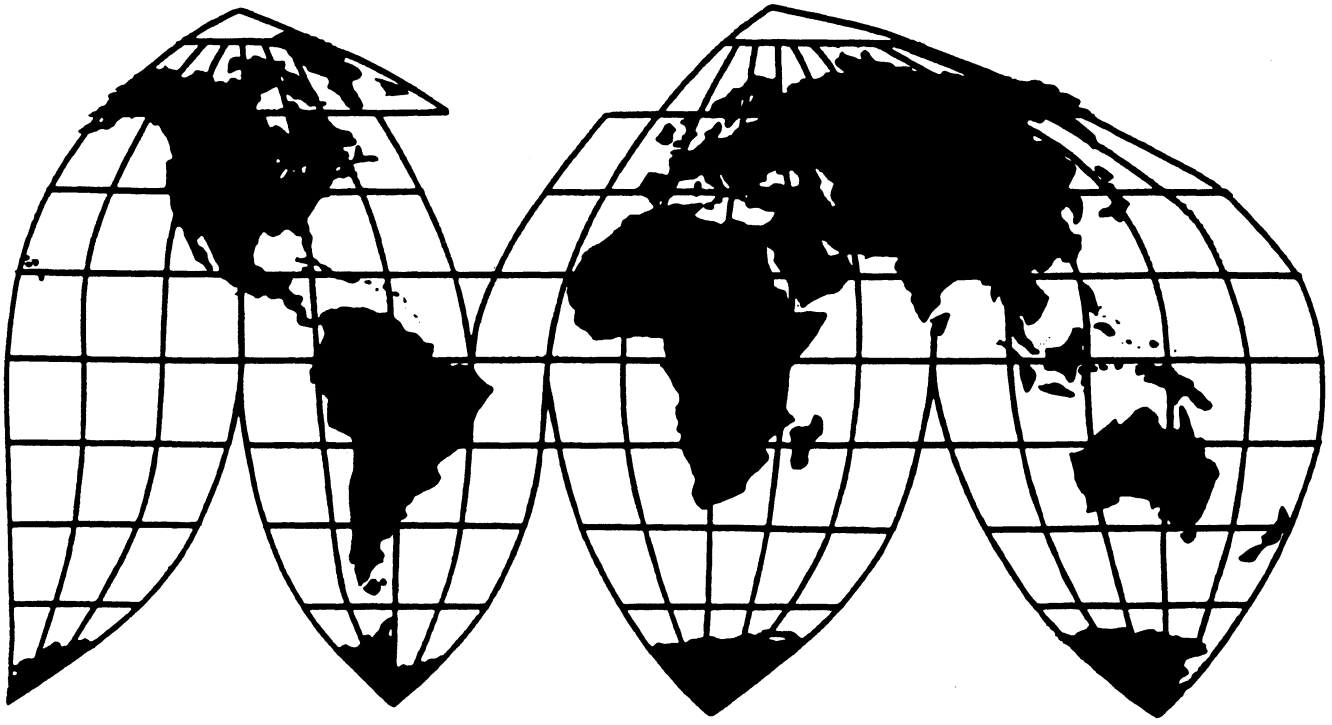
Grain-Oriented Silicon Electrical Steel From Italy

Investigation No. 731-TA-659 (Final)

Publication 2800 **August 1994**

U.S. International Trade Commission



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CONTENTS

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

GRAIN-ORIENTED SILICON ELECTRICAL STEEL FROM ITALY AND JAPAN

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Italy of grain-oriented silicon electrical steel, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 28, 1994, following a preliminary determination by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 23, 1994 (59 F.R. 8658). The hearing was held in Washington, DC, on April 12, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Crawford dissenting; Chairman Watson not participating and Commissioner Bragg not participating in the determination in this investigation.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that the industry in the United States producing grain-oriented silicon electrical steel ("grain-oriented steel") is materially injured by reason of imports of the subject merchandise from Italy that the U.S. Department of Commerce ("Commerce") has determined are being sold in the United States at less than fair value (LTFV).[1] [2] [3]

I. THE LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 ("the Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product..."[4] In turn, the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation..."[5]

The Commission's like product determinations are factual, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[6] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of the particular investigation.[7] Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations.[8]

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[1] 19 U.S.C. § 1673d(b). Chairman Watson and Commissioner Bragg did not participate in this determination. Commissioner Crawford's dissenting views with respect to the subject imports from Italy are set forth separately.

[2] The Commission's final determination in this investigation follows its final determinations in companion investigations on Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 (May 1994). The Commission's preliminary determinations in all three investigations were made simultaneously. See Grain-Oriented Silicon Electrical Steel From Italy and Japan, Inv. 701-TA-355 (Preliminary) and 731-TA-659/660 (Preliminary), USITC Pub. 2686 (Oct. 1993). The Commission also conducted simultaneous final investigations on imports from each of these countries, and held one hearing covering all investigations, but was required to make a separate determination on LTFV imports from Italy due to the Department of Commerce's postponement of its final determination in that investigation. We set forth our opinion on this separate investigation in full herein, but have referenced the Commission's determination in the companion investigations as necessary.

[3] Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] Torrington Company v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade), aff'd 938 F.2d 1278 (1991). In analyzing like product issues, the Commission considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer or producer perceptions of the products; (5) common manufacturing facilities and production employees; and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. at 382, n.4 (Ct. Int'l Trade 1992).

[7] See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-749.

[8] Torrington, 747 F. Supp. 748-49.

Commerce has defined the imported product subject to this investigation as:

> [G]rain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness....[9]

The subject merchandise is a flat-rolled specialty steel product sold in strip or sheet form, characterized by low carbon content in which the magnetic characteristics, principally low core loss[10] and high-permeability,[11] are achieved by relatively high silicon content and the use of special processing.[12] The processing techniques also determine whether the electrical steel product is grain-oriented or non-oriented.[13]

Grain-oriented steel is produced in a number of different grades that are distinguished based on their relative efficiency in conducting electricity. Conventional grades range from the least efficient M-6 to the comparatively high efficiency M-2, which competes with some high permeability grain-oriented steel. The more efficient, high-permeability grades are characterized by a lower core loss and higher market prices.

B. Like Product

In this investigation we have considered whether high-permeability and conventional grades of grain-oriented steel constitute one or two like products.[14] In our final determination in the countervailing duty investigation involving grain-oriented steel from Italy, which was

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[9] 59 Fed. Reg. 33952 (July 1, 1994).

[10] Core loss refers to the amount of electrical energy lost as heat when magnetic flux flows through the steel.

[11] Permeability refers to the relative ability of different types of steel to conduct an electrical current. If a given category of steel possesses high-permeability, this means that the steel is a particularly efficient conductor of electricity.

[12] See Confidential Staff Report in Grain-Oriented Silicon Electrical Steel from Italy and Japan, USITC Pub. 2778 (hereinafter referred to as "CR") at II-8 to II-10; Public Staff Report (hereinafter referred to as "PR") at II-6 to II-8. These staff reports have been incorporated by reference in the Commission's Confidential and Public Staff Reports in the current investigation. See Public Staff Report in Grain-Oriented Silicon Electrical Steel from Italy at I-4.

