

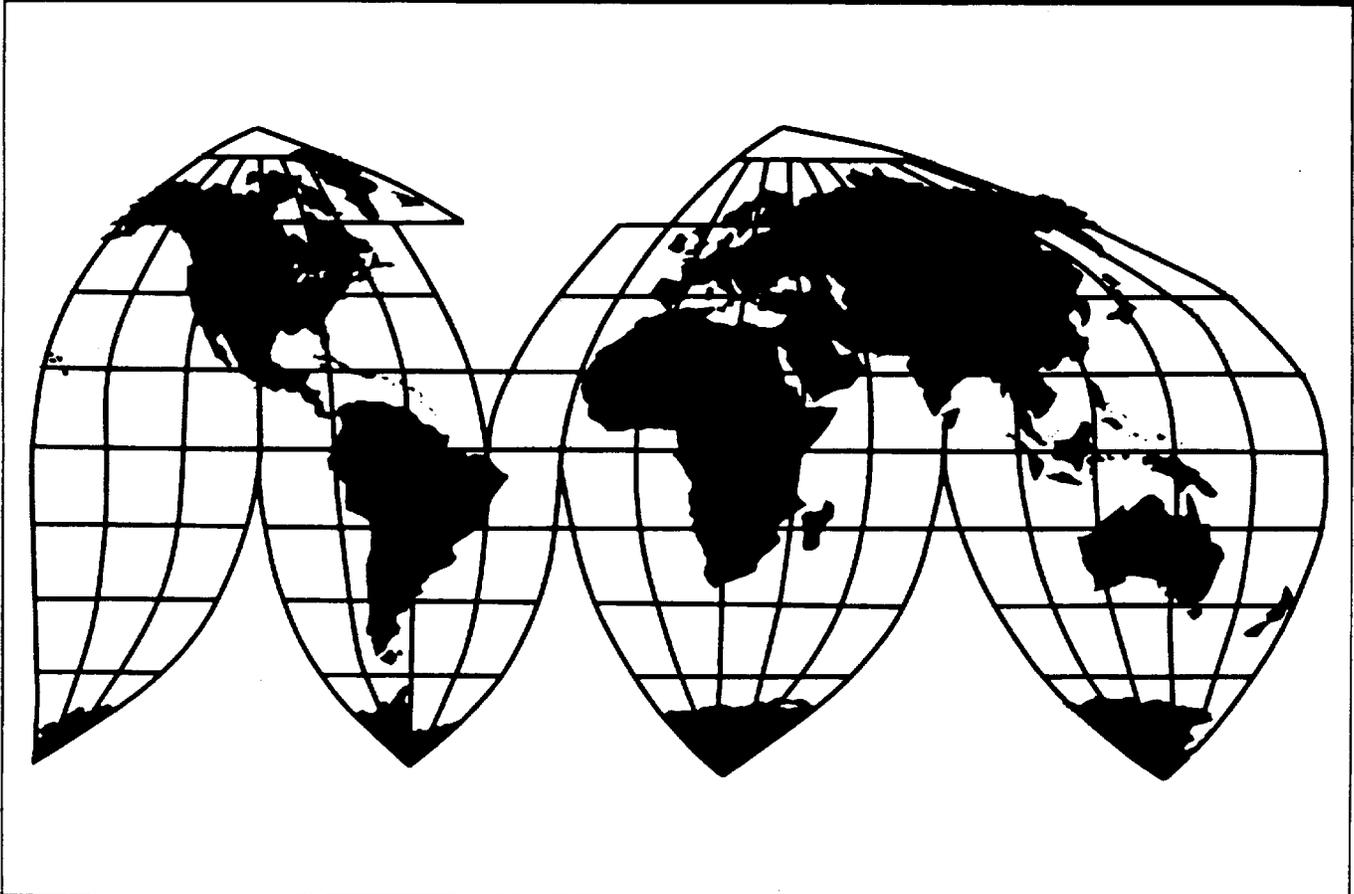
Grain-Oriented Silicon Electrical Steel From Italy and Japan

Investigation Nos. 701-TA-355 (Review) (Third Remand) and
731-TA-659-660 (Review) (Third Remand)

Publication 3798

September 2005

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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VIEWS OF THE COMMISSION

By opinion and order dated June 15, 2005, Judge Richard K. Eaton of the U.S. Court of International Trade (“CIT”) remanded for the third time the Commission’s determination involving subject imports of grain-oriented silicon electrical steel (“GOES”) from Italy and Japan.¹ Upon consideration of the third remand order, we determine that revocation of the countervailing duty order on GOES from Italy and the antidumping duty orders on GOES from Italy and Japan would not 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 BACKGROUND

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 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. 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.⁸ On December 17, 2003, the Court issued an opinion remanding the Commission’s remand determination.⁹ Although the Court found that the Commission had complied with its instructions regarding “likely” and the four enumerated statutory factors, the Court found that several of

¹ Nippon Steel Corp., et al. v. United States, Slip Op. 05-72 (June 15, 2005) (“Slip Op 05-72”).

² Chairman Stephen Koplán and Commissioner Charlotte R. Lane dissenting. See “Dissenting Views of Chairman Stephen Koplán and Commissioner Charlotte R. Lane.”

³ Former Commissioner Marcia E. Miller did not participate in the third remand proceeding.

⁴ Commissioner Shara L. Aranoff did not participate in the third remand proceeding.

⁵ 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) (“Review Determination”) at 3. Chairman Stephen Koplán, Commissioner Marcia E. Miller and Commissioner Dennis M. Devaney made affirmative determinations, while Vice Chairman Deanna Tanner Okun, Commissioner Lynn M. Bragg and Commissioner Jennifer A. Hillman made negative determinations.

⁶ Review Determination at 3.

⁷ Nippon Steel Corp., et al. v. United States, Slip Op. 02-153 (December 24, 2002) (“Nippon I”) 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-659-660 (Review) (Remand), USITC Pub. 3585 (March 2003) (“First Remand Determination”) at 1. Commissioners Marcia E. Miller and Stephen Koplán made affirmative determinations, while then-Chairman Deanna Tanner Okun and then-Vice Chairman Jennifer A. Hillman made negative determinations.

⁹ Nippon Steel Corp., et al. v. United States, 301 F. Supp 1355 (CIT 2003).

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."¹⁰ 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.¹¹

On second remand, the Commission 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.¹²

On June 15, 2005, the Court issued an opinion affirming in part and remanding in part the Commission's affirmative sunset determination on second remand in Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660.¹³ Specifically, Judge Eaton affirmed the Commission's determination with respect to discernible adverse impact, cumulation, and likely price effects. However, the Court found that the Commission's likely volume and likely impact findings were not supported by substantial evidence. In remanding the Commission's likely volume and impact findings, the Court indicated that the Commission may either re-open the record to obtain substantial evidence to support these findings or reach a different determination.¹⁴ The Court directed the Commission to submit its remand determination on or by September 13, 2005.

