indicates that Japanese subject producers will be facing new and stiff competition in two of their

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

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

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

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

major export markets, China and India, with the development of electrical steel industries in both those countries.[68] The ongoing development of these national industries will likely displace some Japanese exports of GOES in both these markets. Finally, actual Japanese shipments to Asian and 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.[69] [70]

The Court also instructed us to consider whether the [[ ]] would divert Japanese GOES from the U.S. market.[71] The Court cites to a statement in the Commission Staff Report, that the existence of such contracts indicated that exports of Japanese GOES to third countries "may not be readily available in the short run to increase GOES shipments to the United States in response to an increase in demand."[72] We note that the statement in the Staff Report does not refer to [[ ]], but to long-term relationships and more specifically, to one contract between [[ ]].[73]

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[68]Petitioners' Posthearing Brief at Ex. 1 pp. 20-22.

[69]CR and PR at Tables IV-5 and IV-6, and Japanese Producers' Post-Hearing Brief at Appendix D.

[70]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. CR and PR at Table IV-5. Moreover, the record shows that shipments to these markets have generally declined since the period of investigation, with the exception of the "Americas" markets where exports have grown. CR and PR at Table IV-5.

[71]Slip Op. 03-168 at 18.

[72]Slip Op. 03-168 at 16 citing to CR at II-23; PR at II-11.

[73]CR at II-22; PR at II-11.

Moreover, the statement merely relates "that reported exports of Japanese GOES to third country markets *may not* be readily available in the *short-run* to increase GOES to the United States in a response to an increase in GOES demand."[74] However, the Commission must consider whether subject imports would *likely* have no discernible adverse impact within a *reasonably foreseeable time*. As the SAA makes clear, " a reasonably foreseeable time" normally will exceed the "imminent" timeframe applicable in a threat of injury analysis.[75] Indeed, the statute makes clear that the effects of revocation or termination may manifest themselves over a longer period of time.[76]

Moreover, the record indicates that [[

]] will likely have only a limited impact on Japanese subject producers' ability to redirect their exports to the United States if the orders are revoked. First, in [[

]].[77] Second, the only [[ ]] specifically identified by the Japanese subject producers [[ ]] will be up for [[ ]] within the "reasonably foreseeable time" contemplated by the statute.[78] Finally,

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[74]CR at II-23; PR at II-11 (emphasis added).

[75]SAA at 887.

[76]19 U.S.C. §1675(a)(5).

[77]See [[ ]].

[78][[
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despite the purported prevalence [[ ]], the record shows that Japanese subject producers still have considerable flexibility to shift between their export markets.[79] [80] [81]

The Court also directs us to consider the fact that Japanese subject producers have no plans to add capacity. We have done so. Notwithstanding the Japanese subject producers' statement, we do not place great weight on this fact given the already substantial production capacity in Japan that could be directed to the U.S. market within the reasonably foreseeable future if the order were revoked. These volumes of subject GOES are particularly significant given that the applicable standard is whether subject imports are likely to have no *discernible* adverse impact.

We note, as discussed above, the Japanese GOES industry's substantial production capacity and unused capacity relative to U.S. production and apparent U.S. consumption, its

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

[80]The Court also indicated that according to the Staff Report the fact that the Japanese capacity utilization rate during the most recent period remained high "suggests that there is *no ability* of the Japanese producers to increase exports to the United States in response to an increase in demand." Slip Op. 03-168 at 15 citing CR at II-21 (emphasis in the original). This quote is not evidence, but merely the opinion of the Commission staff regarding Japanese subject producers' ability to increase exports to the United States. The Staff Report statement refers only to the ability of the Japanese producers to increase exports in light of current capacity utilization in Japan. It does not address the ability of the Japanese producers to shift GOES shipments among various markets. In any event, we believe that a fuller analysis considering other information in the record provides a more complete and accurate picture of the Japanese producers' capacity utilization levels, the likely trend in their levels, committed capacity and the ability to increase exports to the U.S. market by shifting current capacity.

[81]We note that [[ ]] indicated that [[ ]] percent of it home market sales are [[ ]] and [[ ]] percent of its home market are [[ ]]. [[ ]] alone accounted for [[ ]] short tons. See [[ ]]. See also [[ ]].

reliance on exports, the substitutability of the Japanese product with the domestic like product, and the Japanese subject producers' trade patterns during the original investigations. Based on these facts, we do not find that the likely subject imports from Japan would be likely to have no discernible adverse impact on the domestic industry if the orders were revoked.

2. Reasonable Overlap of Competition

In its opinion, the Court found that the Commission's finding of a reasonable overlap of competition was not supported by the record and remanded the Commission's cumulation determination. In particular, the Court instructed the Commission to reconsider its findings regarding fungibility and channels of distribution. We have reconsidered these findings and once again conclude that there would be a reasonable overlap of competition between the subject imports from each country and the domestic like product, and between the domestic like product and the subject imports if the orders were revoked.

Fungibility

As we previously noted, in the original investigations, the Commission declined to cumulate subject imports given the differences in product type from Italy and Japan, as well as differences in the channels of distribution.[82] Indeed, in its 1994 determinations, the Commission found that while the majority of imports from Japan were of high-permeability GOES, the Italian producers sold only conventional GOES consisting primarily of grade M-6 in the U.S. market. At that time, the Commission found that GOES from Japan did not compete with M-6 grade GOES because purchasers often substituted only one grade up or one grade down, and that very

[82]USITC Pub. 2778 at I-12-I-13.

few purchasers bought both the Italian and Japanese product.[83] Moreover, sales of Italian high-permeability GOES in the U.S. market were [[

]]. The Commission also found differences in channels of distribution, in that Japanese GOES was sold directly to transformer manufacturers, whereas Italian GOES was sold to stampers/laminators. [84]

Evidence obtained during the review investigations shows that the differences in product type and channels of distribution have not varied since the period of the original investigations. However, while we note the existence of these differences, we do not find them significant enough to prevent us from concluding that there will likely be a reasonable overlap of competition. As the Court noted, in a five-year review the analysis is a prospective one. The proper focus is on the subject imports' likely post-revocation behavior, and the composition of current imports affected by the discipline of the antidumping orders is not necessarily indicative of likely post-revocation behavior. This is particularly evident in this case given that subject imports from Italy and Japan fell to very low levels following imposition of the orders because they were unable to compete in the U.S. market at fair prices.[85] In other words, the likely composition of subject imports from Japan and Italy following revocation cannot be discerned from the low volumes of subject imports shipped to the U.S. market during the period of review.

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[83]*Id.* at I-13.

[84]*Id.* at I-13.

[85]Subject imports from Italy were a mere [[ ]] short tons in 1997, [[ ]] short tons]] in 1998; and [[ ]] short tons in 1999. Subject imports from Japan were only [[ ]] short tons in 1997, [[ ]] short tons in 1998, and [[ ]] short tons in 1999. CR and PR at Table I-1.

Since the original investigations, several changes have occurred in the U.S. market. As the Commission found in the conditions of competition in the review determination, the deregulation of the electric utilities has caused the utilities to be more concerned with low initial purchase prices for transformers, rather than with the longer term evaluation of total ownership cost ("TOC") traditionally used in making purchasing decisions.[86] As a result, some utilities currently purchase transformers on a low-evaluated basis, resulting in the increased use of lower, less efficient, and less costly grades of GOES in transformer manufacture.[87] The Commission also found that the type of GOES chosen by a purchaser is based on the customer's core-loss evaluation, the relative prices of each type of GOES, and other buyer specifications, such as noise, size, and weight of the transformers.[88]

The relevance of these conditions to likely competition pertains to increased direct competition between high-permeability GOES and conventional GOES. Thus, although

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[86]USITC Pub. 3396 at 14. U.S. electric utilities typically buy transformers based on a total ownership cost ("TOC") calculation that takes into consideration the initial cost of the transformer and the value of transformer power losses over the expected life of the transformer (25-30 years depending on the type of the transformer). The utility usually specifies its valuation per unit of power loss separately for the transformer core loss (no load loss) and coil loss (load loss) over the expected life of the transformer when it solicits bids based on a TOC basis. If a utility places high value on core losses, competing transformer producers have more flexibility (compared to a lower value for core losses) to use a higher-cost/more efficient GOES up to the point that increased costs of the transformer equals savings in losses in improved efficiency. CR at II-2 n.6; PR at II-1 n.6.