[13] Oriented steel is steel in which processing has achieved a comparatively uniform molecular arrangement which permits the metal to conduct electricity in a single direction. It is more efficient to use oriented steel in such products as transformers where it is desirable for the electrical flow to be in a single direction.

[14] The domestic producers argue that all grades of grain-oriented steel comprise a single like product because they share the same physical and performance characteristics, are sold in the same channels of distribution, and are produced using predominantly common manufacturing facilities. Petitioners' Prehearing Brief at 1-11.

Nippon Steel Corporation (Nippon Steel) and Kawasaki Steel Corporation (Kawasaki), the two Japanese producers/exporters, contended during the preliminary investigations that there are two separate like products consisting of, respectively, high-permeability and conventional grades of grain-oriented steel. Kawasaki Post-conference Brief at 4-14; Nippon Steel Post-conference Brief at 1. In the final investigations, however, respondents have not presented this argument. Moreover, at least one significant purchaser, General Electric Co. ("GE"), suggested that a single like product finding would be appropriate. Hearing Transcript at 133-134.

based on the same record now before us, we found a single like product.[15] We reach the same conclusion in this investigation and find that the similar physical characteristics and uses, some degree of interchangeability, common U.S. production processes and facilities, and common channels of distribution, all indicate that there are no clear dividing lines among the different grades of grain-oriented steel. Therefore, we determine that grain-oriented steel is a single like product.

Different grades of grain-oriented steel are chemically alike and possess essentially the same physical properties. For example, the various grades are all relatively efficient conductors of electricity and will conduct electricity in a single direction. As with many other products in which there are distinct grades, however, each grade does not have identical performance characteristics. The high-permeability grain-oriented steel is thinner and generally has a higher silicon content than the so-called conventional grain-oriented steel. The high-permeability grain-oriented steel also provides a lower core loss in most applications, i.e. it is a more efficient electrical conductor.[16] A common manufacturing process imparts similar chemical and physical properties to the products.[17] [18]

Different grades also are marketed in the same channels of distribution (primarily sold directly to transformer manufacturers) and are treated as a single business enterprise by both Armco, Inc. ("Armco") and Allegheny Ludlum Corp. ("Allegheny"), the only domestic producers.[19] [20]

The grades of grain-oriented steel are interchangeable to a certain degree.[21] Grades that are relatively close in performance level, for example, M-2 to M-3 or M-4 to M-5, may be substituted for each other without compromising the design of the transformer in which they are incorporated.[22] Purchasers choose a particular grade based on the total operating cost ("TOC") that an electrical utility, or other customer, will experience over a transformer's life-time. The total operating cost is determined by the interplay of a number of factors including the cost of the grain-oriented steel, the cost of the electricity that is lost in the transformer (which will vary with the relative efficiency of the grain-oriented steel), and the cost of other materials, such

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[15] Grain-Oriented Silicon Electrical Steel From Italy and Japan, Inv. 701-TA-355 (Preliminary) and 731-TA-659/660 (Final), USITC Pub. 2778 (May 993) at I-6-I-8.

[16] CR at II-6, PR at II-5. Petitioners claim that high-permeability grain-oriented steel may have higher core loss and be less efficient, however, at certain electrical induction levels. CR at II-7, PR at II-5.

[17] Petitioners' Prehearing Brief at 3-4.

[18] Allegheny Ludlum Corp. produces only conventional grades of grain-oriented steel. Armco, Inc. produces primarily conventional grades, but also produces high-permeability grain-oriented steel. Armco produces both conventional and high-permeability grain-oriented steel using most of the same equipment to manufacture both the conventional and high-permeability grades. However, there are alleged to be certain manufacturing processes that are unique to the production of the high-permeability grain-oriented steel. For example, the slightly different chemistries of these two types of grain-oriented steel are partly achieved at the vacuum degassing stage of production in which certain alloys are added to the molten steel in the case of high-permeability grain-oriented steel. Etching by laser and other means is also used to produce high permeability steel. Petitioners contend, however, that some conventional grades of grain-oriented steel are also etched so that the products cannot always be distinguished on this basis. CR at II-10 n.25, PR at II-6 n.25.

[19] Petitioners' Prehearing Brief at 6, 8-9.

[20] CR at II-19, PR at II-13. Both high-permeability and conventional grades, moreover, often are sold to the same manufacturers for use in their various transformer products. CR at II-68 to II-73, PR at II-33 to II-34. GE Prehearing Brief at 1-3.

[21] Petitioners state that there is only a relatively small percentage of the total market for grain-oriented steel that must be supplied with high-permeability, low core loss grades because of the specific requirements of the large transformers there involved. Petitioners' Prehearing Brief at 6-8, 62-70; CR at II-6 and II-7, PR at II-5. Economic Memorandum, EC-R-051 at 26.

[22] CR at II-70, Pr at II-33.

as copper, used in the manufacture of a transformer.[23] A purchaser can use various combinations of grain-oriented steel grades and other inputs to obtain a transformer with any of many different total operating costs,[24] although some transformer manufacturers state that there are certain transformers in which only the high-permeability grades will satisfy manufacturing requirements.[25] [26] Moreover, contract bids by transformer manufacturers appear to substantiate that various forms of grain-oriented steel, including both high-permeability and lower-core loss conventional grades, may be used to produce transformers that are competitive in terms of efficiency.[27]

Use of a less efficient grade in a high performance transformer will require that a transformer manufacturer make certain trade-offs with respect to other components of the finished transformer. Information supplied by the petitioners suggests that the necessary balancing of steel electrical performance with other transformer design components can be achieved within a relatively narrow cost range in many cases.[28] Purchasers differentiate between conventional grades of grain-oriented steel, but may substitute grades that are close to one another in terms of performance.[29] This is particularly true for the mid-range grades and for successive grades of increasing efficiency, e.g. M-5 and M-4, M-3 and M-2.[30]

Although high-permeability grain-oriented steel is viewed by some purchasers as significantly different from conventional grain-oriented steel, and at least in some end uses cannot be replaced with conventional grades, there does not appear to be a clear dividing line in terms of performance between different categories of grain-oriented steel. Instead, the different grades represent a continuum of products where the gradations between each more efficient grade are not significant.

The finding of a single like product, therefore, would be consistent with the Commission's practice in similar cases where there are a multitude of different grades suitable for varied end uses.[31] In this investigation, such a finding is appropriate because there is substantial room to substitute different conventional grades in the various end uses, and to use certain of the more efficient conventional grades in products that compete with transformers incorporating the high permeability grain-oriented steel. In accordance with our like product determination, we find that the domestic industry consists of all domestic producers of all grades of grain-oriented steel.[32]

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[23] CR at II-6 and II-7, PR at II-5 and II-6.

[24] Petitioners' Prehearing Brief at 58-60.

[25] GE, for example, stated that for most of its high efficiency transformers high permeability grain-oriented steel is the only grain-oriented category that would be suitable. GE Prehearing Brief at 8-11. CR at II-70 and II-71, PR at 33-34.

