

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STEEL CONCRETE REINFORCING BARS
FROM AUSTRIA, BELARUS, CHINA, INDONESIA, JAPAN, KOREA, LATVIA,
MOLDOVA, POLAND, RUSSIA, UKRAINE, AND VENEZUELA

Investigations Nos. 731-TA-872-883 (Preliminary)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3343, August 2000)

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-872-883 (Preliminary)

CERTAIN STEEL CONCRETE REINFORCING BARS FROM AUSTRIA, BELARUS, CHINA, INDONESIA, JAPAN, KOREA, LATVIA, MOLDOVA, POLAND, RUSSIA, UKRAINE, AND VENEZUELA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of certain steel concrete reinforcing bars, provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States,² that are alleged to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of such imports from Japan.³ Finally, pursuant to 19 U.S.C. § 1677(24)(A) the Commission determines that the subject imports from Austria, Russia, and Venezuela are negligible,⁴ and thereby, pursuant to 19 U.S.C. § 1673b(a)(1), the Commission's investigations with respect to Austria, Russia, and Venezuela are terminated.

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter

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 For purposes of these investigations, certain steel concrete reinforcing bars are all steel concrete reinforcing bars ("rebar") sold in straight lengths. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating.

³ Commissioner Lynn M. Bragg dissenting.

⁴ Commissioner Lynn M. Bragg dissenting. Commissioner Bragg finds that there is a potential that such imports from Austria, Russia, and Venezuela will imminently account for more than 7 percent of the total import volume of all such merchandise such that there is a reasonable indication that a regional industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Austria, Russia, and Venezuela that are alleged to be sold in the United States at LTFV.

a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On June 28, 2000, petitions were filed with the Commission and the Department of Commerce by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members⁵ alleging that a regional industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain steel concrete reinforcing bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela. Accordingly, effective June 28, 2000, the Commission instituted antidumping duty investigations Nos. 731-TA-872-883 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 July 7, 2000 (65 FR 42029). The conference was held in Washington, DC, on July 19, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

⁵ The members of RTAC are AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); CMC Steel Group (Seguin, TX); Marion Steel Co. (Marion, OH); Riverview Steel (Glassport, PA); and Nucor Steel (Darlington, SC). Auburn Steel Co., Inc., is not a petitioner with respect to Indonesia and Japan.

VIEWS OF THE COMMISSION

Based on the record in these preliminary investigations, we find that there is a reasonable indication that a regional industry in the United States is materially injured by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of steel concrete reinforcing bars (“rebar”) that are allegedly sold in the United States at less than fair value (“LTFV”).⁶

We also find that imports of rebar from Austria, Russia, and Venezuela that are sold in the United States are negligible.⁷ Finally, we find that imports of rebar from Japan are not sufficiently concentrated in the region.⁸ We therefore conclude there is no reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of the allegedly LTFV imports of rebar from Japan.⁹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹⁰ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”¹¹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the

⁶ Commissioner Askey finds that there is a reasonable indication that the regional industry is threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of rebar that are allegedly sold in the United States at less than fair value (“LTFV”). See Additional Views of Commissioner Thelma J. Askey.

⁷ Commissioner Lynn M. Bragg dissenting with respect to the finding that Austria, Russia, and Venezuela are negligible for purposes of a threat analysis. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁸ Commissioner Bragg dissenting with respect to the determination that imports from Japan were not sufficiently concentrated in the region. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁹ Commissioner Bragg dissenting. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

¹⁰ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

¹¹ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

Commission first defines the “domestic like product” and the “industry.”¹² Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”¹³ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”¹⁴

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.¹⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁶ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹⁷ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁸

¹² 19 U.S.C. § 1677(4)(A).

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ 19 U.S.C. § 1677(10).

¹⁵ See, e.g., NEC Corp. v. Dep’t of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int’l Trade 1990) aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

¹⁶ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹⁷ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁸ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as follows:

all steel concrete reinforcing bars (rebar) sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating.¹⁹

The subject merchandise is hot-rolled deformed rebar, designed specifically to enhance the tensile and shear-stress strength of concrete structures.²⁰ Rebar is sold to customers in various forms or stages of fabrication, but only stock deformed rebar, which is not further processed, is subject to these investigations.²¹

The parties agree that there should be one domestic like product.²² Based on the information obtained in these preliminary investigations, we find that there is one domestic like product, rebar, coextensive with the scope of these investigations.

C. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”²³ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁴ Based on the definition of the domestic like product, the industry consists of all domestic producers of rebar in the region defined below.