In light of the Court's instructions, the Commission reopened the record with respect to its likely volume and impact findings. On July 19, 2005, the Commission sent the parties supplemental questionnaires with respect to issues raised by the Court. The parties' responses were filed on July 28, 2005.¹⁵ The Commission also permitted the parties to file additional comments. The domestic producers and Japanese respondent parties filed their additional comments on August 15, 2005.

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

After a review of the record, including additional information placed on the record during the third remand proceeding, we adopt Vice Chairman Okun's and Commissioners Hillman's and Pearson's

¹⁰ Id. at 1385.

¹¹ Id.

¹² Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Second Remand), USITC Pub. 3680 (Mar. 2004) ("Second Remand Determination") at 1. Commissioner Koplan, Commissioner Marcia Miller and Commissioner Charlotte R. Lane made affirmative determinations, while then-Chairman Deanna Tanner Okun, then-Vice Chairman Jennifer A. Hillman, and Commissioner Daniel R. Pearson made negative determinations.

¹³ Slip Op. 05-72.

¹⁴ Slip Op. at 38, 47.

¹⁵ On July 26, 2005, counsel for TKAAT, the sole Italian producer at the time of the original five-year reviews, filed a letter indicating that it was not in position to respond to the Commission's request for information because TKAAT had permanently ceased GOES production in Italy. Confidential Staff Report (Third Remand) and Public Staff Report (Third Remand) at II-1 & n. 2. We note that TKAAT's cessation of its GOES production appears to have occurred after the period of review covered by the original reviews. As such, we did not consider this fact in reaching our determination.

prior views regarding domestic like product and industry (section II of the majority opinion),¹⁶ no discernible adverse impact, cumulation, conditions of competition, and likely price effects.¹⁷ We also adopt Vice Chairman Okun's and Commissioner Hillman's and Commissioner Pearson's dissenting views as to likely volume and likely adverse impact, as supplemented below.¹⁸

A. Likely Volume

After a review of the record, as supplemented, we adopt our prior views in their entirety regarding the likely volume of subject imports.¹⁹ Accordingly, we again determine that the cumulated volume of subject imports would not increase substantially if the orders are revoked.

We include below a discussion of some of the additional information submitted to or obtained by the Commission in this third remand. As we previously found, and the domestic producers do not dispute, the demand for GOES is dependent upon the demand for electricity.²⁰ While the record does not contain forecasts specific to increases in world-wide GOES demand, the record indicates that world-wide demand for electricity is expected to increase within the foreseeable future. The record also shows that demand for electricity – and thus for products such as GOES that support electricity production and transmission – is expected to grow fastest in developing countries in Asia, such as China, and Central and South America.²¹

In this third remand proceeding the domestic producers submitted evidence that *** which are primary markets for subject producers.²² Moreover, this evidence indicates that electrical demand in these markets is expected to increase at a greater rate than the expected increase in electrical demand in the United States.²³ Thus, as we previously found, it is not likely that subject producers would risk their access to other markets in order to sell significantly more GOES into the United States.²⁴

¹⁶ USITC Pub. 3396 at 4-7.

¹⁷ See Review Determination, "Dissenting Views of Vice Chairman Okun and Commissioner Hillman," Second Remand Determination, "Dissenting Views of Chairman Okun, Commissioners Hillman, and Pearson," and First Remand Determination (discussion of likely standard). Unless otherwise noted, all cites are to the confidential versions of majority and minority views.

¹⁸ See Review Determination, "Dissenting Views of Vice Chairman Okun and Commissioner Hillman" and Second Remand Determination at 1, n. 2 & 4.

¹⁹ See Review Determination, "Dissenting Views of Vice Chairman Okun and Commissioner Hillman" at 22-25.

²⁰ As we previously found, since the time of the original investigations, the demand for electricity has increased as the U.S. and world economies have expanded, thereby reducing excess electrical capacity and straining power grids throughout the world. As a result, the demand for transformers increased greatly during the period as did the demand for GOES. USITC Pub. 3396 at 14.

²¹ See Original Confidential Staff Report ("CR") at II-1; Original Public Staff Report ("PR") at II-1; EIA, DOE, International Energy Outlook 2000 – Transportation Energy Use, Japanese Prehearing Brief at Ex. 19.

²² Domestic Producers' Submission dated July, 28, 2005 at Ex. 3 ***; Tr. at 162-163; ***Foreign Producer Questionnaire at 7a; *** Foreign Producer Questionnaire at 8, 9.

²³ Domestic Producers' Submission dated July, 28, 2005 at Ex. 3.

²⁴ In this third remand proceeding, domestic producers submitted several articles in support of their prior argument that Japanese exports to China and India would likely be displaced by developing electrical steel industries in those countries, thereby providing both the incentive and ability for Japanese producers to increase exports to the U.S. market. The articles do little to advance domestic producers' argument. With respect to the GOES market and GOES production in India, domestic producers submitted several news articles regarding Thyssen Krupp's acquisition of a steel plant (Raymond) and its plans to increase the plant's capacity to produce electrical steel. Most

The domestic producers argue that the expected increase in demand for GOES in the United States within the foreseeable future would attract both subject and non-subject GOES, thereby displacing domestic supplies. However, as we found in our prior views, the largest foreign source is Russia. The record indicates that the quantity of Russian GOES exported has been controlled by a quota as part of the overall bilateral steel agreement to control Russian steel exports to the United States and that the quality of the Russian product is inferior to the domestic like product.²⁵ Given this limitation on increases in non-subject imports, we reaffirm our finding that the likely increase in demand for GOES in the United States within the foreseeable future could absorb additional GOES imports from subject countries without displacing existing domestic suppliers.²⁶

of these articles did not specify whether the production of GOES (as compared to other electrical steels such as non grain-oriented electrical steel) would be increased. Only two of these articles submitted by domestic producers specifically pertain to GOES production in India. The first article from Metal Bulletin Monthly, dated February 1996, states that Raymond expected to increase GOES production by 25,000 tons per year. The second article issued by American Metal Market, dated April 13, 1998, states that Raymond produced both GOES and non grain-oriented electrical steel. However, it is not known from these articles to what extent the Raymond plant presently services the GOES demand in India. One article submitted by domestic producers, dated September 20, 2000 noted that “at present domestic production of electrical sheet in India covers only 30 percent of the demand, which is expected to increase in the coming years.” See Domestic Producers’ Submission dated July 28, 2005, at Ex. 1.

With respect to the GOES market and production in China, domestic producers submitted several news articles regarding increased technical improvements in GOES production by one Chinese electrical steel producer, increased construction of power stations in China, and the inability of China to supply high-quality steel products. See Domestic Producers’ Submission dated July 28, 2005, at Ex. 2. These articles do not show any significant new Chinese GOES production capacity. As the domestic producers, themselves, acknowledge, “[i]t may not be possible to determine with certainty from the record how much new Chinese production will be absorbed by the growth in Chinese demand.” Domestic Producers’ Producers’ Submission dated July 28, 2005, at 5.