[26] The portion of the market that can only be satisfied by the high-permeability grades is estimated to account for approximately one percent of transformer unit shipments in terms of quantity, but as much as 22 percent in terms of transformer value. Economic Memorandum at 26. Information on the quantity of grain-oriented steel accounted for by such transformers was not received from the parties.

[27] Petitioners' Prehearing Brief at 62-71; CR at II-68 to II-73, PR at II-33 and II-34.

[28] Petitioners' Prehearing Brief at 60-61.

[29] Petitioners' Prehearing Brief at 62-63.

[30] CR at II-70, PR at II-33.

[31] See Certain Steel Wire Rod from Brazil and Japan, Invs. 731- TA-646 and 648 (Final); New Steel Rails from Japan, Luxembourg, and the United Kingdom, USITC Pub. 2524 (June 1992); Polyethylene Terephthalate Film, supra note 12; and Granular Polytetrafluorethylene Resin, supra note 12.

[32] In our recent determinations on LTFV imports from Japan and subsidized imports from Italy, the Commission considered whether Armco should be excluded from the domestic industry under the related party provision, 19 U.S.C. 1677(4)(B), by virtue of a joint venture with a subsidiary of an importer of Japanese merchandise. See Grain-Oriented Silicon Electrical Steel from Italy and Japan, USITC Pub. 2778 at I-9. Similar issues do not arise in this investigation because no record information indicates any

(continued...)

II. CONDITION OF THE DOMESTIC INDUSTRY

In determining whether there is material injury to a domestic industry by reason of the subject imports, the Commission considers all relevant economic factors that have a bearing on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development. No single factor is determinative, and the Commission considers all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[33]

One condition of competition relevant to this industry is the decline in purchases of electrical equipment by utilities.[34] The demand for grain-oriented steel is tied directly to demand for electricity and power and distribution transformers. Electrical transformers purchased by utilities account for approximately 80 percent of consumption of grain-oriented steel.[35] Both the U.S. recession and energy conservation efforts have contributed to reduced growth in demand for electricity and a concomitant reduction in utility equipment requirements, including fewer transformer purchases.[36] Moreover, respondents have argued that there has been a trend toward more efficient transformers which may favor sales of high-permeability products.[37] These developments have translated into overall reduced demand for grain-oriented steel.[38] We have examined the various indicators of the domestic industry's performance in light of these conditions of competition.

Information was collected in this investigation for a four year period, 1990 through 1993, inclusive. In making our determination, however, we considered data for the latter part of the period to be the most indicative of the current condition of the industry.

Apparent U.S. consumption of grain-oriented steel decreased by almost 14 percent between 1990 and 1991, declining from 273,545 to 235,555 tons, then increased by less than 1 percent to 237,385 tons in 1992 and to 248,490 tons in 1993, but never recovered to 1990 levels.[39]

Domestic production fell by more than *** percent between 1990 and 1991 and continued to decline during both 1992 and 1993.[40] Average annual capacity to produce grain-oriented steel remained stable during the period of investigation, with only a small increase in

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[32] (...continued)
potential relationship between domestic producers and producers or importers of Italian material and the Commission has determined that cumulation of imports from these two countries is inappropriate. See Section III infra.

[33] 19 U.S.C. § 1677(7)(C)(iii). Although the foreign producers argued that the decline in the performance of the domestic industry simply reflected a normal business cycle with 1990 representing the most recent peak, respondents provided no substantiation for their argument and the record does not support a finding that the grain-oriented steel industry's performance is linked in a direct manner with general business cycles or that its performance would be largely explained by the fluctuations in demand that normally accompany such cycles.

[34] Conference Transcript at 65-66, 99, and 110; GE Prehearing Brief at 35; Kawasaki/Nippon Prehearing Brief at 20-22.

[35] CR at II-12, PR at II-8.

[36] Id.; GE Prehearing Brief at 36-41; Kawasaki/Nippon Prehearing Brief at 20-21, 47-48.

[37] Kawasaki/Nippon Prehearing Brief at 23; GE Prehearing Brief 36-37.

[38] CR at II-19; PR at II-14.

[39] Table 1, CR at II-20, PR at II-15.

[40] Table 2, CR at II-21, PR at II-15.

1993.[41] Capacity utilization declined in each year of the investigatory period as production decreased.[42]

The quantity of the domestic industry's U.S. shipments of grain-oriented steel also fell more than *** percent from 1990 to 1992, but increased somewhat in 1993. The domestic industry's 1993 U.S. shipments, however, remained well below the 1990 level and were only marginally higher than the 1991 level despite an increase of more than 5 percent in apparent consumption between 1992 and 1993.[43] The value of the domestic industry's U.S. shipments exhibited the same general trend as the quantity of shipments.[44] The average unit value of the domestic industry's U.S. shipments increased from 1990 to 1991, but then declined from 1991 through 1993, reaching a low for the period examined.[45]

The domestic industry's end-of-period inventories of grain-oriented steel fluctuated during 1990-1993 both in absolute terms and as a percentage of both production and U.S. shipments.[46] The average number of production and related workers producing grain-oriented steel declined annually between 1990 and 1993 as production and capacity utilization both fell.[47] Hours worked followed essentially the same trend as the average number of workers.[48]

Generally, indicators of the financial condition of the domestic industry have declined, and the improvement in the domestic industry's U.S. shipments in 1993 was not sufficient to alter the downward trend. Thus, a partial recovery in shipments did not restore profitability and financial losses grew worse for the industry in 1993.

Net sales fell between 1990 and 1992, displayed a small improvement in 1993, but remained well below 1990 and 1991 levels.[49] The decline in sales value resulted in a reduction in gross profits, operating income, and net income for the domestic industry from 1990 to 1993, with the situation becoming more aggravated each year.[50] Gross profits declined from 1990 to 1992 and then disappeared altogether as a loss was reported in 1993.[51] Operating income declined in a similar fashion as the costs of goods sold and SG & A expenses did not decline commensurate with reductions in production and sales.[52] In fact, cost of goods sold increased as a percentage of sales from 1990 to 1993.[53]

Net income declined from 1990 to 1991 and became a loss in both 1992 and 1993.[54] Cash flow followed the same pattern as net income, declining from 1990 to 1991 and turning

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[41] Table 2, CR at II-21, PR at II-15.

[42] Id.

[43] Table 3, CR at II-22, PR at II-15.

[44] Id.

[45] Id.

[46] Table 4, CR at II-23, PR at II-16.

[47] Table 5, CR at II-25, PR at II-16.

[48] Id.

[49] Table 7, CR at II-29, PR at II-17. The decline in net sales is partially due to a decline in export shipments of hot rolled bands which are produced on some of the same equipment used to manufacture grain-oriented steel. Hot-rolled bands are not subject to cold-rolling and the successive annealing processes that grain-oriented steel undergoes and are not included in the like product in this investigation.

U.S. producers' exports of grain-oriented steel remained relatively stable throughout the period of investigation. CR at II-22 and II-23 n.57, PR at II-15.

[50] Table 7, CR at II-29, PR at II-17.

[51] Table 7, CR at II-29, PR at II-17.

[52] Id.

[53] Some of the increase in the cost of goods sold is attributable to yield difficulties which the domestic producers encountered in improving the efficiency of grain-oriented steel that they produce. CR at II-33 and II-34, PR at II-18.