[87]USITC Pub. 3396 at 14; see CR at II-2, II-29-30; PR at II-1-2, II-15-16. Due to the economic uncertainties associated with deregulation, [[ ]], stated in its questionnaire response that there is now greater emphasis on price as a first consideration.

[88]USITC Pub. 3396 at 14.

differences exist between the varying types of GOES, purchasers will likely substitute one type of GOES for another in order to optimize initial costs or obtain lower core loss. Moreover, relative decreases in prices of higher-grade GOES would likely result in a purchaser switching to a lower-priced (better) grade in order to produce a low-efficiency transformer, as core performance could be significantly enhanced, thus heightening competition between high-permeability GOES and conventional GOES.[89] Taking into account the emphasis on initial costs, the record indicates that high-permeability GOES would likely compete with conventional grades and high-permeability domain-refined grades.[90] As the record further indicates, sales of M-6 for

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[89] CR at I- 15, II-30-32; Testimony at the hearing from both domestic producers and purchasers indicated that cross-grade competition is occurring in today's market. Tr. at 25, 39-40. See also Tr. at 69, 180-182. ABB indicated at the hearing that cross-grade competition of GOES has expanded and that high permeability GOES possesses no physical characteristics that would prevent it from being used in what otherwise would normally be a lower grade application. Tr. at 93-94 (Mr. Caver).

We note that the staff report indicates that purchasers indicated moderate, limited or weak substitution between the grades. CR at II-33. However, our finding does not relate to a strict substitution between the grades based solely on physical characteristics, but to cross-competition between the grades based on purchasers' ability to interchange one grade of GOES for another depending on a purchaser's priorities in the manufacturing a transformer.

[90] Id; [[

use in transformers and competition across a wide spectrum of grades from M-6 through the high-permeability grades has increased since the original investigations.[91] Thus, unlike the situation in the original investigations, cross-grade competition will not likely be limited to one grade up or down. Therefore, even if neither the Italian nor Japanese subject producers changes their product mix, subject imports from each country will likely compete directly with each other if the orders are revoked.

Nevertheless, we find it likely that the Italian and Japanese subject producers will change their product mix given the significant level of demand in the United States for both conventional and high-permeability GOES. As noted, demand in the U.S. market for conventional GOES has increased based on economic efficiencies sought by transformer producers.[92] At the same time, purchasers of GOES indicated that they expect demand for high-permeability GOES to increase.[93]

Japanese subject producers have substantial capacity to produce both conventional GOES, which is now in greater demand in the U.S. market, as well as high-permeability GOES,[94]

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[91]CR at II-2, II-4 n.12; PR at II-1, II-2 n.12; Tr. at 25 (Mr. Styck), 183-184 (Mr. McGrane).

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

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

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

and Japanese subject producers export considerable amounts of both product types.[95] Indeed, in 2000, [[ ]] percent of Japanese shipments to Canada and Mexico were of conventional GOES.[96] In 1993, [[ ]] percent of U.S. shipments of imports from Japan consisted of conventional GOES.[97] Due to their reliance on their export markets and higher prices commanded in the U.S. market, and the stability of the U.S. market, Japanese subject producers will likely ship increasing amounts of conventional GOES as well as high-permeability GOES to the U.S. market, and thereby will likely compete directly with the Italian subject imports.

At the same time, it is likely that Italian subject imports will not be limited to conventional grades of GOES, but also will likely include sales of high-permeability grades of GOES similar to the type exported by Japanese subject producers.[98] The record indicates that AST recently has increased its high-permeability GOES production by 23 percent.[99] AST itself

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

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

[97]1994 Staff Report at II-49.

[98]AST's argument that it does not have the capability to produce high-permeability domain-refined GOES and thus will not compete with imports from Japan is without merit. First, we note that Japanese producers manufacture and export both domain-refined and non-domain-refined GOES. CR and PR at Table IV-8. Second, the record indicates that high-domain-refined products can be substituted for other high-permeability products. CR at II-31. PR at II -16. Finally, any notion that the Italian high-permeability product does not compete with the Japanese high-permeability product appears to be contradicted by [[

]]. Indeed [[

]]. 1994 Staff Report at II-43.

[99]Petitioner's Prehearing Brief at Ex. 3

indicated that it has significantly changed its product mix to focus more on niche products "such as high-permeability grain-oriented steel, [products that] are not widely produced by the domestic industry."[100] Due to their reliance on their export markets and higher prices commanded in the U.S. market, and the stability of the U.S. market, the Italian subject producer will likely ship increasing amounts of both high-permeability and conventional GOES to the U.S. market and thereby compete directly with Japanese subject imports.[101]

We further find that the domestic like product is substitutable and will likely compete with both subject imports from Italy and subject imports from Japan if the orders are revoked. In the original investigations, the Commission found that the domestic like product was interchangeable with both the Italian product and Japanese product.[102] Additionally, although comparisons of subject product and domestic product are limited due to the low volume of subject imports, purchasers indicated that the domestic like product and subject imports are

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[100] AST Letter to ITC, Jan. 20, 2000 (emphasis added).

[101]The fact that AST has not shipped high-permeability GOES to the United States despite [[ ]] does not establish that AST will not do so if the orders were revoked. AST's current reluctance to ship high-permeability GOES to the U.S. market is easily attributable to the restraining effects of the orders, particularly since even its shipments of conventional GOES dropped to *de minimis* levels following imposition of orders. CR and PR at Table I-1. Moreover, as just noted, AST itself has indicated that it intends to concentrate on the production of high-permeability GOES.

[102]USTIC Pub. 2778 at I-15, I-16.

generally comparable in terms of quality and other factors.[103] [104]

In determining whether there will be a reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product, the Court instructed us first to consider "evidence that the type of conventional GOES produced by the Japanese producers to export to third country markets is different in thickness than GOES favored by U.S. purchasers."[105] Japanese subject producers argue that "much" of the conventional GOES produced by domestic producers is made with an uncommonly thin gauge and that Japanese subject producers [[

]].[106] The Japanese subject producers are incorrect that "much" of domestic production is of the thin gauge as the thin gauge comprises only 10 percent of domestic production.[107] Moreover, the record indicates that [[

]] during the original investigations,[108] demonstrating that Japanese subject producers have the ability to satisfy U.S.

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[103]CR at II-36-37, Table II-38.

[104]We note that with respect to subject imports from Italy, the Commission's findings in the original investigations and current comparison were based solely on the Italian conventional M-6 product. We find that, based on the same factors that suggest Italian conventional and high-permeability GOES will compete with the Japanese product, the domestic like product and subject imports from Italy will likely compete if the orders were revoked.

[105]Slip Op. 03-168 at 28.

[106]Japanese Producers' Prehearing Brief at 32.

[107]Tr. at 100.

[108]1994 Staff Report at II-49. [[

]]. *Id.* n. 73.

gauge demand. Notably, the Commission found in the original determination that Japanese M-3 grade conventional GOES was directly competitive with the M-3 grades manufactured in the United States.[109] Finally, Japanese subject producers sell substantial amounts of conventional GOES in Canada and Mexico, where a number of U.S. purchasers have moved some or all of their facilities.[110] Thus, the evidence shows that domestic producers will likely compete directly with Japanese subject producers for sales of conventional GOES.

Even if Japanese subject producers do not now produce the exact same type of conventional GOES as do U.S. producers, this does not indicate that there is or would likely be no competition between the domestic like product and Japanese subject imports. U.S. GOES producers manufacture the full spectrum of GOES products, from high-permeability domain-refined GOES down to the conventional grades.[111] The record shows that Japanese high-permeability GOES competes with *both* U.S. conventional and high-permeability GOES for wound core applications in distribution transformers, which comprise the largest segment of the U.S. transformer market.[112] Moreover, a Nippon steel representative acknowledged at the

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[109] USITC Pub. 2778 at I-16.

[110]Japanese Producers' Posthearing Brief at Appendix B; CR at II-2 & II-3 n. 10; PR at II-1 & II-2 Tr. at 33-34.