²⁵ CR at II-23-24; PR at II-11.

²⁶ In the original review proceedings, the domestic producers argued that GOES demand was likely to decline and remain depressed within the foreseeable future. Domestic Producers’ Posthearing Brief at 8. The documents submitted by the domestic producers in this third remand proceeding indicate that ***. Remand Report at III-2-3. Confidential Staff Report (Third Remand) at III-2-3. Moreover, the record indicates that *** may be understated. See Japanese Producers’ Submission dated July 28, 2005, at 15-16.

As we previously found, overall demand in the United States for GOES has been strong, and is likely to continue to increase, in light of the demonstrated energy needs of the United States and the aging of the nation’s transformers. Overall, GOES demand has been increasing in recent years, rising by *** percent in 1998, by *** percent in 1999, and by *** percent through the first three-quarters of 2000. CR/PR at Table C-1, I-3. This upward trend will likely continue in the foreseeable future due to the aging infrastructure of the United States’ electrical power generation and transmission systems and the likely increase in housing starts which will increase the need for power and distribution transformers, respectively. See CR at II-2-3, ABB’s Posthearing Brief at 5-8, Ex.2; Ex. 9; Japanese Producers’ Final Comments at 2; Japanese Producers’ Submission dated July 28, 2005, at 15-16. Indeed, the record also shows that most purchasers anticipate that demand will continue to increase within the foreseeable future. CR at II-25. ABB, ***, forecasted a *** percent growth in orders for transformers in 2002 and a *** percent growth in 2003. CR/PR at II-1-3, ABB Posthearing Brief at Ex. 9. ABB also indicated that its purchases from *** for the first quarter of 2001 were expected to increase by over *** percent compared to the first quarter of 2000. ABB Posthearing Brief at Ex. 2. Apart from this likely increase in demand, the domestic industry is operating at virtually full capacity and has no specific plans to add capacity in the foreseeable future. CR at Table C-2, II-13; *** Producer Questionnaire at 4; *** Producer Questionnaire at 3 and 4; Tr. at 65-66 (noting that AK Steel’s GOES expansion was already at capacity).

For the reasons cited above and in our prior views, we conclude that the likely volume of subject merchandise would not be significant if the orders are revoked, either in absolute terms or relative to production or consumption in the United States.

B. Likely Price Effects

We adopt our prior findings with respect to likely price effects in their entirety and incorporate them by reference.²⁷ Accordingly, based on the record, as supplemented, we find that revocation of the orders on imports of GOES from Italy and Japan would not be likely to lead to significant underselling by the subject imports of the domestic like product, or to significant price depression or suppression, within a reasonably foreseeable time.

C. Likely Impact of Subject Imports

After a review of the record, as supplemented, we adopt our prior findings with respect to likely impact in their entirety and incorporate them by reference.²⁸ In particular, we incorporate our finding that the domestic industry is not in a vulnerable condition. The new information obtained in the present remand, particularly the business plans and public SEC filings of the domestic producers, is not inconsistent with this finding. Thus, as discussed above, we conclude again that revocation of the subject orders would not be likely to lead to a significant increase in the volume of subject imports that would undersell significantly the domestic like product or significantly suppress or depress U.S. prices. We also find that any volume and price effects of the subject imports would not likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. We further find that any minimal effect on the industry's production, shipments, sales, market share, and revenues would not adversely impact the industry's profitability and ability to raise capital and maintain necessary capital investments.

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

III. Conclusion

For the foregoing reasons, we determine that revocation of the antidumping duty orders on imports of GOES from Italy and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We also find that the revocation of the countervailing duty order on Italy would not be likely to lead to the continuation or recurrence of material injury to the U.S. GOES industry within a reasonably foreseeable time.

²⁷ See Review Determination, "Dissenting Views of Vice Chairman Okun and Commissioner Hillman" at 25-26.

²⁸ See Review Determination, "Dissenting Views of Vice Chairman Okun and Commissioner Hillman" at 26-27.

DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN AND COMMISSIONER CHARLOTTE R. LANE

I. INTRODUCTION

On June 15, 2005, Judge Eaton of the U.S. Court of International Trade (“Court”) issued an opinion affirming in part and remanding in part the Commission’s affirmative sunset review determination on second remand in Grain-Oriented Silicon Electrical Steel from Italy and Japan.¹ Specifically, the Court affirmed the Commission’s determination with respect to conditions of competition, discernible adverse impact, cumulation, and likely price effects. However, the Court found that the Commission’s likely volume and likely impact findings were not supported by substantial evidence. In responding to the Court’s opinion, the Commission determined to reopen the record in order to collect additional evidence on these issues.

Based on the record as supplemented in this remand proceeding, we determine that revocation of the orders covering the cumulated subject imports of GOES from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. We therefore dissent from the current Commission majority’s determination. We join the majority’s determinations with respect to background, legal standards, domestic like product, and the domestic industry. We reaffirm the discussion of conditions of competition, cumulation, and the price effects of cumulated subject imports set forth in the Commission’s second remand opinion. However, we write separately to explain why revocation of the subject orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

II. LIKELY VOLUME OF CUMULATED SUBJECT IMPORTS

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, we are directed to consider whether the likely volume of subject imports would be significant “either in absolute terms or relative to production or consumption in the United States.”² In the original investigations, the Commission found that subject import volume, measured by both quantity and value, was significant and increased substantially during the period of investigation. The Commission further found that market penetration of subject imports increased dramatically during the three-year period.³

In its five-year reviews of the subject orders, the Commission found that upon issuance of the orders, the volume and market share of subject imports of GOES fell dramatically and remained substantially below the levels they attained during the original investigations.⁴ The Commission then found that the likely volume of cumulated subject imports was likely to be significant if the orders were revoked because (1) there was considerable capacity to produce GOES in the subject countries, (2) the subject country producers had an incentive to maximize and sustain high levels of capacity utilization due to the high fixed costs associated with GOES production, (3) subject country producers were export-oriented and had demonstrated considerable flexibility to switch between their export markets, and (4) U.S. GOES customers were seeking new sources of low-priced GOES and many of these U.S. purchasers

¹ Inv. Nos. 701-TA-355 & 731-TA-659-660 (Review) (Second Remand), USITC Pub. No. 3680 (March 2004).

² 19 U.S.C. § 1675a(a)(2).

³ See Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 and 731-TA-660 (Final), USITC Pub. No. 2778 (May 1994) at I-15 to I-17. (“Original Determination”).