[54] Id. Part of the losses experienced in 1992 and 1993 are attributable to one-time charges for post-retirement expenses that the domestic producers incurred. CR at II-30.

negative in 1992 and 1993.[55] Capital investment by the domestic industry declined from 1990 to 1992 and then increased in 1993. Investment in 1993, however, remained at a level substantially below that of 1990.[56] The domestic industry also reduced its research and development expenditures from 1990 to 1993.[57] [58]

III. CUMULATION [59]

A. In General

In determining whether there is material injury by reason of the subject imports, the Commission is required to assess cumulatively the volume and price effects of imports from two or more countries of products subject to investigation if such imports compete with each other and with like products of the domestic industry in the U.S. market.[60]

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors.[61] While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[62]

B. Competition Between Imports from Italy and Japan

In this investigation, we have not cumulated LTFV imports from Italy with imports from any other country. Although the petition in this investigation was filed simultaneously with the petitions in Grain-Oriented Silicon Steel from Japan and Italy, the Commission determined in those earlier investigations that cumulation of imports from Japan and Italy was inappropriate

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[55] Id.

[56] Table 11, CR at II-38, PR at II-18.

[57] Table 12, CR at II-38, PR at II-19.

[58] Based upon the foregoing, Commissioners Newquist and Rohr determine that the domestic industry producing grain-oriented steel is materially injured.

[59] Commissioner Newquist does not join in the remainder of this opinion. See Additional Views of Commissioner Newquist.

[60] 19 U.S.C. § 1677(7)(C)(iv)(I); see Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

[61] These factors are:

> (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
> (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
> (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
> (4) whether the imports are simultaneously present in the market.

See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[62] See Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

based on a lack of reasonable overlap of competition.[63] We adopt our findings on cumulation in Grain-Oriented Silicon Steel from Japan and Italy for the purposes of this determination.[64] [65]

IV. MATERIAL INJURY BY REASON OF IMPORTS OF THE SUBJECT MERCHANDISE [66]

In its determination of whether the domestic industry is materially injured by reason of the subject imports, the statute directs the Commission to consider the volume of imports of the merchandise which is the subject of the investigation, their effect on prices in the United States for like products, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[67] Although the Commission may consider causes of injury other than the allegedly LTFV or subsidized imports, it is not to weigh causes.[68] Finally, the Commission is directed to "evaluate all relevant factors . . . within the context of the . . . conditions of competition that are distinctive to the affected industry.[69] For the reasons discussed below, we find that the domestic grain-oriented steel industry is materially injured by reason of LTFV imports of grain-oriented steel from Italy.[70]

Imports of the subject merchandise from Italy are highly concentrated in a single conventional grade of grain-oriented steel, M-6.[71] This grade is the least efficient of the conventional grades and competition between suppliers is based to a significant degree on price.[72] M-6 accounts for a substantial portion of total domestic shipments of grain-oriented steel[73] and the domestic M-6 competes directly with the subject imports from Italy.[74] Purchasers, who bought M-6 from domestic producers and the Italian producer, state that they use those products interchangeably.[75]

Imports of grain-oriented steel from Italy *** between 1990 and 1993, with the largest *** occurring in 1993.[76] Given such *** and the overall decline in apparent domestic

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[63] See Grain-Oriented Silicon Steel from Japan and Italy, USITC Pub. 2778 at I-12- I-14.

[64] Id.

[65] The countervailing and antidumping duty investigations involving Italy are coextensive in terms of product coverage because only one producer/exporter shipped the subject merchandise to the United States during the entire period of investigation and this company, ILVA S.p.A., was the sole subject of Commerce's investigations involving the subject merchandise from Italy.

[66] Commissioner Crawford does not join these views. See her Dissenting views.

[67] 19 U.S.C. § 1677(7)(B)(i).

[68] See e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101.

Commissioner Rohr and Commissioner Nuzum further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrusoco Paulista, SA. v. United States, 704 F. Supp. at 1101.

[69] 19 U.S. C. § 1677(7)(C).

[70] Although respondents argue that increases in non-subject imports of grain-oriented steel caused any material injury that the domestic industry may be suffering, we have determined for the reasons set forth below that imports of the subject merchandise are a cause of material injury to the domestic industry. We note that non-subject imports were present in the market and increased their market share during the period examined.

[71] CR at II-43, PR at II-21.

[72] See CR at II-6, PR at II-5.

[73] Appendix F, Table F-1, CR at F-3, PR at F-3.

[74] Stampers, who purchase most of the M-6 grade, stated that price was a determining factor in deciding where to source their grain-oriented steel purchases. CR at II-68, PR at II-32.

[75] CR at II-68, PR at II-32.

[76] Table 16, CR at II-48, PR at II-23.

consumption, the market share enjoyed by the subject imports from Italy *** by almost *** percent, albeit from a small base, as domestic producers simultaneously lost market share.[77] Based on these facts, we find that the volume of the subject imports from Italy was significant.

The subject imports from Italy also had an adverse effect on prices of the domestic like product. The Commission collected price data for both shearing quality M-6 grain-oriented steel as well as M-6 punching quality (used by stampers), which together represent almost all imports of the subject merchandise from Italy. Price comparisons for the two M-6 categories reveal that in 27 of 30 calendar quarters the Italian imports undersold the comparable domestic product.[78] Margins of underselling were as high as 15.9 percent. Notably, several large purchasers of grain-oriented steel stated that they would have switched to the domestic producers for M-6 grade steel if the price of the imports from Italy increased by 5 to 10 percent.[79] The margins of underselling by the imports from Italy often exceeded these amounts[80] and we find that such underselling, combined with steady decreases in the price of the subject merchandise, depressed prices for the M-6 grade, reducing domestic prices in 1993 to a level lower than they were in 1990.[81] Purchaser price information, moreover, shows that the margin of underselling by the M-6 imports from Italy increased substantially between 1990 and 1993.
This situation prevented, to a significant degree, the domestic producers from increasing prices as their cost of goods increased. Based on the foregoing, we find that imports of the subject merchandise from Italy showed significant underselling and that they significantly suppressed prices for the domestic like product.

The impact on the domestic industry from the increased market penetration and price underselling is manifested in the deteriorating condition of the domestic industry. Decline in domestic producer market share and shipment volume is evidenced in reduced revenue, a decline in production and capacity utilization, and increased per-unit costs of production. Because domestic prices were suppressed by the subject imports, the domestic industry could not recapture its increased costs and the industry began to experience losses on operations in 1992. The increase in import market share was achieved and held at the direct expense of U.S. capacity utilization, employment, and sales.[82]

CONCLUSION

We find that the relatively low prices of the imports have enabled the subject imports to increase in volume and market share at the expense of the domestic industry and enabled the subject imports to displace domestic sales. As a result, the domestic industry has suffered lower sales, production, capacity utilization, employment, and profitability than otherwise would have prevailed. Therefore, we determine that the information of record in this final investigation establishes that the domestic industry producing grain-oriented steel is materially injured by reason of the subject imports from Italy.