[111]CR at I-17-18.

[112]According to the staff report:

> U.S.-produced domain-refined high-permeability GOES is produced by laser-scribing and is used for stacked cores. It is not used for wound cores, which are stress relieved after assembly, because the laser-scribed product does not retain its enhanced magnetic properties if stressed relieved. Japanese-produced domain-refined high-permeability

hearing, "there is a possibility [that U.S.] M-2, the materials for wound core, is, could be equivalent to our high BDR product."[113]

The Court also instructed us to consider "evidence that Japanese subject producers intend to sell small quantities of high-permeability products, particularly domain-refined, that are not available from the U.S. industry."[114] Specifically, the Court refers to Japanese subject producers' contentions that (1) conventional GOES is prevalent in the U.S. market due to U.S. transformer manufacturers' concern with initial costs; (2) Japanese subject producers do not produce the same type of conventional GOES prevalent in the U.S. market (their product is thinner than the domestic like product, they produce GOES with 39 inches in width, and their Hi-B-DR product that is recognized for its low noise level property has no U.S. counterpart);[115] and 3) Japanese producers have traditionally exported high-permeability GOES to the United States).

As for Japanese subject producers' first contention, we agree that conventional GOES is prevalent in the U.S. market. However, this contention assumes that demand for high-

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> GOES is produced by either the mechanical scribing method or the electrolytic etching method and the product retains its magnetic properties through stress relieving; it, therefore, *may be used for either wound-core or stacked core transformers*. U.S. producers, however, produce a very thin, conventional GOES product, not produced in Japan, that is also used in wound cores (emphasis added).

CR at I-17-19; Tr. at 55 (distribution transformers comprise 60 percent of transformer market); See also Tr. at 29 (Mr. Psyck).

[113]TR at 202-203 (Mr. Tsukakoshi).

[114] Slip Op. 03-168 at 28.

[115]Tr. at 160-161.

permeability GOES is likely to diminish in the U.S. market within a reasonably foreseeable time due to deregulation and the need to reduce up-front costs. Yet, the record shows that the use of high-permeability GOES has been persistent in the U.S. market[116] and purchasers of GOES indicated that they expect demand for high-permeability GOES to increase. Japanese subject producers' claim that the fact they traditionally exported high-permeability GOES to the United States indicates that they will only sell high-permeability GOES is not supported by the record. While Japanese subject producers did not export any conventional GOES to the U.S. market under the restraining effects of the orders, [[ ]] percent of U.S. shipments of imports from Japan consisted of conventional GOES in 1993.[117]

We previously addressed Japanese subject producers' second contention relating to differences in thicknesses. With respect to the Japanese subject producers' contention regarding their 39 inch product, we note that while Japanese subject producers manufacture GOES in 39 inches, only *one* purchaser in the U.S. market utilizes GOES in this width.[118] Thus, the fact that domestic producers do not manufacture GOES in this width does not detract from our finding that the domestic like product and Japanese subject imports would likely compete if the orders were revoked.[119] Finally, Japanese subject producers contend that their " Hi-B-DR" GOES is

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[116]CR and PR at Table III-3.

[117]1994 Staff Report at II-49.

[118]Petitioners' Posthearing Brief Ex. 1 at 6-7.

[119][[ ]]. ABB Prehearing Brief at 10. However, the record indicates that [[ ]] Petitioners' Posthearing Brief Ex. 1 at

recognized for its low noise level property and that there is no comparable U.S. product.[120] However, their own witnesses indicated that the U.S. produced M-2 was comparable to the Japanese high-permeability domain-refined product.[121]

Channels of Distribution

In the original investigations, the Commission found differences in the channels of distribution between subject imports from Italy and subject imports from Japan. Japanese GOES was sold directly to transformer manufacturers, whereas Italian GOES was sold to stampers/laminators.[122] The Commission also found that domestic producers sold to both transformer manufacturers as well as stampers/laminators.

Due to the changes in demand in the U.S. marketplace as well as likely changes in product mix, we find it likely that subject imports from Italy and Japan and the domestic like product often will be sold through the same channels of distribution. The increasing utilization of conventional GOES, including M-6 grade, by transformer manufacturers makes it likely that Italian GOES will be sold to transformer producers as well as stampers/laminators. Moreover, evidence cited above that the Italian producer will likely change its product mix and sell high-permeability GOES to the U.S. market means that subject imports from Italy will likely be sold directly to the end user in the same channel of distribution as subject imports from Japan,

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6-7.

[120]Tr. at 161.

[121]Tr. at 203 (Mr. Tsukahoshi).

[122]USITC Pub. 2778 at I-13.

because transformer manufacturers are the sole purchasers of high-permeability GOES. Thus, both subject imports from Italy and subject imports from Japan will likely be sold to transformer manufacturers. Similarly, evidence cited above that the Japanese subject producers will likely sell conventional grades to the U.S. market, as well as evidence that conventional Japanese GOES is sold to laminators/slitters in Mexico, indicates that subject imports from Japan will likely be sold to laminators/stampers in the U.S. market.[123]

We adopt the Commission's previous findings of likely simultaneous presence and geographic overlap.[124] Based on a balance of these factors, we therefore find that there would likely be a reasonable overlap of competition between the subject imports and the domestic like product, and among the subject imports themselves, if the orders are revoked. We also adopt the Commission's previous finding, which was not challenged on appeal, that subject imports from each of these countries would compete in the U.S. market under similar conditions of competition.[125]

Based on the foregoing, we exercise our discretion to cumulate subject imports from Italy and Japan in these reviews.

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[123]See CR at II-2 n.9, II-29n.79; IV-10.

[124]USITC Pub. 3396 at 10. The Commission found that these two factors were less easy to evaluate, given that since the orders were imposed, U.S. imports of the subject product from both Italy and Japan declined substantially. *Id.* In the original determinations, the Commission found that imported GOES from both Italy and Japan were simultaneously present and generally competed directly with the domestic product nationwide." *Id.* Thus, we find that subject imports are likely to be simultaneously present and overlap geographically if the orders are revoked. See 19 U.S.C. § 1675a(a)(1)(a); SAA at 884.

[125]USITC Pub. 3396 at 10.

III. CONDITIONS OF COMPETITION

For purposes of our cumulative injury analysis, we adopt the Commission's findings in the initial determinations on the conditions of competition, which have not been challenged on appeal. Accordingly, we find current conditions in the domestic industry provide us with a basis upon which to assess the likely effects of revocation of the antidumping and countervailing duty orders within the reasonably foreseeable future.

IV. REVOCATION OF THE ORDERS ON SUBJECT IMPORTS OF GRAIN-ORIENTED SILICON ELECTRICAL STEEL IS LIKELY TO LEAD TO THE CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Likely Volume of Subject Imports

In reviewing the Commission's likely volume findings, the Court found that the Commission had complied with its previous instructions that it consider each of the four enumerated statutory factors.[126] It also found that the Commission's finding that GOES prices in the U.S. market are higher than in other third-country markets was supported by substantial evidence. However, "in light of the questions to be addressed on remand with respect to likely discernible adverse impact and likely overlap of competition," the Court also remanded the Commission's likely volume determination for further consideration and instructed the Commission to reconsider it in light of the following evidence:

> with respect to Japan: (a) high capacity utilization rates data reported for 2000; b) the existence of long-term contracts that would direct Japanese GOES away from the United States market, (c) the evidence relating to whether Japanese producers would likely compete with Italian conventional GOES, and (d) whether it is likely that the Japanese producers' pattern of sales will change ; and (2) with respect to Italy: (a) whether it is

[126]Slip Op. 03-168 at 37.

likely that AST will sell high-permeability GOES to the United States such that it would compete with Japanese high-permeability GOES, and (b) whether it is likely that the Italian producer's patterns of sales will change.[127]

The Court also instructed the Commission to reconsider its likely volume determination in light of the increase in U.S. demand and in domestic production capacity, strong worldwide demand for GOES, and to explain whether these conditions of competition would prevent significant quantities of GOES sales to the United States.[128]

In light of these instructions, we have reexamined the record and conclude that subject import volume is likely to be significant if the orders are revoked. In particular, we note that 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.[129] The Commission further found that market penetration of subject imports increased dramatically during the period of investigation.[130] These increases in volume and market share took place despite relatively high capacity utilization rates for both Italian and Japanese producers.[131] Upon issuance of the orders, the volume and market share of subject

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[127]Slip Op. 03-168 at 39.