⁴ See Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659 & 660 (Review), USITC Pub. No. 3396 (Feb. 2001) at 17. (“Review Opinion”).

were former customers of the subject producers and thus likely to resume purchases of GOES from the subject countries should the order be revoked.⁵

The Commission's review findings on likely cumulated volume of subject imports were made in the context of conditions of competition that were upheld by the Court. Those conditions of competition included the fact that price was an important factor in purchasing decisions in the market for GOES,⁶ that prices in the U.S. market were higher than prices in other markets, and that short-term contracts were prevalent in the U.S. market.⁷

In response to the Court's second remand opinion, issued on December 17, 2003, the Commission majority again determined that revocation of the orders on cumulated subject imports from Italy and Japan would be likely to lead to continuation or recurrence of material injury to U.S. producers of GOES within a reasonably foreseeable time.⁸ The Commission noted that in the original investigations, the Commission found that the volume of cumulated subject imports had increased substantially despite relatively high capacity utilization rates for both Italian and Japanese producers.⁹ The Commission also noted that the Japanese home market had contracted steadily since the original investigation, that Japanese subject producers were thus required to focus on their export shipments in order to maintain their high capacity utilization rates, and that the higher prices and large size of the U.S. market provided incentives for subject producers to increase their exports to the U.S. market if the order were revoked.¹⁰

In responding to the Court's most recent opinion, we note that the Court apparently made two separate country-specific findings regarding the significance of the likely volume of subject imports in the event of revocation of the orders, despite the fact that the Court upheld the Commission's finding that cumulation of subject imports from Japan and Italy was appropriate.¹¹ However, it is not the likely volume of subject imports from each of the countries individually that the Commission found to be significant, but rather the likely cumulated volume of subject imports from both Italy and Japan.

We also note the need to clarify the meaning of the word "significant" as used in our affirmative review determination. Under the conditions of competition in this particular industry in which GOES producers must maintain high capacity utilization in order to be profitable, the volume of likely cumulated subject imports need not be especially large in an absolute sense in order to be characterized as significant.¹² This is because even a relatively modest influx of unfairly traded imports can reduce the

⁵ Review Opinion at 17-18.

⁶ Review Opinion at 15.

⁷ Review Opinion at 15.

⁸ Nippon Steel Corp. v. United States, Slip Op. 03-168 (December 17, 2003) ("Second Remand Opinion") at 1.

⁹ In this regard, we note that the Court upheld the Commission's finding on page 11 of its second remand opinion that "the record indicates that it is quite possible for a GOES producer to operate above *** percent capacity." See note 38, Second Remand Opinion. The Court also upheld the Commission's finding in the initial reviews that U.S. capacity utilization surpassed *** percent during the first nine months of 2000. See Review Determination at p. 16, note 95.

¹⁰ Second remand determination at 37-38.

¹¹ Slip Op. at 31 ("CIT Second Remand").

¹² There is no minimum rate of increase in subject import volume or a baseline percentage of market share for subject imports, above which volume will be considered "significant." Congress has specified that "for one industry, an apparently small volume of imports may have a significant impact on the market; for another the same volume might not be significant." H.R. Rep. 317, 96th Cong., 1st Sess. 46, U.S. Code Cong. & Admin. News 1979, pp. 381, 474 (1979); see also S. Rep. No. 96-249, 96th Cong., 1st Sess. at 88 ("The significance of the various factors affecting an industry will depend upon the facts of each particular case.")

domestic producers' capacity utilization to a level below that necessary for the industry to maintain its profitability.

We now determine that the record, as supplemented on remand, contains substantial evidence to support a finding that the volume of cumulated subject imports is likely to be significant, relative to both U.S. production and consumption, if the orders at issue are lifted. We reemphasize that this significant volume need not come from the same source, but rather may issue from a variety of sources in both Italy and Japan. In our initial reviews, we noted that the GOES capacity in the subject countries was large when compared to the relatively modest level of U.S. apparent consumption. Indeed, in 1999 reported GOES capacity in the subject countries was nearly *** U.S. apparent consumption for the same year.¹³ Information obtained in this third remand investigation reemphasized the size of the Japanese GOES industry, which constituted *** percent of world GOES production during the period of investigation.¹⁴ In addition, a February 1, 2000 article published in New Materials Japan reported that Nippon Steel was making technological improvements in high end GOES production, suggesting a renewed interest by Japanese producers in markets that have traditionally purchased high-end GOES such as the United States.¹⁵

Therefore, after considering the supplemented record taken as whole, we find that in combination, the likely volume of GOES arising from a number of sources, including GOES in the subject countries that are not contractually committed and likely to shift to the higher-priced U.S. market, excess capacity in Italy or Japan, the contraction of the Japanese or Italian home markets, or reductions in exports to third country markets by subject producers would be likely to result in a significant volume of subject imports into the U.S. market within a reasonably foreseeable time if the orders are revoked.

III. LIKELY IMPACT OF CUMULATED SUBJECT IMPORTS

In evaluating the likely impact of imports of subject merchandise on the domestic industry if the orders are revoked, the ITC is directed, by statute, to consider:

all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to:

- (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity;
- (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and
- (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the like product.¹⁶

The Commission is further directed to evaluate all relevant economic factors within the context of the business cycle and the conditions of competition that are distinctive to the industry.

¹³ Review Opinion at 17.

¹⁴ Confidential Staff Report in Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Third Remand): Grain-Oriented Silicon Electrical Steel from Italy and Japan, August 8, 2005 at II-1. (Third Remand CR).

¹⁵ Third Remand CR at II-3.

¹⁶ 19 U.S.C. § 1675a(a)(4).

As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.

The record indicates that the results of the financial operations of the U.S. producers in the production of GOES for fiscal years 1997-1999 represent an improvement over the financial operations during the period of investigation (POI) in the original case. In the original investigations the ratios of operating income to net sales were not only low, they were declining,¹⁷ and operating income for the original POI translated to a declining and ultimately *** return on total assets for the period.¹⁸ In contrast to these numbers, during the 1997-1999 Review period of investigation, operating income ratios to net sales were consistently positive.¹⁹ Therefore, the financial condition of the industry had significantly improved from the POI in the original investigations. In our first Review determination, we also found that although the domestic industry was in a relatively healthy state and therefore not currently vulnerable, that revocation of the orders would likely lead to a recurrence of material injury.

In its opinion dated June 15, 2005, the Court declined to affirm the Commission's conclusion with respect to adverse impact. Rather, the Court remanded this case to the Commission for the third time and directed the Commission to either reopen the record in order to obtain substantial evidence to support an adverse impact conclusion or to make a determination that subject imports will have no adverse impact should the orders be revoked.

We begin by reaffirming our findings, upheld by the Court, that the subject imports that enter the United States are likely to have significant price effects.²⁰ As discussed above, we also find that the likely volume of cumulated subject imports will be significant. In making this determination, it is important to note that the volume of imports need not be especially large in an absolute sense in order to be characterized as "significant."²¹ For a capital intensive industry with a relatively high level of fixed costs, even apparently small changes in sales volumes can have a magnified impact on profitability.

We have reviewed the record in this proceeding as supplemented on remand and reaffirm our finding with regard to the likely recurrence of material injury. Additional information obtained by the Commission by reopening the record in this remand proceeding further supports the Commission's previous finding that the increase in cumulated subject imports is likely to result in a rapid loss in profitability.