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[77] Table 17, CR at II-51, PR at II-24.
[78] Tables 18 and 19, CR at II-56 and II-57, PR at II-27.
[79] CR at II-68, PR at II-33.
[80] CR at II-65, PR at II-31.
[81] CR at II-74 and II-75, PR at II-35 and CR at II-68, PR at II-32.
[82] One of the domestic manufacturers ceased production of M-6 grade grain-oriented steel during the period of investigation due to insufficient demand. Conference Transcript at 46. Absent imports of the lower priced M-6 from Italy it is likely that purchasers of the subject imports from Italy would have turned to the domestic industry as their principal source of supply.

VIEWS OF COMMISSIONER NEWQUIST

I concur with the majority that the domestic industry producing certain grain-oriented electrical steel is materially injured by reason of imports of such steel from Italy which the Department of Commerce has determined are sold in the United States at less-than-fair-value. I join the majority's discussion of like product and condition of the domestic industry. The reasons for my affirmative determination in this investigation are set forth in my views in Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 (May 1994).[1] Accordingly, I adopt those views in their entirety and incorporate them by reference.

[1] I note that in those investigations, I cumulated dumped imports from Japan with subsidized imports from Italy. The dumped imports from Italy subject to this investigation are those which are also subsidized; in other words, as I explained in the earlier investigations, there is no issue of cross-cumulation. In my view, the statute mandates cumulation of the dumped imports from Italy with those from Japan. Therefore, my causation analysis there is equally applicable here.

DISSENTING VIEWS OF COMMISSIONER CRAWFORD

I. INTRODUCTION

The petition in this investigation was filed simultaneously with two other investigations of grain-oriented silicon electrical ("GOES"): the antidumping investigation of GOES imports from Japan[1] and the countervailing duty investigation of GOES imports from Italy.[2] In those investigations, I joined the majority of the Commission in determining that an industry in the United States is materially injured by reason of imports of GOES from Japan found by the Department of Commerce to be sold at less-than-fair-value ("LTFV"). However, I dissented from the majority's affirmative determination in the investigation of GOES imports from Italy. In that investigation, I determined that an industry in the United States is not materially injured or threatened with material injury by reason of subsidized and LTFV imports of GOES from Italy.[3]

This investigation is the antidumping investigation of GOES imports from Italy, the companion case for the other two investigations. On the basis of the record in this final investigation, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of subsidized and LTFV imports of GOES ("subject imports") from Italy.

I concur in the conclusions of my colleagues with respect to like product, the domestic industry, and related parties. I also concur in their discussion of the condition of the domestic industry, and in the determination not to cumulate subject imports from Italy with subject imports from Japan. However, I dissent from my colleagues' affirmative determination with respect to subject imports from Italy. I determine that an industry in the United States is not materially injured or threatened with material injury by reason of subject imports from Italy. My analysis follows.

II. ANALYTICAL FRAMEWORK

Evaluating the effects of subject imports on domestic prices and the domestic industry requires an understanding of the economic factors affecting the domestic market. It is necessary to understand how purchasers of the product react to an increase or decrease in the price of the product they purchase (i.e. the elasticity of demand). It is also necessary to understand how the imported and domestic products are differentiated from each other and how that affects purchasers' decisions to buy the products. When purchasers can choose between imports and domestic products, differences between those products will affect the price purchasers are willing to pay for each. The extent of those differences determines whether purchasers buy relatively more of the domestic product when the relative price of the imported product increases (i.e. the elasticity of substitution).

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[1] Inv. No. 731-TA-660.

[2] Inv. No. 701-TA-355.

[3] See, Additional and Dissenting Views of Commissioner Crawford in Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. 2778 (May 1994). At that point in time, the Department of Commerce had made only its preliminary determination of sales at LTFV. On July 1, 1994 the Department of Commerce published in the *Federal Register* its final determination that the LTFV margin is 60.79 percent.

Similarly, when evaluating the impact of subject imports on the domestic industry, it is necessary to understand whether the industry could increase the volume of its production in response to an increase in the price of the domestic product (i.e. the elasticity of domestic supply). It is also necessary to understand other relevant economic factors, such as the composition of the industry, market segmentation, and the availability of nonsubject imports, that affect domestic prices and output.

Having developed an understanding of the market and the domestic industry, I evaluate the effects of the dumping and the subsidies. To evaluate the effects of the dumping and the subsidies on domestic prices, I compare domestic prices that existed when the imports were dumped and subsidized with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the impact on the domestic industry, I compare the state of the industry when the imports were dumped and subsidized with what the state of the industry would have been if the imports had been priced fairly. In this regard, the impact on the domestic industry's prices and sales, and therefore revenues, is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from the impact on revenues.

I then determine whether the price and sales effects of the dumping and subsidies, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If this is affirmative, I find that the domestic industry is materially injured by reason of dumped and subsidized imports.

III. BACKGROUND AND CONDITIONS OF COMPETITION

A. Elasticity of Demand

The elasticity of demand measures how purchaser demand responds to product price changes. It reflects several factors, including the product's cost as a percentage of total cost of the finished product, and the availability of substitute products and of alternative finished goods.

The demand for GOES is derived from the demand for the downstream products in which it is used, principally distribution and power transformers. Record evidence indicates that GOES represents 6 to 22 percent of the total cost of power transformers, 12 to 30 percent of the total cost of distribution transformers, and an even smaller percentage of the final cost of the electricity. The only practical substitute for GOES is amorphous metals, which are currently used for only a small portion of the distribution transformer market. Although their use is increasing, the high cost of amorphous metals and the need for different production equipment limit significantly their substitutability with GOES. For these reasons, the demand for GOES is relatively inelastic, and purchasers are relatively insensitive to price increases. Therefore, I find that purchasers are unlikely to reduce their purchases of GOES significantly if prices increase.

B. Elasticity of Substitution

The elasticity of substitution measures how the quantity demanded of one product relative to another product responds to changes in the relative prices of these products. It depends upon the extent of product differentiation such as quality differences, and upon differences in terms and conditions of sale. Products are close substitutes if product attributes and terms and conditions of sale are similar. If products are close substitutes, purchasers will tend to respond more readily to relative price changes. In this investigation I find that subject imports and the domestic products are not close substitutes for each other.

I find that the elasticity of substitution between Italian imports and the domestic product is low. That is, I find that Italian imports and the domestic industry are not good substitutes for each other. The substitutability is substantially limited due to the product mix of subject imports and the domestic product and nonprice differences between the two products.