[128]Slip Op. 03-168 at 39.

[129]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").

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

[131]Capacity utilization rates ranged from [[ ]] percent to [[ ]] percent for the Italian producer and [[ ]] percent to [[ ]] percent for Japanese producers during the original period of investigation. CR and PR at Tables IV-2 and IV-6.

imports of GOES fell dramatically and have remained substantially below the levels they attained during the original investigation.[132] [133]

Therefore, the record indicates that subject producers have both the incentive and the capability to 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,[134] 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.

As we previously found,[135] and the Court affirmed, subject producers from both Italy and Japan are export-oriented. During the period of review, the Italian subject producer, AST, exported well over [[ ]] of its total shipments.[136] Although its total exports were [[ ]]

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

[133]We note that the statute expressly instructs the Commission to take into account its prior injury determination, including the volume, price effects and impact of the subject imports on the industry before the order in question was issued. 19 U.S.C. §1675a(a)(1)(a). The SAA indicates that "[t]his consideration is important, because this period is the most recent time during which imports of subject merchandise competed in the U.S. market free of the discipline of an order. . . . If the Commission finds that pre-order . . . conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury." SAA at 884.

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

[135]USITC Pub. 3396 at 9; USITC Pub. 3585 at 4.

[136]CR and PR at Table IV-2; See also AST's Posthearing Br. at Ex. A ([[ ]]).

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 U.S. market following imposition of the orders.[137]

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.[138] Furthermore, [[

]].[139] [140] [141] Finally, we note that the Japanese home market has contracted steadily since the original investigations, both in absolute size and as a percent of total shipments, thereby requiring Japanese subject producers

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

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

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

[140]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.

[141]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.

to focus on their export shipments in order to maintain their high capacity utilization rates.[142]

Subject producers have the incentive to increase their exports to the U.S. market if the orders were revoked. The Commission found in the remand determination, and the Court affirmed, that U.S. prices for GOES are higher than third-country prices.[143] The higher prices make the U.S. market particularly attractive to foreign producers. As discussed more fully below, subject GOES products in other foreign markets, have been priced below the U.S. product.[144]

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. However, U.S. apparent consumption for GOES has increased since the original investigation and the U.S. market remains the largest market for GOES in the world, providing incentives for subject import volumes to shift back to the United States.[145]

Indeed, in order to continue to take advantage of the subject producers' lower prices, 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. As a result, U.S. GOES producers have competed against the Italian and Japanese subject producers

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

[143]USITC Pub. 3585 at 5; Slip Op. 03-168 at 39.

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

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

for sales of all varieties of GOES products in both Mexico and Canada.[146]

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 will likely seek out the lower-priced subject imports if revocation occurs.[147] For a variety of reasons, subject 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.[148] Subject producers' infrastructure in the United States for the sale of their product remains intact[149] and much of the subject product

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[146]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.

[147]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, Question II-4b [[ ]].

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

[149]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 sales of temporary under bond ("TIB") entries. Petitioners' Posthearing Br. at 10, Exs. 4 and 5.

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.[150] 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.[151] [152]

Subject producers in Italy and Japan also have the capability to increase shipments to the U.S. 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 and both countries can shift shipments among markets.[153] 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,[154] both the Italian and Japanese GOES producers reported capacity levels during the period of review that were either [[ ]] or at [[ ]] higher than those existing during the original investigation period when they were able to increase significantly both their U.S. shipment volume and market share. In 1999, the last full year for which data were available, the

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

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

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

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

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

total capacity for both countries was [[ ]] total U.S. consumption and U.S. production of GOES for the same period.[155] Subject producers in both Italy and Japan divide this considerable production capacity between high-permeability GOES and conventional GOES.[156]

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.[157] At the same time, Japanese capacity utilization rates fluctuated from [[ ]] percent in 1997 to [[ ]] percent in 1998, and to [[ ]] percent in 1999.[158] In 1999, subject producers from Italy and Japan had [[ ]] short tons of unused capacity, which was equivalent to [[ ]] percent of U.S. production and [[ ]] percent of U.S. apparent consumption for the

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

[156]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.

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

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

same year.[159] [160] Moreover, subject producers have the incentive to maximize and sustain the utilization of available capacity due to the high fixed costs associated with GOES production.[161]

The Court instructed us to fully explain why high capacity utilization rates of subject producers during interim 2000 did not limit subject producers' ability to increase exports of GOES to the United States within a reasonably foreseeable time following revocation of the orders. As we explained above, although AST indicates that it is operating at full capacity, by its own account, its production capacity is a somewhat fluid figure subject to shifts in product mix and other factors.[162] Moreover, AST's own submissions reveal that at least [[ ]] percent of its capacity is uncommitted for 2001 alone, which represents a substantial volume of Italian GOES

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[159]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 manufactures 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.

[160]We also note that while there may be some limited potential for product shifting by subject producers, we do not view it to be dispositive in our affirmative determination given our findings relating to subject producers' already substantial production capacity and export orientation. While both Italian and Japanese producers use the same machinery and equipment for GOES as well as other steel products, the 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.

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

[162]See discussion at p.11.

that would likely be exported to U.S. if the orders were lifted.[163] Finally, AST has demonstrated considerable flexibility in switching between export markets.[164]

Japanese subject producers reported a capacity utilization rate of [[ ]] percent for interim 2001.[165] While capacity utilization rates for Japanese subject producers were particularly high, we note that the reported capacity utilization rates fluctuated over the period of review. Japanese capacity utilization rates will likely fluctuate within the foreseeable future due to a number of factors. Japanese subject producers' home market contracted throughout the period of review from [[ ]] percent in 1997 to [[ ]] percent in 1999 of Japanese producers' total shipments.[166] This trend will likely continue as Japanese home market shipments were lower in interim 2000 than in interim 1999.[167] Furthermore, Japanese subject producers rely extensively on their export markets to maintain high capacity utilization rates that are critical in this capital intensive industry. The record indicates that Japanese subject producers will be facing new and stiff competition in two of their major export markets, China and India, with the development of electrical steel industries in both those countries.[168] The ongoing development of these national industries will likely displace Japanese exports of GOES in both these markets and cause subject

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[163]AST's Prehearing Brief at 16-27.

[164]CR and PR at IV-2.

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

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

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

[168]Petitioners' Posthearing Brief at Ex. 1 pp. 20-23.

producers to seek out other markets, such as the United States. Finally, Japanese shipments to Asian and to other foreign markets historically have been erratic with significant annual increases and declines despite Japanese respondents' claims of robust demand for GOES in many of those markets.[169] [170]

The Court also instructed the Commission to fully explain why [[

]] would not limit Japanese subject producers from shifting exports from third country markets to the United States. The record indicates that [[

]] will likely have only a limited impact on Japanese subject producers' ability to redirect their exports to the United States if the orders are revoked. First, in [[

]].[171] Second, the very [[ ]] identified by the Japanese subject producers will be up for [[ ]] within the "reasonably foreseeable time"

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[169]CR and PR at Tables IV-5 and IV-6, and Japanese Producers' Post-Hearing Brief at Appendix D.

[170]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. CR and PR at Table IV-5. Indeed, while Japanese subject producers' point to China as a market of recent growth,[[

]]. CR and PR at Table IV-5. Moreover, for the record shows that shipments to these markets have generally declined since the period of investigation, with the exception of the "Americas" markets where exports have grown. CR and PR at Table IV-5.