While we found in our original determination that the domestic industry was not currently in a vulnerable condition, information collected in this remand proceeding supports our view that the domestic industry anticipated harsher business conditions to prevail in the near future, even in the event that the order were not revoked. For example, Allegheny Ludlum's business plans and cost assumptions

¹⁷ In the original investigations, operating income ratios to net sales were *** from 1990 through 1993. See Original Confidential Staff Report ("CR") at Table 7, II-29.

¹⁸ The return on assets for the original POI was *** for the three-year period. See Original CR at Table 10, II-37.

¹⁹ These ratios were ***, respectively for the three-year review POI. Review CR at Table I-1.

²⁰ Review Opinion at 18-19.

²¹ The CIT has held that "It is the significance of a quantity of imports, and not absolute volume alone, that must guide ITC's analysis under section 1677(7). There is no minimum rate of increase in subject import volume or a baseline percentage of market share for subject imports, above which volume will be considered "significant." Congress has specified that "for one industry, an apparently small volume of imports may have a significant impact on the market; for another the same volume might not be significant." H.R. Rep. 317, 96th Cong., 1st Sess. 46, U.S. Code Cong. & Admin. News 1979, pp. 381, 474 (1979); see also S. Rep. No. 96-249, 96th Cong., 1st Sess. At 88 ("The significance of the various factors affecting an industry will depend upon the facts of each particular case.") Thus for the Commission's findings under section 1677(7)(C)(1) to be supported by substantial evidence, the Commission must analyze the volume and market share data in the context of conditions of competition." Nippon Steel v. United States, 11 C.I.T. 82 (2001) at 85.

projected that its sales volume of silicon steel would *** during the period 2000 to 2004. Given the need for high capacity utilization rates to be profitable, such a *** in U.S. production would inevitably *** per unit production costs. Allegheny Ludlum's business plan also predicted a *** in silicon sales dollars per ton between 1999 and 2000. Allegheny Ludlum further predicted that it would ***.²²

All of this record evidence, considered with the previously cited evidence, helps to demonstrate the likely negative impact on the domestic industry if the orders at issue are revoked and cumulated subject imports of GOES from Italy and Japan reenter the United States market.

Our conclusion is further supported by a consideration of the impact on the financial results of the domestic industry producing GOES that are likely to occur with what might appear to be relatively small volume changes. While it is not possible on this record to precisely quantify the impact on net operating income that is likely to result from small changes in the volume of cumulated subject imports, a reasonable evaluation of the impact would be based on likely declines in net sales volumes and the level of fixed versus variable costs that are included in the financial results.²³ The record demonstrates that even what might appear to be a small decline in sales volume can have a significant adverse impact on the profitability of the domestic industry.²⁴

The Court has affirmed our findings of likely adverse price effects should the orders be lifted. Any consideration of the likely impact on the domestic industry of revoking the orders must also consider the price impact. Here, as in the case of declining capacity utilization, the full impact on the profitability of the industry is much greater than simply the percentage of price decline.²⁵

As noted above, the highly capital intensive nature of this industry suggests that its financial results would be quite sensitive to even a modest influx in subject imports because maintaining high levels of capacity utilization to cover non-variable expenses and capital investment is necessary for reasonable industry profitability. We find that the likelihood that the volume of subject imports will exceed such a modest level if the orders are lifted is great. Likewise, even what might appear to be relatively small price effects are greatly magnified when considering their impact on the profitability of the industry.

CONCLUSION

For the foregoing reasons, we determine that revocation of the subject orders on the cumulated subject imports of 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.

²² Third Remand CR at III-2. *** See *Id.* at III-2.

²³ Allegheny Ludlum provided a "Financial Outlook" schedule in the reopened record which breaks down its Costs of Sales between "variable" and "other". This breakdown indicates a level of variable production related expenses, ranging from *** to ***, with a weighted average of *** of total cost of goods sold.

²⁴ For example, the quantification of the *** is discussed in the Remand Decision. Given domestic industry net sales of *** tons, *** tons would represent *** of domestic industry net sales. A decline in sales volumes of only *** percent, would cause the net operating income and return on assets to drop by *** percent. Thus, the significance of a volume impact, as measured by the bottom line financial impact, is much greater than simply the percentage of sales decline to total sales.

²⁵ For example, a price reduction of *** per short ton may appear to be small, since it is only about *** percent of the price. However, a *** percent price reduction would cause the net operating income and return on assets to drop by *** percent.

PART I: INTRODUCTION

BACKGROUND

On February 23, 2001, the U.S. International Trade Commission (“Commission” or “USITC”) determined that revocation of the countervailing duty order on grain-oriented silicon electrical steel (“GOES”) from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determined that revocation of the antidumping duty orders on GOES from Italy and Japan would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.¹

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).² 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.³

On December 17, 2003, the Court issued an opinion remanding the Commission’s remand determination.⁴ Although the Court found that the Commission had complied with its instructions regarding “likely” and the four enumerated 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.”⁵ 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.⁶ On second remand, the Commission found that revocation of the countervailing duty order on GOES from Italy and

¹ *Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Review)*, USITC Publication 3396 (February 2001), p. 1. Chairman Stephen Koplan and Commissioners Marcia E. Miller and Dennis M. Devaney made affirmative determinations, while Vice Chairman Deanna Tanner Okun and Commissioners Lynn M. Bragg and Jennifer A. Hillman made negative determinations. Ibid.

² *Nippon Steel Corp., et al. v. United States*, Slip Opinion 02-153 (December 24, 2002), p. 15. The Court found that given these findings, it would be premature to address plaintiffs’ substantial evidence arguments. Ibid.

³ *Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Remand) (Review)*, USITC Publication 3585 (March 2003), pp. 1-2. Commissioners Marcia E. Miller and Stephen Koplan made affirmative determinations, while Chairman Deanna Tanner Okun and Vice Chairman Jennifer A. Hillman made negative determinations. Ibid.

⁴ *Nippon Steel Corp., et al. v. United States*, 301 F. Supp 1355 (CIT 2003).

⁵ Ibid., p. 1385.

⁶ Ibid.

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.⁷

On June 15, 2005, the Court issued an opinion affirming in part and remanding in part the Commission's affirmative determination on second remand in these reviews. While the Court affirmed the Commission's determination with respect to discernible adverse impact, cumulation, and likely price effects, the Court found that the Commission's likely volume and likely impact determinations were not supported by substantial evidence. In remanding the Commission's likely volume and likely impact determinations, the Court indicated that the Commission "may either re-open the record to obtain substantial evidence to support" these determinations or reach a different determination.⁸

SUMMARY OF PROCEEDING

Information relating to the third remand proceeding is provided below.⁹

<u>Date</u>	<u>Action</u>
June 15, 2005	Third remand issued by Court (Slip Opinion 05-72).
July 18	Commission issues notice of remand proceedings, noting its intent to re-open the record (70 F.R. 42380, July 22, 2005).
July 19	Supplemental information requested of parties.
July 26	Response provided by counsel on behalf of ThyssenKrupp Acciai Speciali Terni S.p.A. of Italy ("TKAST").
July 28	Responses provided by counsel on behalf of JFE Steel Corporation of Japan ("JFE"), Nippon Steel Corporation of Japan ("NSC"), and Allegheny Ludlum Corporation and AK Steel Corporation of the United States ("Allegheny Ludlum" and "AK" respectively).
August 8	Commission's remand staff report issued.
August 15	Briefs submitted by parties.
September 13, 2005 .	Transmittal of the Commission's determination and views to the Court.