The record demonstrates that substitutability between and among grades of GOES is limited primarily to one grade higher or lower in energy efficiency. The overwhelming majority, *** percent, of Italian imports consists of grade M-6, the least energy efficient grade of GOES. The remaining minuscule amount, *** percent, consists of grade M-3. In other words, virtually all Italian imports consist of M-6. For the domestic industry, on the other hand, M-6 accounts only for about *** percent of domestic shipments. Therefore, fully *** percent of domestic shipments does not compete directly with Italian imports. Even including the limited substitutability between M-6 and M-4/M-5, nearly *** percent of domestic shipments does not compete at all with Italian imports.[4]

In addition, two purchasers that accounted for *** percent and *** percent respectively, or *** percent of total Italian imports collectively, stated that they purchased Italian imports for nonprice reasons. One purchased Italian imports for quality reasons, and the other purchased Italian imports expressly to maintain an alternative source of supply. In other words, *** of Italian imports did not compete with the same grade of the domestic product, due to quality or product differentiation and other nonprice reasons.[5]

Overall, Italian imports compete directly with about *** percent of domestic shipments. The lack of direct competition with nearly *** percent of domestic shipments reduces substantially the elasticity of substitution between Italian imports and the domestic product. In addition, the record demonstrates that *** of Italian imports does not compete with the same grade of the domestic product, which further reduces the overall substitutability between the two.[6]

For these reasons, I find that Italian imports and the domestic product are not good substitutes. Therefore, if the price of Italian imports increases, purchasers will likely continue to buy some Italian imports and will likely switch to domestic products only if alternative sources of supply are not available.

C. Elasticity of Domestic Supply

I find that the elasticity of domestic supply is high; that is, the domestic industry would have been able to increase its output as a result of an increase in prices. In 1993, capacity utilization was *** percent. In addition, there are large inventories available for sale in the market, and significant export markets exist so that the domestic industry is able to shift production into and out of the U.S. market.[7] For these reasons, I find that the domestic industry is readily able to increase its output in response to an increase in prices.

D. Characteristics of the U.S. Market

There are two producers of GOES in the United States. One firm produces only conventional grades. The other firm produces primarily conventional grades, but also produces high-permeability GOES. Nonsubject imports were concentrated in the least energy efficient grades (i.e. M-4/M-5 and M-6), with *** nonsubject imports of high permeability GOES.

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[4] EC-R-051 at 5.
[5] EC-R-051 at 23.
[6] EC-R-051 at 22 to 24.
[7] EC-R-051 at 17 to 19.

Therefore, nonsubject imports were available as an alternative source of supply to purchasers of Italian imports.

IV. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM ITALY

In determining whether a domestic industry is materially injured by reason of the subject imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[8]

In assessing the effect of subject imports, I compare the current condition of the domestic industry with the condition that would have existed had imports been fairly priced.[9] Then, taking into account the condition of the industry, I determine whether any resulting change of circumstances constitutes material injury. For the reasons discussed below, I find that the domestic industry is not materially injured by reason of subject imports from Italy.

A. Volume of the Subject Imports

In 1993, the domestic industry's shipments of GOES accounted for a market share of *** percent by quantity, and the market share of subject imports from Italy was *** percent by quantity.[10] Based on this relatively small market share and the low elasticity of substitution, I do not find the volume of subject imports to be significant.

B. Effect of Subject Imports on Domestic Prices

To analyze the effect of subject imports on domestic prices of the like product, I consider a number of factors relating to the industry and the nature of the products. These factors include the availability of substitute products in the market, the degree of substitutability between the subject imports and the domestic like product, and the presence of fairly traded imports. For the reasons stated below, I find that the subject imports had no significant price effects on the domestic industry.

Giving the domestic industry the benefit of the doubt, I have assumed that the entire subsidy margin of 24.42 percent has been passed through in the prices of Italian imports. I have also included the effects of the 60.79 percent final dumping margin in my analysis. If subject imports and the domestic product were good substitutes, the combined effects of these margins would likely have been to price Italian imports out of the market. However, as discussed above,

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[8] 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

[9] 19 U.S.C. § 1677(7)(C)(iii).

[10] Report Table D-4.

the two are poor substitutes, so the effects of eliminating the subsidies and dumping are not as great.

If the price of Italian imports had been increased to fairly priced levels, one would expect that the domestic industry would have been able to increase its prices because demand is inelastic. However, competition in the market between domestic producers and with nonsubject imports and the low elasticity of substitution would have prevented domestic price increases.

Giving petitioners the benefit of the doubt, I have assumed that no Italian imports would have been sold in the domestic market had they been offered at fairly traded prices. Domestic capacity utilization is *** percent, and therefore the domestic industry would have been able to supply the market share held by Italian imports. Although there are only two domestic producers, record evidence demonstrates that they compete actively in the market. Therefore, attempts by one producer to increase prices would have been met and "beaten back" by the other producer. A further limitation on the ability of domestic producers to increase their prices is the availability of substantial quantities of nonsubject imports in the market giving purchasers access to alternative sources of supply. As a result, I find that competition between the domestic producers themselves, and from nonsubject imports, would have minimized or prevented any price increase for the like product even without the presence of subject imports. Hence, subject imports cannot be found to have had any adverse effect on domestic prices.

C. Impact of Subject Imports on the Domestic Industry

In assessing the impact of subject imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.[11] These factors either encompass or reflect the volume and price effects of the dumped and subsidized imports, and so I must gauge the impact of the dumping and subsidies through those effects.

As discussed above, I have assumed that no subject imports would have been sold in the domestic market at fairly traded prices. Because of competition in the U.S. market, domestic prices would not have increased had subject imports been priced out of the market. As a result, any impact of subject imports on the domestic industry would have been on the volume of the domestic industry's output and sales.

The domestic industry's capacity utilization rate was *** percent in 1993. Therefore, if subject imports had been priced out of the market, the domestic industry had more than sufficient available capacity to replace them. Nonsubject imports were also available to satisfy demand had subject imports not been in the market.

Subject imports and the domestic product are poor substitutes. Thus, purchasers are more likely to have purchased nonsubject imports than domestic GOES had subject imports been sold at fairly traded prices. The record includes evidence that fully *** of Italian imports is bought by purchasers for specific nonprice reasons (quality differences and the need to maintain alternative sources of supply). Consequently, purchasers are unlikely to have switched to the domestic product, even if Italian imports were not available. In fact, the domestic industry would have had the opportunity to compete only for the sales of *** of subject imports, had they been priced out of the market. I have given petitioners the benefit of the doubt and assumed that the domestic industry would have captured this entire *** of the market share of subject imports.

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[11] 19 U.S.C. § 1677(C)(iii).

If the domestic industry had captured this *** of the displaced Italian market share, it would have increased its market share by *** percent. This increase in market share is so small that the domestic industry's output and revenues would not have increased significantly. Consequently, I conclude that, even giving the benefit of the doubt to the domestic industry, it would not have been materially better off if subject imports had been fairly priced. Therefore, I determine that the domestic industry is not materially injured by reason of subject imports from Italy.

V. NO THREAT OF MATERIAL INJURY BY REASON OF SUBSIDIZED AND LTFV IMPORTS FROM ITALY

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.[12] A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."[13]

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence[14] that I am required by law to evaluate in making my determination.

None of the subsidies found by Commerce are export subsidies. However, in my determination of no material injury by reason of subject imports, I gave petitioners the benefit of the doubt by assuming that the entire amount of the subsidies has been passed through to prices of subject imports in the United States. I make the same assumption in my analysis of threat of material injury by reason of subject imports.