[171]See [[ ]].

contemplated by the statute.[172] Finally, despite the purported prevalence [[

]], the record shows that Japanese subject producers still have remarkable flexibility to shift between their export markets.[173]

The Court also orders us to consider evidence relating to whether Japanese and Italian subject merchandise would compete with each other. In exercising our discretion to cumulate, we already have considered the market segmentation issues in determining that there would be a reasonable overlap of competition and we direct the Court to those findings.[174]

Finally, the Court asked us to reconsider the Commission's likely volume findings in "light of the increase in U.S. demand and domestic production capacity, and strong worldwide demand for GOES, and to explain whether these conditions of competition would prevent significant quantities of GOES sales" by subject producers in the U.S. market. With respect to U.S. demand and domestic production capacity, the Court appears to be focusing on the subject producers' contention that the domestic producers' capacity is already strained and therefore domestic producers would be unable to meet any increase in U.S. demand in the foreseeable future. However, with the recent addition of capacity that has come on-line at AK Steel and [[

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[172]See [[ ]].

[173]We note that [[ ]] indicated that [[ ]] percent of it home market sales are [[ ]] and [[ ]] percent of its home market are [[ ]]. [[ ]] short tons. See [[ ]]. See also [[ ]].

[174]See our discussion of reasonable overlap of competition at Section II. C.

industry will likely continue to meet domestic demand for GOES within the reasonably foreseeable future.[175] Even if U.S. producers likely could not fully satisfy U.S. demand, the shortfall in supply would likely increase prices in the U.S. market, making the market more attractive to the subject producers and contribute to a rapid re-entry of subject imports.

With respect to world-wide demand, an increase in demand does not mean that subject producers would not attempt to get the highest price for their product by shipping to the United States, the world's largest GOES market. Moreover, as explained above, at least [[ ]] percent of Italian capacity for 2001 remains uncommitted, and Japanese subject producers will be facing new competition in at least two of their largest export markets as increases in demand in China and India have led to expanding production in those countries. Moreover, all subject producers have shown remarkable flexibility to shift between their exports markets with changing economic conditions. As such, we find that strong demand outside of the United States would not likely preclude subject producers from exporting significant volumes of GOES to the U.S. market within the reasonably foreseeable future.

In these reviews, based on subject producers' substantial production capacity and unused capacity relative to U.S. production and U.S. apparent consumption; the incentive of the Italian and Japanese subject producers to ship to the U.S. market as seen in their reliance on export markets and their demonstrated ability to shift between their export markets; the attractiveness,

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[175]As Allegheny Ludlum stated at the hearing, "we have 15,000 to 20,000 tons of idled capacity right now that could be brought on-stream immediately." Tr. at 111 (Mr. Ross). See also Petitioners' Posthearing Brief at Ex. 1 pp. 55-54. 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.

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 again 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 light of its decision to remand the Commission's likely volume determination, the Court concluded that the Commission's likely price effects determination should be remanded for reconsideration as well. Nevertheless, the Court considered whether the Commission's findings with respect to price were supported by substantial evidence. In so doing, the Court sustained several of the Commission's price effect findings as supported by substantial evidence, specifically (1) that the domestic like product and subject imports from Italy and Japan are substitutable; (2) that price is an important factor in purchasing decisions; and (3) that there would be heightened price competition if the orders were revoked.[176] One finding regarding likely price effects that the Court believed required further explanation was the Commission's finding that the average unit values of temporary importation under bond entries ("TIB") are indicators of the aggressive low prices at which the unfairly traded imports would be sold in the U.S. market if the orders were revoked. The Court therefore remanded the specific issue of "whether the use of AUVs as an indicator of price underselling produced an accurate comparison of price differences, given the questions that exist with respect to whether the grade of GOES

[176]Slip Op. 03-168 at 45-49.

likely to be exported to the United States from Japan and that from Italy are fungible."[177]

We have reconsidered the Commission's price findings according to the Court's instructions. We adopt the findings in the review determinations that the significantly increased volumes of cumulated subject imports likely would undersell the domestic like product to a significant degree, leading to significant price depression and suppression, within a reasonably foreseeable time.[178] We repeat most of those findings here for the Court's convenience.

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.[179] Specifically, the Commission found evidence of significant underselling by the subject imports, resulting in lost sales and price depression in the U.S. industry.[180] For the following reasons, we find that the likely significantly increased volumes of the cumulated subject imports would likely have significant adverse price effects on the domestic like product if the orders were revoked.

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 earlier, the domestic like product and subject imports are substitutable. Moreover, as at the time of the original investigations, price is an important factor

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[177]Slip Op. 03-168 at 48.

[178]USITC Pub. 3396 at 54-55.

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

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

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 the expectations of several responding importers and purchasers.[181]

The available pricing data indicate that domestic prices have fallen during the period of review and are at lower levels than during the original investigations.[182] This decrease in price levels is notable since it occurred at a time of increasing demand.[183] 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 levels present during the original period of investigation.[184] While U.S. producers have attempted to raise prices, they have been relatively unsuccessful in their attempt.[185]

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

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[181] 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.

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

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

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

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

low-priced subject imports and are pressured by their customers for further price reductions. As indicated in the discussion of the conditions of competition, several large purchasers have manufacturing facilities in both Canada and Mexico as well as the United States.[186] The record indicates that 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.[187] The record indicates further that these purchasers are currently seeking to obtain prices from domestic producers for GOES for their U.S. facilities that are comparable to prices for the subject product shipped to their Canadian and/or Mexican operations.[188] 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 become readily available without the orders in place. Additionally, because of the heightened competition between domestic GOES purchasers and their 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.[189] For example, [[ ]] stated that prices in Canada and

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

[187]Petitioners' Posthearing Br. at Ex. 1 pp. 61-68.

[188]*Id.*

[189]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.

Mexico are lower due to open competition; and that if the orders were revoked, prices for subject imports in the United States will drop to price levels known in Canada and Mexico.[190] 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, [[

]].[191]

The Court instructed us to reconsider the Commission's finding that in 1999, the average unit values for subject GOES from Italy and Japan under TIB provisions were lower than for subject imports for consumption for the same period.[192] We had determined that while comparisons of AUVs for TIB entries and AUVs for imports for consumption may not allow direct price comparisons, they were consistent with other price comparisons on the record and give an indication of the aggressive low prices at which unfairly traded imports likely would be sold in the U.S. market if the orders were revoked.

The Court instructed us to explain "the difference and similarities between products imported temporarily for re-exportation to Canada and Mexico and those imported for consumption in the United States."[193] The record indicates that TIB entries from Italy were essentially the same product mix as imports for consumption: conventional GOES.[194] With

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

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

[192]Slip Op. 03-168 at 50.

[193]Slip Op. 03-168 at 50.

[194]CR and PR at Table IV-3; CR at IV-2 n.1; PR at IV-1 n.1

respect to TIB entries from Japan, the record indicates that they consisted of conventional grade GOES and imports for consumption consisted entirely of high-permeability GOES.[195] Therefore, direct price comparisons for comparable products are not possible. However, we note that the AUVs of TIBs are lower than domestic prices for both conventional and high-permeability GOES for the same period.[196] Even without the finding regarding TIB entries, the significant underselling during the original period of investigation, evidence of low prices for subject imports in Canada and Mexico, and evidence that U.S. customers would seek out the lower-priced subject imports if revocation occurs indicate that subject producers will likely undersell the domestic like product if the orders are revoked.[197]

Thus, 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

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[195]CR and PR at Table IV-7; CR at IV-2 n.1; PR at IV-1 n.1

[196] Average unit values for U.S. TIB imports of GOES from Japan in 1999 were $0.49 per pound and U.S. imports from Italy show the AUVs of TIB imports were $0.43 per pound in 1999. Petitioner's Prehearing Brief Ex. 6 at Table 1. Domestic prices for GOES, including conventional grades of GOES ranged from $[[ ]] to $[[ ]] per pound in 1999. CR and PR at Table V-1. Even taking into account that TIB imports from Japan, unlike some of the domestic products, were "semi-processed" in that they required further slitting or packaging, AUVs for TIB imports from Japan were still well below domestic prices even with value added for the additional processing. Japanese Posthearing Brief at 12, Appendix A; CR at II-8 & n.22, II-22 & n.57; PR at I-10-11,: CR at IV-2 n.1; PR at IV-1 n.1; CR at Staff Correspondence (Techno Corp . Dated Jan. 29, 2001); Staff Notes (Taylor Nov. 11 & 13 2000).

[197]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.