⁷ *Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Second Remand)*, USITC Publication 3680 (March 2004), p. 1. Commissioners Marcia E. Miller, Stephen Koplán, and Charlotte R. Lane made affirmative determinations, while Chairman Deanna Tanner Okun, Vice Chairman Jennifer A. Hillman, and Commissioner Daniel R. Pearson made negative determinations. *Ibid.*

⁸ *Nippon Steel Corp., et al. v. United States*, Slip Opinion 05-72 (June 15, 2005), pp. 38, 47.

⁹ The *Federal Register* notice cited in the tabulation is presented in app. A.

PART II: SUPPLEMENTAL INFORMATION WITH RESPECT TO THE LIKELY VOLUME OF SUBJECT IMPORTS IF THE SUBJECT ORDERS WERE REVOKED

In its third remand of the Commission's determinations in the subject reviews, the Court stated that the Commission "may either reopen the record and examine its findings with respect to (Italy's and Japan's) likely volume as it relates to injury, or find that the likely volume on revocation of the orders would likely not be significant and complete its analysis accordingly."¹ In light of these instructions, the Commission re-opened the record in these reviews and requested parties to address the following issues: changes in the GOES markets in China and India, future demand and supply expectations in Italy and Japan, and future shipments of GOES by producers in Italy and Japan to customers in their home market or in third-country markets. Responses to these questions are presented below.

CHANGES IN THE GOES MARKETS IN CHINA AND INDIA

Counsel reported that TKA² is not in a position to respond to the Commission's request for data.² Counsel for JFE (formerly Kawasaki Steel Corporation) supplemented information initially provided in the reviews with excerpts from a technical report from ***.³ The technical report discusses the size of the Japanese producers (**% percent of world GOES production); trends in GOES production (migrating toward *** product); and silicon steel production in China (** tons of existing or constructed cold-rolled silicon steel capacity by **, of which ** tons of **'s capacity is used for GOES).⁴ Counsel for NSC supplemented information initially provided in the reviews with two items.⁵ A Chinese news article dated September 5, 2000, describes the entry of Baosteel's non-oriented electrical steel into the East-China steel market in low grades and low volumes.⁶ In addition, a ** describes the production equipment and techniques for **.⁷

Counsel for Allegheny Ludlum and AK submitted several news articles on Thyssen Krupp's acquisition of a steel plant in India and its plans to increase the plant's capacity to produce electrical steel. An article from AFX Asia, dated September 10, 2000, noted that "at present domestic electrical sheet production in India covers only 30 percent of the demand, which is expected to increase in the coming years." Most of these articles did not specify whether the production of GOES (as opposed to non grain-oriented electrical steel) would be increased. However, two articles submitted by counsel addressed

¹ Slip Opinion 05-72, p. 38.

² TKA's July 26, 2005, submission, p. 1. Counsel observed that TKA has "permanently ceased" GOES production in Italy.

³ Counsel for JFE also referenced Kawasaki Steel Corp.'s foreign producer questionnaire response (questions III-D-14, III-E-1, III-E-2, III-E-3, III-E-4, and questionnaire attachments D and E), and respondent interested parties Kawasaki Steel Corp.'s and Nippon Steel Corp.'s posthearing brief, app. F and its attached exhibits, submitted during the reviews. The questionnaire response **. The posthearing brief noted that China's "rapid increase in electricity demand will lead to significant demand for electricity generation, transmission and distribution equipment, including electric transformers."

⁴ JFE's July 28, 2005, submission, attachment, and JFE's July 29 submission, attachment.

⁵ NSC's foreign producer questionnaire response, submitted during the reviews, stated that **.

⁶ NSC's July 28, 2005, submission, attachment (translation of Guangdong Hong Kong Daily News article). The article notes the initial low impact of Baosteel's non grain-oriented electrical steel production on hot-rolled silicon steel production and price, but also cites analysts' belief that, in the long run, "Baosteel's electrical steel will have a great impact on the domestic market," alleviating shortages and reducing importation. Ibid.

⁷ NSC's July 28, 2005, submission, attachment (translation of **).

GOES production: an article issued by *American Metal Market*, dated April 13, 1998, stating that the plant in India produced both GOES and non-oriented electrical steel, and a *Metal Bulletin Monthly* report in February 1996 stating that the Indian plant expected to increase GOES production to 25,000 tons per year. Counsel for Allegheny Ludlum and AK also submitted several news articles on China regarding increased technical improvements in GOES production by Wuhan Iron and Steel Co. (*Xinhua General News Service*, March 18, 2000), Wuhan Iron and Steel Co.'s increased GOES capacity (*Asia Pulse*, January 11, 2000), China's increased construction of power stations, and China's inability to supply domestic demand for high-quality steel products (*Metal Producing and Processing*, September 1998). Also submitted was a strategic planning presentation by Allegheny Ludlum, dated January 26, 2001, which forecast electricity consumption growth of *** percent for China and *** percent for India.⁸

FUTURE DEMAND AND SUPPLY EXPECTATIONS IN ITALY AND JAPAN

Counsel reported that TKAST is not in a position to respond to the Commission's request for data.⁹ Counsel for JFE directed the Commission's attention to information initially provided in the reviews,¹⁰ as did counsel for NSC.¹¹

Counsel for Allegheny Ludlum and AK submitted two news articles: a *Metal Bulletin Monthly* report, dated February 1, 2001, which said that the largest European producers of electrical steel reported good demand for all types of electrical steels in 2000 and an article dated February 1, 2000, by *New Materials Japan* which reported on Nippon Steel's technological improvements in GOES production.¹²

FUTURE SHIPMENTS OF GOES BY PRODUCERS IN ITALY AND JAPAN TO CUSTOMERS IN THEIR HOME MARKET OR IN THIRD-COUNTRY MARKETS

Counsel reported that TKAST is not in a position to respond to the Commission's request for data.¹³ Counsel for JFE directed the Commission's attention to information initially provided in the reviews,¹⁴ as did counsel for NSC.¹⁵

Counsel for Allegheny Ludlum and AK stated that "information on contracts between Italian and Japanese GOES producers and their customers for sales in the home and third country markets is uniquely in the possession of the Italian and Japanese producers and is unavailable to the domestic industry."¹⁶

⁸ Allegheny Ludlum and AK's July 28, 2005, submission, exhibits 1-3.

⁹ TKAST's July 26, 2005, submission, p. 1.