There has been no increase in Italian capacity, and capacity utilization was fairly high in 1993. Capacity utilization is projected to *** in 1994, and so it is likely that some production capacity will be available to increase exports of GOES from Italy. However, I find that the available capacity is not likely to result in a significant increase in imports of Italian GOES into the United States. First, there are significant export markets for Italian GOES, so the foreign producer is not primarily reliant on the U.S. market. Second, Italian exports to the United States are projected to *** in 1994. Finally, GOES represents a *** of the Italian producer's total production, evidence that the Italian firm's economic interests lie almost exclusively in producing other products. For these reasons, I find that the information relevant to production capacity and unused or underutilized capacity in the exporting countries does not represent evidence that any threat of material injury is real or that actual injury is imminent.

While the market share of subject imports increased from *** percent in 1990 to *** percent in 1993, it only increased by *** percentage points from 1992 to 1993. I do not find this to be a "rapid increase" in market penetration. In addition, because subject imports and the domestic product are poor substitutes, I find little, if any, likelihood that the market penetration will increase to injurious levels. Therefore, I find that the increase in market penetration does not constitute evidence that any threat of material injury is real or that actual injury is imminent.

There were no inventories of Italian GOES in the United States in 1993. Therefore, there are no U.S. inventories to constitute a threat of material injury.

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[12] 19 U.S.C. § 1677(F)(i).
[13] 19 U.S.C. § 1677(7)(F)(ii).
[14] See American Spring Wire Corporation v. United States, 590 F., Supp. 1273 (1984).

In my determination that there is no material injury by reason of subject imports, I demonstrated that subject imports have had no significant effect on domestic prices. In light of the domestic industry's capacity utilization rate, the low elasticity of substitution, and the availability of nonsubject imports, I find no positive evidence that this will change in the immediate future. Therefore, I conclude that subject imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

I find no evidence of any other demonstrable adverse trends that indicate the probability that subject imports will be the cause of actual injury.

For the reasons stated above, I find that the domestic industry is not threatened with material injury by reason of subject imports from Italy.

VI. CONCLUSION

On the basis of the record, I determine that the domestic industry is not materially injured or threatened with material injury by reason of subject imports from Italy.

PART II

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of grain-oriented silicon electrical steel[1] from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission (Commission), effective January 28, 1994, instituted investigation No. 731-TA-659 (Final) under section 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation was given by posting a copy of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 23, 1994 (59 F.R. 8658).[2]

BACKGROUND

This investigation results from a petition filed by counsel on behalf of Allegheny Ludlum Corp. (Allegheny), Pittsburgh, PA; Armco, Inc. (Armco), Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH, on August 26, 1993, alleging that an industry in the United States is materially injured and is threatened with further material injury by reason of LTFV imports from Italy of grain-oriented silicon electrical steel. In addition, the petition also alleged that an industry in the United States is materially injured and is threatened with further material injury by reason of LTFV imports of grain-oriented silicon electrical steel from Japan and subsidized imports of that product from Italy.[3] In response to the petition, the Commission instituted countervailing duty investigation No. 701-TA-355 (Preliminary) under section 703(a) of the Act (19 U.S.C. § 1671b(a)) and antidumping investigations Nos. 731-TA-659 and 660 (Preliminary) under section 733(a) of the Act (19 U.S.C. § 1673b(a)) and, on October 12, 1993, determined that there was a reasonable indication of such material injury. Commerce subsequently made final affirmative determinations in the countervailing duty investigation concerning Italy (59 F.R. 18357, Apr. 18, 1994) and the antidumping investigation concerning Japan (59 F.R. 19693, Apr. 25, 1994), but delayed its final LTFV determination concerning Italy. The Commission conducted all three injury investigations concurrently and held a hearing in connection with all three on April 12, 1994. It made final affirmative determinations of injury in the countervailing duty investigation concerning Italy and the antidumping investigation concerning Japan on May 27, 1994 (*Grain-Oriented Silicon Electrical Steel From Italy and Japan: Investigations Nos. 701-TA-355 and 731-TA-660 (Final)*, USITC

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[1] As defined by Commerce, the grain-oriented silicon electrical steel covered by this investigation is an alloy steel containing by weight at least 0.6 percent of silicon and not more than 0.08 percent of carbon (the steel may also contain by weight not more than 1.0 percent of aluminum but no other element in an amount that would give it the characteristics of another alloy steel), of a thickness of no more than 0.56 millimeter, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, with its constituent molecular crystals oriented primarily in one direction, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Copies of cited *Federal Register* notices are presented in app. A.

[3] Armco, the Butler Armco Independent Union, and the Zanesville Armco Independent Union were not petitioners in the antidumping investigation concerning Japan. Armco, however, indicated that it supported that petition.

Publication 2778, May 1994). This report contains only information related specifically to Commerce's final LTFV determination on Italy, and is intended to be used in conjunction with the Commission report on investigations Nos. 701-TA-355 and 731-TA-660 (Final), which contains information relevant to all three investigations.

THE NATURE AND EXTENT OF SALES AT LTFV

On July 1, 1994, Commerce published in the *Federal Register* its final determination that imports of grain-oriented silicon electrical steel from Italy are being, or are likely to be, sold in the United States at LTFV (59 F.R. 33952). Commerce examined sales and costs of the Italian producers ILVA S.p.A. and Acciai Speciali Terni, S.r.l. (collectively Terni) during the period March 1, 1993 through August 31, 1993. Commerce was unable to verify Terni's submitted cost of production and constructed value information because the company did not provide adequate source documentation at verification to substantiate the accuracy and completeness of its submitted costs. Accordingly, Commerce based its determination on "best information available," as detailed in its notice. The final LTFV margin for all companies is 60.79 percent *ad valorem*.

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigations Nos. 701–TA–355 and 731–TA–659–660 (Final)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–355 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of grain-oriented silicon electrical steel.[1]

The Commission further gives notice of the institution of final antidumping investigations Nos. 731–TA–659 and 660 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Japan of grain-oriented silicon electrical steel.[1]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Italy of grain-oriented silicon electrical steel, and as a result of affirmative preliminary determinations by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy and Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on August 26, 1993, by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA; Armco, Inc., Butler, PA; the Butler Armco Independent Union, Butler, PA; the United Steelworkers of America, Pittsburgh, PA; and the Zanesville Armco Independent Union, Zanesville, OH.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on March 30, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 12, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 6, 1994 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is April 6, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 20, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 20, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of

[1] The products covered by these investigations are grain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeter, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness. The subject products are provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States. In the scope section of its preliminary antidumping determinations, the Department of Commerce noted that the HTS numbers identified in the scope of the countervailing duty determination will be conformed with those listed in the antidumping determinations.

sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-3993 Filed 2-22-94; 8:45 am]

BILLING CODE 7020-02-P

[A-475-811]

Notice of Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Katt or Lori Way, Office of Antidumping Investigations, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0498 and 482–0656, respectively.

Final Determination

The Department of Commerce (the Department) determines that grain-oriented electrical steel (GOES) from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of the preliminary determination and postponement of the final determination on February 2, 1994 (59 FR 5991, February 9, 1994), the following events have occurred:

We conducted verification of the respondents' (ILVA S.p.A. and Acciai Speciali Terni, S.r.l. (collectively Terni)) sales and cost questionnaire responses in Italy and the United States in May 1994.