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 products; the negative price effects of low-priced imports in the original investigations; and 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 significant 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 its review of the Commission's likely adverse impact determination, the Court considered plaintiffs' argument that the Commission's finding that the domestic industry was not vulnerable to material injury is irreconcilable with the Commission's likely adverse impact determination. The Court noted that while a finding that the domestic industry is not vulnerable may not preclude a finding of likely injury, relying on a threat of material injury case,[198] it emphasized that a robust industry is less likely to experience material injury in the "near" future in its present state.[199] Given that the Commission found that the domestic industry's performance

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[198]Citing Calabrian Corp., v. United States International Trade Commission, 794 F. Supp 377, 388 (Ct. Int'l Trade 1992).

[199]Slip Op. 03-168 at 55.

improved following imposition of the orders, the Court believed that it was "difficult" to see how the industry would likely be materially injured if the orders were lifted.[200] The Court stated that this was particularly the case given that the Commission reached its conclusion without identifying specific record evidence to support its impact findings.

Accordingly, the Court ordered the Commission to address the perceived difficulties and

> (1) explain how, if at all revisions to the ITC's likely volume and likely price effects determinations alter its impact finding, (2) explain in detail, the extent to which future imports factored into its no vulnerability finding, and (3) identify specific record evidence supporting its findings with respect to production, sales revenue levels, profitability, ability to raise capital, investments, and employment.[201]

We first address the Court's instructions regarding the Commission's finding that the domestic industry is not vulnerable and its relationship to our determination that subject imports would likely have an adverse impact on the domestic industry. The Commission's vulnerability analysis under 19 U.S.C. 1675a(1)(C) involves an examination of whether the domestic industry is in a weakened or declining state because of the effects of dumped or subsidized imports or because of other economic factors.[202] Whether or not an industry is in a weakened state, the Commission must still determine whether that industry would likely be harmed by subject

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[200]Slip Op. 03-168 at 56.

[201]Slip Op. 03-168 at 56.

[202] The SAA states that in determining whether an industry is vulnerable, "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 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; See also Furfuryl Alcohol from China and Thailand, Inv. Nos. 731-TA-703 and 705 (Review), USITC Pub. 3412 (Apr. 2001) at 19 aff'd Indorama Chemicals et al. v. USITC, Slip Op. 02-105 (CIT).

imports if the order is revoked. The SAA further provides that the

> Commission should not determine that there is no likelihood of continuation or recurrence of material injury simply because the industry has recovered after the imposition of an order . . .because one would expect that the imposition of an order . . . . would have some beneficial effect on the industry. Moreover, an improvement in the state of the industry related to an order . . . may suggest that the state of the industry is likely to deteriorate if the order is revoked or the suspended investigation terminated.[203]

Thus, as the Commission has previously found, an industry need not be currently in a vulnerable or weakened state in order to find that injury would recur if the order were revoked.[204] In this matter, because the orders have allowed the domestic industry to recover to a significant degree, their removal will likely lead to a recurrence of material injury in view of the likely significant volumes of subject imports having significant adverse price effects.[205]

In its discussion of the Commission's vulnerability determination, the Court suggests that based on the facts of this case, the domestic GOES industry could not experience the recurrence of material injury having become a more "efficient" and "healthy" industry.[206] It is true that the

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[203]SAA at 884; See also Timken v. United States, Slip Op. 03-168 04-7 (CIT) at 35.

[204]See e.g. Furfuryl Alcohol from China and Thailand, Inv. Nos. 731-TA-703 and 705 (Review), USITC Pub. 3412 (Apr. 2001) at 1,19 aff'd Indorama Chemicals et al. v. USITC, Slip Op. 03-168 02-105 (CIT); Helical Spring Lock Washers From China and Taiwan, Inv. Nos. 731-TA-624-625 (Review, USITC Pub. 3384 (Jan. 2001).

[205]We note that the Court cited to Calabrian for the rationale that a robust industry is less likely to become materially injured in the near future. Calabrian is a threat of material injury case and was decided according to different standards then those in a five-year review, in particular the time frame that the Commission must consider in determining whether material injury is likely to continue or recur. Moreover, we do not find the industry to be "robust." In any event, in Calabrian, the court found only that the industry was "less" likely to be injured in the future, not that it could not be. 794 F. Supp. 377, 388 (1992).

[206]Slip Op. 03-168 at 55.

domestic industry has become more efficient, resulting in domestic prices that were lower during the period of review than they were during the original investigations.[207] The record indicates, however, that while unit sales values fell between the interim periods, the cost of goods sold increased between the interim 2000 and 2001.[208] In addition, the record indicates that [[ ]].[209] However, if the orders are revoked and the domestic industry is faced with unfair competition from low-priced imports, the domestic industry will have less ability to cut its prices in order to compete with those low-priced imports. As a result, the domestic industry will likely be faced with a cost price squeeze and will likely experience a rapid loss in profitability.

The Court asked us to explain to what degree future imports figured into the Commission's no vulnerability determination. While the domestic industry will be negatively affected by the likely changes in the volume of subject imports and subsequent price changes that will likely occur in the event of revocation,[210] we find that the domestic industry is not currently in a weakened condition as contemplated by the vulnerability criterion of the statute[211] and adopt

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

[208]CR and PR at Table C-1.

[209][[ ]] in interim 2000 compared to interim 1999. CR and PR at Table III-7.

[210]See discussion of likely adverse effects on pp. 56-57.

[211]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.).

the Commission's previous findings as to vulnerability.[212] [213]

We now address whether subject imports would likely adversely impact the domestic industry within a reasonably foreseeable future if the orders were revoked. 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."[214]

We found above that revocation of the countervailing and antidumping duty orders would likely 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 industry and would likely cause the domestic industry to lose market share. [215] Indeed, U.S. purchasers and importers indicate that U.S. customers would seek

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[212]USITC Pub. 3396 at 17.

[213]We note that the Commission's finding that the domestic industry was not currently vulnerable has not been challenged on appeal, as only the subject producers challenged the Commission's determination.

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

[215]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. See section III, supra and USITC Pub. 3396 at 14. Although the domestic industry is reporting relatively high capacity-utilization rates, as we found earlier, the domestic industry will have sufficient capacity to supply this modest increase in demand. See n. 163.

out the lower-priced subject imports if revocation occurs.[216] 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. The record indicates that domestic producers need to operate at high levels of capacity utilization ranging from [[ ]] to [[ ]] percent to remain cost competitive.[217] Capacity utilization [[

]].[218]

Based on the foregoing as well as the Commission's findings in the original

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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.

[216]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.

[217]CR at II-14.

[218]CR at II-14. The data show that in 1991, the domestic industry's capacity utilization was [[ ]] percent, while its operating income was [[ ]] percent on sales. By 1992, capacity utilization declined to [[ ]] percent and operating income fell to a loss of [[ ]] percent of sales value. In the original investigations and the period of review, the domestic industry showed a profit in every year that capacity utilization exceeded [[ ]] percent and showed a loss in every year in which it fell below that figure. CR and PR at Table I-1.

investigations,[219] 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.[220]

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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[219]See USITC Pub. 2778 at I-10-I-11.

[220]We note that the Court requested that we provide record cites for our adverse impact findings. We have provided them to the extent possible. However, such record cites are limited due to the prospective nature of these reviews.

SEPARATE AND DISSENTING VIEWS ON REMAND OF CHAIRMAN OKUN, VICE-CHAIRMAN HILLMAN AND COMMISSIONER PEARSON

On remand, we again determine that revocation of the antidumping and/or countervailing duty orders on GOES from Italy and Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. In the original review determination, we joined in the Commission's decision to cumulate subject imports from Italy and Japan. We reach the same decision on cumulation in this remand. However, because our analysis differs from the analysis of the Commissioners voting in the affirmative, we write these additional views to explain our analysis.