¹⁰ JFE's July 28, 2005, submission, p. 2. Counsel for JFE referenced JFE's foreign producer questionnaire response during the reviews which ***.

¹¹ NSC's July 28, 2005, submission, p. 2. The foreign producer questionnaire response of NSC in the reviews said that ***.

¹² Allegheny Ludlum and AK's July 28, 2005, submission, exhibit 4.

¹³ TKAST's July 26, 2005, submission, p. 1.

¹⁴ JFE's July 28, 2005, submission, p. 2. The JFE foreign producer questionnaire response, submitted during the reviews, notes that ***.

¹⁵ NSC's July 28, 2005, submission, p. 2. In its foreign producer questionnaire response provided during the reviews, NSC states that ***.

¹⁶ Allegheny Ludlum and AK's July 28, 2005, submission, p. 3.

PART III: SUPPLEMENTAL INFORMATION WITH RESPECT TO THE LIKELY IMPACT OF SUBJECT IMPORTS IF THE SUBJECT ORDERS WERE REVOKED

In its third remand of the Commission's determinations in the subject reviews, the Court stated that the Commission "may either reopen the record in order to obtain substantial evidence to support its adverse impact conclusion or make a determination that subject imports will have no adverse impact should the orders be revoked, and complete its analysis accordingly."¹ In light of these instructions, the Commission re-opened the record in these reviews and requested parties to address the following issues: domestic producers' business plan(s) for GOES, documentation for cost assumptions (including standard costs) and estimates in the submitted business plans, documentation of U.S. GOES producers' future plans to increase production capacity and/or improve production processes, and documentation regarding claims by U.S. GOES producers regarding the effects of increased imports on existing operations and new capacity. Responses to these questions are presented below.

DOMESTIC PRODUCERS' BUSINESS PLANS AND COST ASSUMPTIONS FOR GOES

Counsel reported that TKAST is not in a position to respond to the Commission's request for information.² Counsel for JFE directed the Commission's attention to information initially provided in the reviews,³ as did counsel for NSC.⁴

The Commission requested responding domestic producers to provide copies of their business plan(s) for GOES that show projected sales, cost of sales, and operating income for fiscal years 2001 and beyond. It further asked for documentation for cost assumptions (including standard costs) and estimates in the submitted business plans.

AK's business plan was submitted in the domestic producers' filing of July 28, 2005, as exhibits 6 and 7 for conventional GOES ("RGO") and high permeability GOES ("TCH"), respectively. AK also provided actual data for the two products in 2000 at exhibit 8 of that submission, again with the data shown separately for RGO and TCH. AK's actual results for 2000 and its forecasts for 2001 are summarized in table III-1. AK's overall 2001 forecast relies heavily on realizing sales and cost estimates, such as achieving *** in sales volume and value (particularly achieving a ***) and holding costs to projections.

Allegheny Ludlum's business plans and cost assumptions were submitted by domestic interested parties on July 28, 2005, as exhibits 3 and 5, respectively. Allegheny Ludlum's projected sales of silicon steel *** from approximately *** short tons in 2000 to *** short tons in 2002, *** for one year, then *** to *** short tons in 2004. The firm forecast that electrical demand growth in the United States would be ***. Silicon sales dollars per ton were predicted to *** from \$*** in 1999 to \$*** in 2000 before *** to about \$*** in 2001, and *** until 2004. Operating income before taxes (which does not include certain corporate allocations of cost) was forecast to *** from the first quarter of 2000 through approximately the first quarter of 2004; i.e., the firm forecast a *** from operations.

¹ Slip Opinion 05-72, p. 46.

² TKAST's July 26, 2005, submission, p. 1.

³ JFE's July 28, 2005, submission, attachment.

⁴ NSC's July 28, 2005, submission, p. 3.

Table III-1
GOES: AK's business plan, 2000 actual and 2001 forecast

Item	2000 Actual	2001 Forecast
	Quantity (short tons)	
Net sales - RGO	***	***
Net sales - TCH	***	***
Total	***	***
	Value (\$1,000)	
Net sales - RGO	***	***
Net sales - TCH	***	***
Total	***	***
Base cost ¹ - RGO	***	***
Base cost ¹ - TCH	***	***
Total	***	***
Margin ¹ - RGO	***	***
Margin ¹ - TCH	***	***
Total	***	***
	Unit value (dollars per short ton)	
Net sales - RGO	***	***
Net sales - TCH	***	***
Base cost ¹ - RGO	***	***
Base cost ¹ - TCH	***	***
Margin ¹ - RGO	***	***
Margin ¹ - TCH	***	***
	Ratio to net sales (percent)	
Margin ¹ - RGO	***	***
Margin ¹ - TCH	***	***
<p>¹ The term "base cost" does not include numerous categories of plant overhead expenses, selling, or general and administrative expenses. It should be noted that margin (sales minus "base cost") does not correspond to the Commission's categories of "gross profit" or "operating profit." For example, base cost in 2000 for RGO was \$*** while these other costs totaled \$***, reducing the base margin of \$*** to \$***, which is closer to the Commission's category of operating profit in that year.</p>		
<p>Source: Domestic producers' July 28, 2005, submission, exhibits 6, 7, and 8.</p>		

With respect to Allegheny Ludlum's cost assumptions, the company forecast that raw material costs would *** by *** percent between 2000 and 2001, and *** from 2001 through 2004. Allegheny Ludlum also assumed that it could *** its conversion costs of *** percent per year and *** by *** percent, resulting in savings of \$*** in 2002 to \$*** in 2005. It finally assumed ***. These assumptions depended on such items as realizing forecast prices and maintaining the same *** in the face of opportunities and threats, including the following: ***.

In addition, staff researched the issue of energy costs, examining filings with the Securities and Exchange Commission ("SEC") EDGAR database for AK Steel Holding Corp. and Allegheny Technologies, Inc. Both of these firms make a broad range of products that includes GOES, and there is little information that is specific to GOES. The annual report of each company for the fiscal year that ended December 31, 2000, was not available until after February 6, 2001, and was not considered.

With respect to AK, staff retrieved that firm's quarterly reports (form 10-Q) for the periods ending June 30, 2000 and September 30, 2000, and its current report (form 8-K with press release) dated December 22, 2000, from the SEC's EDGAR database. For the third quarter and the first nine months of 2000, AK noted that it earned a higher operating profit that "was due primarily to the benefits of the increased shipments of value-added products, which carry higher margins." It also reported that merger synergies (it had purchased Armco Steel) and the resulting enhanced product mix partly offset substantially higher costs for steel scrap, purchased carbon steel slabs, and natural gas in the third quarter of 2000.⁵ Similarly, it had reported higher scrap, slab, and natural gas costs for the second quarter and six month period of 2000.⁶ In AK's current report of December 2000, it projected fourth quarter 2000 revenues and profits to be considerably lower compared to the third quarter due to "steep declines in carbon and stainless spot market selling prices." It also reported that the fourth quarter would be impacted by "spiraling natural gas prices," projecting natural gas cost increases of \$10 million to \$12 million compared to the third quarter.⁷

With respect to Allegheny Ludlum, staff retrieved that firm's quarterly reports (form 10-Q) for the periods ending June 30, 2000, and September 30, 2000, from the EDGAR database. Allegheny Ludlum is self-described as one of the largest and most diversified producers of specialty materials in the world. The second quarter 2000 report noted that strong demand for certain products, including silicon steel products (which includes GOES), led to overall improvement in sales and operating profits within the segment, and that the segment also continued to benefit from on-going cost reduction efforts. The report for the quarter and nine months that ended September 30, 2000, noted higher sales and operating profits for the segment that includes GOES "in spite of significantly higher raw material costs."⁸ Unlike the report for second quarter 2000, this filing did not specifically include silicon steel products in the list of high-performing contributors.⁹

⁵ AK's Form 10-Q for the period ended September 30, 2000, p. 6 (as filed).