Terni and the petitioners in this investigation (Allegheny Ludlum Corp., Armco, Inc., The United Steelworkers of America, Butler Armco Independent Union and Zanesville Armco Independent Union) submitted case briefs on June 10, 1994, and rebuttal briefs on June 15, 1994. No public hearing was requested.

On June 20, 1994, a meeting took place where representatives from the Italian government expressed their concerns regarding our findings at verification.

Scope of Investigation

The product covered by this investigation is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015 and 7226.10.5065. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is March 1, 1993, through August 31, 1993.

Such or Similar Comparisons

We have determined that the merchandise subject to this investigation constitutes a single category of such or similar merchandise.

Best Information Available (BIA)

We were unable to verify Terni's submitted cost of production (COP) and constructed value (CV) information because the company did not provide adequate source documentation at verification to substantiate the accuracy and completeness of its submitted costs. Section 776(b) of the Act provides that if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA. For a detailed discussion of the problems encountered in attempting to verify Terni's cost information, see our response to Comment One under the "Interested Party Comments" section of this notice.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents found to be uncooperative in an investigation (See, *Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled and Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Steel Plate from Belgium*, 58 FR 37082, July 9, 1993).

As detailed in the DOC position to Comment One below, we consider Terni to have been cooperative. When a company cooperates with our requests for information but fails to provide that information in a timely manner or in the form required, it is the Department's practice to use as BIA the higher of: 1) the average of margins in the petition; or 2) the calculated margin for another firm for the same class or kind of merchandise from the same country. Since there was only one less than fair value margin alleged in the petition and there was no other respondent in this case, we have applied, as BIA, the single rate alleged in the petition.

Fair Value Comparisons

To determine whether sales of subject merchandise from Italy to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV). USP and FMV were based on information contained in the petition, as fully described in the notice of initiation of this investigation (58 FR 49017, September 21, 1993).

Interested Party Comments

Comment 1: Terni argues that the Department should amend its cost verification report to "correct and clarify numerous misstatements and fundamental inaccuracies contained therein." Terni asserts that the cost verification report incorrectly casts the company's actions at verification as uncooperative. Terni further asserts that its conduct at the cost verification and throughout this investigation has been cooperative for the following reasons: (1) Terni provided complete and timely responses to the Department's requests for information; (2) Terni completed two successful sales verifications immediately following the cost verification; and (3) the cost verification was conducted at an inopportune time for Terni.

Petitioners argue that Terni has been uncooperative and has significantly impeded this investigation by failing to prepare for, or cooperatively participate in, the cost verification. Therefore, under the Department's two-tiered BIA methodology, petitioners assert that Terni should be assigned the highest margin alleged in the petition as BIA.

DOC Position: We disagree with Terni's statement regarding the accuracy of the cost verification report. At verification we found that Terni: (a) was unprepared and unable to provide source documents in a timely manner, which impeded the testing that was performed and limited the amount of testing which could be completed, (b) did not prepare a reconciliation between cost and financial systems or provide an explanation of these systems, (c) was unable to support that all necessary variances were reported, (d) provided differing labor amounts in the general (or financial) accounting system and the cost (or the analytical) system and the cost of goods sold calculation prepared at verification, and was unable to reconcile these discrepancies, (e) did not provide audited financial statements, and did not reconcile information to its unaudited statements, and (f) caused delays in other areas which did not allow the reported amounts for general & administrative

expenses, interest expense, and profit to be examined. For a more detailed discussion of each of the major problems encountered at verification and the areas where Terni challenges the accuracy of the Department's verification report see the cost verification report, dated June 3, 1994 and the calculation memorandum dated June 16, 1994, which are both on file in room B-099 of the Main Commerce Building.

Regarding petitioners' contention that Terni was an uncooperative respondent, we disagree. Although Terni's cost information was unverifiable, this failure does not change the fact that its level of participation throughout this investigation clearly indicates that it cooperated. Terni provided all information requested in the questionnaire, permitted verification of its data, and successfully completed verification of its sales information.

Comment 2: Terni argues that the Department should use its submitted costs rather than resort to BIA. However, in the event the Department determines it is justified in using BIA, Terni argues that the best information available is Terni's data, not information contained in the petition, because the petition contains numerous errors in the calculations of COP and CV. Finally, Terni asserts that if the Department rejects its cost response, the Department could still use Terni's reported U.S. sales data in making its final determination because this information was "successfully" verified.

Petitioners argue that Terni's submitted costs should not be relied upon because Terni failed every aspect of the cost verification. In addition, petitioners contend that the Department should reject Terni's entire response, including its verified U.S. sales data, and base the final determination on information provided in the petition.

DOC Position: As discussed in the "Best Information Available" section above, during the verification of the cost response, the Department encountered serious and pervasive problems in its efforts to verify the information submitted by Terni. Consequently, in accordance with Section 776(b) of the Act, the Department was compelled to use BIA.

While we were able to verify Terni's submitted sales data, we were unable to verify its cost information. Without verified COP/CV data we do not have a basis to calculate an appropriate FMV, and thus cannot perform sales comparisons. Even if the Department were to contemplate using Terni's verified U.S. sales data, there is insufficient CV information available in the petition to adequately cover the sale of all products sold by Terni in the United States. Specifically, the CV specified in the petition covers a single product which differs in physical characteristics from certain of Terni's U.S. sales. Additionally, the petition does not provide adequate cost information on which to base difference in merchandise adjustments. Under such circumstances, the use of verified U.S. sales data is inappropriate.

The rejection of a respondent's questionnaire responses in toto and use of BIA is appropriate and consistent with past practice in instances where a respondent has failed to provide verifiable COP information. (See *e.g., Final Determination of Sales At Less Than Fair Value: Certain Forged Stainless Steel Flanges* from Taiwan, 58 FR 68859, December 29, 1993); and *Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Lead & Bismuth Carbon Steel Products* from France, 58 FR 6203, January 27, 1993.)

Moreover, if the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation. Therefore, as described in the "Best Information Available" section above, we have based Terni's margin for the final determination on BIA. As permitted by Section 776(b) of the Act, the Department is using, as BIA, information contained in the petition.

Terni's four comments pertaining to certain errors in the petition hold no merit. The first comment alleging a mathematical error in petitioner's calculation of the cost of production is incorrect. Stage by stage yield factors are missing from petitioner's worksheet but have obviously been included in their analysis. Petitioners have recognized the importance of yields by listing at the bottom of the worksheet the overall yield for each product. This yield factor, however, is an average yield factor for all stages of the production process and, therefore cannot be used exclusively for purposes of recalculating costs on a stage by stage basis. The remaining three comments concern methodologies used by the petitioners in the calculation of the yield rate and depreciation and the reliance upon petitioner's costs as a proxy for Terni's costs. The Department determined that these methodologies were appropriate for purposes of initiation and continues to find them reasonable for purposes of calculating CV. Consequently, these methodologies are appropriate for use as BIA.

Other Comments

Terni made additional comments on various charges and adjustments contained in its home market and U.S. sales listings. However, since we are basing our final determination on BIA, those comments are now moot. Accordingly, no response on behalf of the Department is required.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percentage
All Companies	60.79

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or

destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 24, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16085 Filed 6–30–94; 8:45 am]

BILLING CODE 3510–DS–P