1. No Discernible Adverse Impact

In its opinion dated December 17, 2003, the Court ordered the Commission to reconsider its findings under the "no discernible adverse impact" provision with respect to subject imports from Italy and Japan. In reconsidering its findings with respect to subject imports from Italy, the Court instructed the Commission to take into account the Italian producer's interim 2000 data and evidence of the inability of the Italian producer to increase production capacity. In reconsidering its findings with respect to subject imports from Japan, the Court instructed the Commission to consider Japanese subject producers' interim 2000 data, the [[

]], and evidence with respect to Japanese producers' inability to increase production capacity.[1]

In the original determination we found that it was not likely that imports from Italy and imports from Japan would have no discernible adverse impact on the domestic industry because

[1] Slip Op. 03-168 at 18.

of the conditions of competition and the current condition of the domestic industry. Specifically, we found that subject imports from Italy and Japan remained in the U.S. market in the years since the orders were imposed, albeit at substantially reduced levels. The continuing presence of these subject imports in the domestic market indicates that subject foreign producers continue to have contacts and channels of distribution necessary to compete in the U.S. market. We found that industry capacity in Japan has remained large (greater than annual U.S. consumption) and industry capacity in Italy has grown since the original investigations.[2] We also noted that the GOES industries in both Italy and Japan devote considerable resources to export markets. In 1999, the share of total shipments of GOES exported from Italy was [[ ]] percent while the share of total shipments of GOES exported from Japan was [[ ]] percent.[3]

We have considered the record as a whole in light of the Court's instructions and continue to find that the record does not support the conclusion that subject imports from Italy or Japan are likely to have no discernible adverse impact on the domestic industry if the orders are revoked. The record indicates that there is enough capacity, particularly in the ability to shift exports to the higher-priced U.S. market, for imports from each of the subject countries to have a discernible adverse impact on the domestic industry in the event of revocation of the orders. Given our expectation of a modest increase in the volume of subject imports in the event of revocation of the orders, we would expect subject imports to have some, albeit modest, adverse impact on U.S. prices.

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[2] USITC Pub. 3396 at 9, *citing* Confidential Staff Report (CR) and Public Staff Report (PR) at Table IV-2.

[3] USITC Pub. 3396 at 9 *citing* CR and PR at Table IV-2 and IV-6.

We recognize that the capacity utilization for the subject countries was relatively high during the period of review, which was a significant factor in our negative material injury determinations. Nonetheless, we are mindful that the statute instructs us to determine whether imports will have "*no discernible* adverse impact" on the domestic industry in the event of revocation of the order in determining whether to cumulate imports. In other words, we are to determine whether imports will have *no* "noticeable" or "detectable" adverse impact. This Court has stated that "cumulation of imports from the countries with relatively small likely volume and price impact would not only be appropriate, a refusal to do so without some additional justification could constitute an abuse of discretion.[4]

Based on our reconsideration of the record evidence, we continue to conclude that imports from each of the countries individually would have a *discernible* adverse impact on the domestic industry in the event of revocation, and thus we assess them on a cumulative basis. This Court has recognized that we may consider the same factors in determining no discernible adverse impact and likely volume, but that "the substantial evidence necessary to support an affirmative material injury determination is greater than that necessary to find there will not likely be no discernible adverse impact from imports from a particular country."[5] Indeed, even though we find that imports from Italy and Japan would have a discernible adverse impact on the domestic industry in the event of revocation of the orders, we determine that the revocation of the antidumping and countervailing duty orders would not likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable

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[4] *Neenah Fountry Co. et al., v. United States*, Slip Op. 01-77 (June 25, 2001) at 15.

[5] *Usinor Industeel, S.A. v. United States,* Slip Op. 03-118 (Sept. 8, 2003) at 7.

time, even when the impact of imports from Italy and Japan is assessed on a cumulative basis. We address below each of the countries individually and the concerns expressed by the Court in its opinion.

Italy: The record indicates that the Italian subject producer, AST, had both the incentive and ability to increase shipments in amounts likely to have a discernible adverse impact on the domestic industry in the event of revocation of the order. In reaching this conclusion, we have considered a number of factors affecting GOES supply and demand, as well as the export orientation of the subject producer, the range of products offered by the Italian producer, pricing, and the patterns of shipments to other markets into which the subject imports from Italy are sold.

As the Commission previously found, and this Court affirmed, the Italian subject producer is export-oriented. During the period of review AST exported [[ ]] of its total shipments. AST has also shown an ability to shift among its export markets with changing economic conditions.[6] This is further evidenced by the fact that [[ ]] following the imposition of the orders.[7] In addition, as the Court recognized, the price of GOES in the U.S. market is higher than in other export markets.

In its opinion, the Court instructed us to address Italy's interim 2000 capacity utilization rate of [[ ]] percent, which the Court believed indicates that it is unlikely that the Italian producer will increase exports to the United States. The Court also instructed us to consider

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[6] *See* AST's Posthearing Brief at Ex. A, G ([[ ]]).

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

evidence of the Italian producer's inability to increase production capacity.

The record indicates that approximately [[ ]] percent of AST's GOES capacity was committed for 2001 under long-term contracts, leaving about [[ ]] percent of Italian capacity which could be exported to the higher-priced United States market in the event of revocation of the order.[8] Given that there is sufficient volume and incentive (due to higher U.S. prices) to increase imports to the U.S. in amounts sufficient to have a *discernible* adverse impact on the domestic industry, the fact that AST has no plans to add additional capacity does not detract from this finding. Thus, although we agree that AST's limited available capacity supports the conclusion that it, along with producers from Japan, will not export *significant* quantities of GOES to the United States, we do not conclude that its exports to the United States will not even have a *discernible* adverse impact.

Japan: The record indicates that the Japanese producers had both the incentive and ability to increase shipments in amounts likely to have a discernible adverse impact on the domestic industry in the event of revocation of the order. In reaching this conclusion, we have considered a number of factors affecting GOES supply and demand, as well as the export orientation of the subject producers, the range of products offered by the producers, pricing, and the patterns of shipments to other markets into which the subject imports from Japan are sold.

As the Commission previously found, and this Court affirmed, the Japanese producers are export-oriented. During the period of review, Japanese producers increased their reliance on exports. By the end of the period over [[ ]] of their total shipments were exports.[9]

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[8] AST's Prehearing Brief at 26-27.

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

Notwithstanding the [[ ]], the record indicates that the Japanese producers have the ability to shift among export markets.[10] Given the ability to shift export shipments, we find that in the event of revocation, it is likely that imports of GOES from Japan will enter the higher-priced U.S. market in quantities that would have a *discernible* adverse impact on the domestic industry.

The Court instructed us to reconsider our finding taking into account Japanese subject producers' capacity utilization rate of [[ ]] percent for interim 2000. We do not depend on Japan's capacity utilization fluctuating or going down for purposes of our analysis of no discernible adverse impact. A high capacity utilization rate does not preclude the shifting of product from other markets into the higher-priced U.S. market. The total volume of shipments of the Japanese industry is so large (well in excess of total U.S. consumption of GOES) that only a relatively modest shift in its sales distribution toward the U.S. market would be sufficient to produce a noticeable adverse effect in the U.S. market.

The Court also instructed the Commission to consider whether the [[ ]] would divert Japanese GOES from the U.S. market,[11] citing a statement by Commission staff that the existence of such contracts indicated that exports of Japanese GOES to third countries "may not be readily available in the short run to increase GOES shipments to the United States in response to an increase in demand."[12] Notwithstanding that statement, as

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[10] CR and PR at Table IV-5; Japanese Respondents' Posthearing Brief, Appendix D [[ ]].

[11] Slip Op. 03-168 at 18.

[12] Slip Op. 03-168 at 16, citing CR at II-23.

discussed above, the record indicates that the Japanese subject producers demonstrated considerable flexibility in shifting between export markets during the period of review. Further, only [[

]][13], and these contracts are up for [[ ]] periodically. Moreover, that producer indicated that [[ ]] percent of its home market sales were spot sales.[14] Notwithstanding the fact that the Japanese producers indicated that they had no plans to increase capacity, the record evidence discussed above suggests that in the event of revocation of the order that the imports from Japan would have a *discernible* adverse impact on the domestic industry.

2. Reasonable Overlap of Competition

In its opinion, the Court found that the Commission's finding of a reasonable overlap of competition was not supported by substantial evidence. The Court focused on the Commission's findings regarding two of the factors the Commission typically examines in assessing cumulation -- fungibility and channels of distribution – as they pertain to the likely overlap of competition between subject imports from Italy and subject imports from Japan. The Court asked the Commission to re-examine its findings regarding those factors in light of certain record evidence that it characterized as detracting from those findings.