⁶ AK's Form 10-Q for the period ended June 30, 2000, p. 8 (as filed).

⁷ AK's Form 8-K, press release dated December 22, 2000.

⁸ Allegheny Technologies' Form 10-Q for the period ended September 30, 2000, pp. 13-14 (as filed).

⁹ Allegheny Technologies' Form 10-Q for the period ended June 30, 2000, p. 14 (as filed).

FUTURE PRODUCTION AND CAPACITY PLANS

Counsel reported that TKAST is not in a position to respond to the Commission's request for information.¹⁰ Counsel for JFE directed the Commission's attention to information initially provided in the reviews,¹¹ as did counsel for NSC.¹²

As discussed in the previous section, AK's business plan forecast *** in net sales of nearly *** short tons in 2001, consistent with *** production levels. The company forecast that *** would be ***.¹³ Allegheny Ludlum ***, and forecast *** in sales of *** short tons between 2000 and 2002, consistent with *** production levels.¹⁴ The company identified *** as potential opportunities.¹⁵

U.S. PRODUCERS' VIEWS ON THE EFFECTS OF INCREASED IMPORTS ON EXISTING OPERATIONS AND NEW CAPACITY

Counsel reported that TKAST is not in a position to respond to the Commission's request for information.¹⁶ Counsel for JFE directed the Commission's attention to information initially provided in the reviews,¹⁷ as did counsel for NSC.¹⁸

AK's additional documents do not address the effects of increased imports on existing operations and new capacity. Also, as discussed above, Allegheny Ludlum ***. Nevertheless, Allegheny Ludlum's planning documents identify *** as an import-based threat, along with ***.¹⁹ While the company did not quantify ***, it indicated concern over ***.²⁰

¹⁰ TKAST's July 26, 2005, submission, p. 1.

¹¹ JFE's July 28, 2005, submission, attachment.

¹² NSC's July 28, 2005, submission, p. 3.

¹³ Domestic producers' July 28, 2005, submission, exhibits 6, 7, and 8.

¹⁴ Domestic producers' July 28, 2005, submission, exhibits 3 and 5. Allegheny Ludlum's projections, however, ***. Ibid., exhibit 5.

¹⁵ Domestic producers' July 28, 2005, submission, exhibit 3.

¹⁶ TKAST's July 26, 2005, submission, p. 1.

¹⁷ JFE's July 28, 2005, submission, attachment.

¹⁸ NSC's July 28, 2005, submission, p. 3.

¹⁹ Domestic producers' July 28, 2005, submission, exhibit 3 (Allegheny Ludlum's ***).

²⁰ Domestic producers' July 28, 2005, submission, exhibit 5 (Allegheny Ludlum's ***).

APPENDIX A

FEDERAL REGISTER NOTICE

**INTERNATIONAL TRADE
COMMISSION**

[Inv. Nos. 701-TA-355 and 731-TA-659-660]

**Grain-Oriented Silicon Electrical Steel
From Italy and Japan, Notice and
Scheduling of Third Remand
Proceeding**

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission ("the Commission") hereby gives notice of proceedings in the remand investigation ordered by the United States Court of International Trade in Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran, Office of Investigations, telephone 202-205-2057 or Gracemary R. Roth-Roffy, Esq., Office of the General Counsel, telephone (202) 205-3117, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TODD terminal on (202) 205-1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at [www.http://edis.usitc.gov](http://edis.usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:**Background**

On February 23, 2001, the Commission determined that revocation of the countervailing duty order on grain-oriented electrical steel ("GOES") from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determined that revocation of the antidumping duty orders on GOES from Italy and Japan would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. 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). The Commission's determinations were appealed 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 outline 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)92). *Nippon Steel Corp., et al. v. United States*, Slip Op 02-153 (December 24, 2002).

On first 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. Grain-Oriented Silicon Electrical Steel from Italy and Japan, Invs. Nos. 701-TA-355 and 731-TA-659-660 (Remand) (Review), USITC Pub. 3585 (March 2003). On December 17, 2003, the Court issued an opinion remanding the Commission's first remand determination. *Nippon Steel Corp., et al. v. United States*, 301 F. Supp 1355 (CIT 2003). Specifically, the Court remanded the Commission's no discernible adverse impact, cumulation, likely volume, likely price and likely impact findings for reconsideration.

On second remand, the Commission 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. Grain-Oriented Silicon Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 and 731-TA-659-660 (Review) (Remand), USITC Pub. 3650 (Mar. 2004).

On June 15, 2005, the Court issued an opinion affirming in part and remanding in part, the Commission's affirmative sunset determination on second remand. Specifically, the court affirmed the Commission's determination with respect to discernible adverse impact, cumulation, and likely price effects. However, the court remanded the commission's likely volume and likely

adverse impact determinations to the Commission with an order to take further action consistent with its instructions. The Commission is directed to issue its remand determination within 90 days of the issuance of the Court's decision *i.e.*, by September 13, 2005.

Reopening the Record

In order to assist it in making its determination on third remand, the Commission is reopening the record in this investigation to seek additional information with respect to certain of the instructions provided by the Court.

Participation in the Remand Proceedings

Only those interested parties who were parties to the original investigations (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand proceeding. No additional filings with the Commission will be necessary for these parties to participate in the remand proceeding. Business proprietary information (BPI) obtained during the remand proceeding will be governed, as appropriate, by the administrative protective order (APO) issued in the original investigations. (Parties who participated in the original investigation, if no longer covered by the APO, are directed to contact the Commission Secretary.)

Written Submissions

Information obtained during the remand investigation will be released to the parties under the administrative protective order ("APO") issued in the original investigations on or about July 28, 2005. The third remand staff report will be placed in the nonpublic record on August 8, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules. Parties that are participating in the remand proceedings may file comments on or before August 15, 2005 with respect to how the record, as supplemented, bears on the issues presented by the panel's remand instructions.

No additional factual information may be included in such comments. Comments shall not exceed 20 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ × 11 inches.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's

rules. The Commission rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 updated 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.

Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 18, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-14483 Filed 7-21-05; 8:45 am]

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