We have re-examined our findings on fungibility and channels of distribution in view of the points raised by the Court. As described below, we again determine that the record as a whole supports a finding of a likely reasonable overlap of competition between subject imports

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[13] *See* [[ ]].

[14] *See* [[ ]]

from Italy and Japan, although we agree that the issue is a close one.

In our original views in these reviews, we noted that during the review period imports from Japan were limited to high-permeability product sold to end-users, whereas imports from Italy were limited to conventional product sold to laminators/stampers. With respect to likely future imports in the event of revocation of the orders, we found the following with respect to fungibility and channels of distribution for subject imports from Italy and Japan:

> While current imports may be specialized or limited to a particular grade, subject producers in both Italy and Japan can and do produce a broad range of GOES products. For example, while Japan sells primarily high permeability GOES to the U.S. market, it also sells significant amounts of conventional GOES grades to other markets. Over [[ ]] percent of its shipments to both Canada and Mexico were of conventional GOES in 2000. Similarly, while Japanese producers currently sell directly primarily to end-users in the United States, this pattern of sales is likely to change with an alteration in the product mix shipped to the United States. Indeed, Japanese subject producers sell to laminators/slitters for subsequent sale of the GOES in Mexico and presumably could do so in the United States.[15]

Fungibility

The Court raised several issues regarding our fungibility findings, with respect to GOES from both Italy and Japan. With respect to Japan, the Court ordered the Commission to explain its finding of likely competition in detail, "taking into account the following: (a) evidence that the type of conventional GOES produced by the Japanese producers for export to third country markets is different in thickness than the GOES favored by U.S. purchasers, and (b) evidence that the Japanese producers intend to 'sell small quantities of high-permeability products, particularly domain refined, that are not available from the U.S. industry.'"[16]

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[15] USITC Pub. 3396 at 10 (footnotes omitted).

[16] Slip Op. 03-168 at 28, citing Hearing Tr. at 159.

With respect to the claim that Japanese producers export a type of conventional GOES to third-country markets that is different than the conventional GOES used in the United States, we find that this is true only to a very limited extent. Japanese producers indicated that they [[

]].[17]

However, this product – grade M2 GOES – is a small part of U.S. market. The M2 grade is an extra-thin grade of conventional GOES that some purchasers may use as a substitute for high-permeability GOES in certain wound core transformers.[18] At the hearing, both of the U.S. producers indicated that this product represented only about 10 percent of their production.[19] By contrast, [[ ]] conventional GOES used in the U.S. market consists of other grades – M3 through M6[20] – that are manufactured and exported [[

]]. [[ ]] to all markets over the review period consisted of grades M5 and M6 alone.[21] Thus, the fact that Japanese producers do not produce certain thin-gauge conventional product used in a small segment of the U.S. market does not detract from the likelihood of a reasonable overlap of competition.

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[17] *See, e.g.,* Japanese Respondents Posthearing Brief at 32.

[18] Hearing Tr. at 100-101 (Ross), 203 (Tsukakoshi).

[19] Tr. at 100 (Stitt, Ross). Data subsequently provided to the Commission by the producers indicated that M2 grade accounted for substantially [[ ]] over the period of review. Petitioners' Posthearing Brief at Exhibit 10.

[20] Petitioners' Posthearing Brief at Exhibit 10.

[21] Japanese Respondents' Posthearing Brief, Appendix at E. For 2000, [[ ]] percent of conventional exports from Japan consisted of these two grades. For home market sales plus exports, [[ ]] percent of conventional shipments consisted of these two grades in 2000.

With respect to the Court's second point, we observe that a Nippon official testified at the Commission's hearing that his company did not intend to sell conventional GOES in the U.S. market, but intended only to "sell small quantities of high-permeability products, particularly domain refined, that are not available from the U.S. industry."[22] We have considered this statement, and have weighed it against other record information. As we noted in our original review determination, a significant share of Japanese producers' exports to other North American markets consists of conventional GOES. Specifically, in 2000 more than [[ ]] percent of Japanese producers' GOES shipments to both Canada and Mexico were of the conventional product.[23] Notably, the share of Japanese shipments to Canada consisting of conventional GOES [[ ]] over the review period, from [[ ]] percent in 1997 to [[ ]] percent in 2000.

Thus, the record indicates a large and [[ ]] interest on the part of the Japanese producers as a whole in selling conventional GOES to the markets neighboring the United States. This behavior by Japanese producers is consistent with the fact that a substantial percentage of their overall shipments consists of conventional GOES. Between [[ ]] percent and [[ ]] percent of Japanese shipments during the period of review was conventional GOES.[24]

We observed in our original determination that increased Italian and Japanese exports of GOES to Canada and Mexico have occurred at the same time as some U.S. transformer manufacturers shifted production to those countries, in part to be able to obtain subject GOES without being subject to the orders. The record also indicates that transformer exports from

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[22] Tr. at 159 (Tsukakoshi).

[23] Japanese Respondents Post-Hearing Brief, Appendix at B.

[24] CR, PR at Table IV-7.

Canada and Mexico to the United States increased sharply over the period of review.[25] Thus, it appears that exports of GOES from Japan and Italy are being incorporated into the kind of transformers that are being used in the U.S. market. We see no reason why Japanese producers would not sell a similar set of products to transformer producers in the United States in the event of revocation of the antidumping duty order.

We explained in our original determination why we do not expect the *overall volume* of subject imports from Japan and Italy to be significant, or that those imports would be likely to cause material injury to U.S. GOES producers. However, in terms of the *mix* of the subject imports, on balance, we find it likely that a sufficient share of subject imports from Japan would consist of conventional GOES in grades that compete with subject imports from Italy (and the domestic like product) such that there would be reasonable overlap of competition for cumulation purposes.

With respect to subject imports from Italy, our original determination noted that:

> AST may seek to sell some of its high-permeability products in the United States in view of the [[ ]] on selling these products in the United States and its increased production of high-permeability GOES.[26]

We have re-examined the record in light of the points identified by the Court. While it is possible that AST would export high-permeability products to the United States, we do not find it to be likely.[27] Accordingly, we do not rely on the likelihood that subject GOES from Italy

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[25] CR at II-28 and n.77, PR at II-14-15 and n.77.

[26] USITC Pub. 3396 at 10, n.45.

[27] This conclusion is consistent with the passage quoted above from our original review determination, in which we found merely that AST "may" seek to sell high-permeability product

would consist of high-permeability product in finding a reasonable overlap of competition.[28]

Channels of distribution

The Court also ordered the Commission to reexamine its conclusion that it is likely that subject imports from Italy and Japan would be sold in similar channels of distribution. In the review determination, the Commission found that "while Japanese producers currently sell directly primarily to end-users in the United States, this pattern of sales is likely to change with an alteration in the product mix shipped to the United States."[29]

The Court stated that "the ITC shall, taking into account its finding on remand with respect to fungibility, revisit its finding that the Japanese and Italian producers of GOES will change their patterns of sale, such that 'common or similar channels of distribution' for imports from Japan and Italy exist, and an overlap of competition between Japanese and Italian GOES imports would be likely."[30] As described above, we find that fungibility supports a reasonable overlap in competition because of likely sales of conventional GOES from Japan in the event the orders were revoked. Moreover, the record indicates that at least some Japanese GOES is sold to laminators/stampers in Canada and Mexico.[31] Accordingly, we find it likely that a meaningful

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in the United States.

[28] Accordingly, we do not believe it is necessary to address the individual items of evidence that the Court cites as detracting from a finding of a likely overlap of competition based on high-permeability imports from Italy. In addition, we note that we do not rely on competition between conventional and high-permeability GOES as a basis for our cumulation decision.

[29] USITC Pub. 3396 at 10.

[30] Slip Op. 03-168 at 30.

[31] CR at II-29 n.79.

share of subject imports from Japan would be sold in the United States to laminators/stampers in the event of revocation. Therefore, we find that the evidence on channels of distribution is consistent with a finding of a reasonable overlap of competition.