There are two domestic industry issues in this preliminary investigation: (1) whether there is a regional industry; and (2) whether any of the producers of the domestic like product should be excluded from the industry as related parties.

¹⁹ 65 Fed. Reg. 45754, 45755 (July 25, 2000).

²⁰ Confidential Version of the Staff Report (“CR”) as revised by INV-X-180 and INV-X-181, at I-5-7, Public Version of the Staff Report (“PR”) at I-5-6.

²¹ Id.

²² The Commission, in a prior decision in 1997 concerning rebar, also found one domestic like product coextensive with Commerce’s scope. Steel Concrete Reinforcing Bars From Turkey, Inv. No. 731-TA-745 USITC Pub. 3034 (Final) (April 1997)(“Rebar from Turkey”) at 4. In these investigations, Commerce’s scope differs slightly from the 1997 case as it presently excludes rebar in coils.

²³ 19 U.S.C. § 1677(4)(A).

²⁴ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

III. DOMESTIC INDUSTRY AND REGIONAL INDUSTRY ANALYSIS

A. General Considerations

Petitioners have proposed that the Commission undertake a regional industry analysis. The proposed region would include 30 states (all states east of the Mississippi River plus Arkansas, Louisiana, Missouri, and Texas) as well as the District of Columbia and Puerto Rico.²⁵

Section 771(4)(C) of the Tariff Act of 1930, as amended by the URAA,²⁶ provides that:

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

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

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

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefitting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefitting from a countervailable subsidy. The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.²⁷

The statute sets up three prerequisites that must be satisfied before the Commission can reach an affirmative determination under a regional industry analysis.²⁸ The Commission must determine that there

²⁵ CR at I-2, PR at I-1-2. The thirty states proposed by Petitioners to be included in the region are Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Virginia, Maryland, West Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Tennessee, Kentucky, Ohio, Indiana, Illinois, Wisconsin, Michigan, Missouri, Arkansas, Louisiana and Texas. Id.

²⁶ The Uruguay Round Agreements Act ("URAA") amendments to the Tariff Act of 1930 ("the Act"), P.L. 103-465, approved Dec. 8, 1994, 108 Stat. 4809. 19 U.S.C. § 1671 et seq., as amended.

²⁷ 19 U.S.C. § 1677(4)(C). The URAA changes to the regional industry provisions were not intended to affect substantive Commission practice. The definition of "regional industry" in the last sentence was added and technical language changes were made by the URAA. The URAA also amended the statute to require that Commerce "to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation." 19 U.S.C. § 1673e(d).

²⁸ Texas Crushed Stone Co. v. United States, 822 F. Supp. 773, 777, aff'd, 35 F.3rd 1535 (Fed. Cir. 1994) ("the ITC's case-by-case approach represents a 'legitimate policy choice' made by the agency in interpreting and

is: (1) a regional market satisfying the requirements of the statute, (2) a concentration of dumped imports into the regional market, and (3) material injury or threat thereof to producers of all or almost all of the regional production, or material retardation to the establishment of an industry due to the subsidized or dumped imports. The Commission will proceed to the subsequent step only if each preceding step is satisfied.

B. Analysis

1. Background and Proposed Alternative Regions

The Commission has found, in the past, that "appropriate circumstances" exist for the Commission to engage in a regional industry analysis for products with low value-to-weight ratios and where high transportation costs make the areas in which the product is produced necessarily isolated and insular.²⁹ In a recent investigation involving a similar domestic like product, the Commission found that while transportation costs are not a substantial part of any final delivered price to customers, the low value-to-weight ratio for rebar restricted the geographical area in which it could be competitively sold. Moreover, the Commission noted that the industry practice of "freight absorption" or "freight equalization" made transportation costs important as a component of rebar sales by the domestic producer. The Commission found that regional shipments of rebar generally were concentrated within a 250 mile radius of the producing mill.³⁰

In these investigations, domestic producers generally reported that transportation costs accounted for 5 to 8 percent of the total delivered cost for U.S. inland transportation. Transportation charges for imports from the subject countries generally ranged from 8.9 percent to 14.6 percent, with the exception of Austria, which was 2.8 percent.³¹ While transportation costs are not a substantial part of any final delivered price to customers, rebar is a low value-to-weight product, estimated to be \$273.16 per ton in 1999, which appears to restrict the geographical area in which rebar can be competitively sold.

In these investigations, shipments of rebar are reportedly concentrated within 500 miles of the producing mill.³²

applying the statute." *Id.* at 1542), affirming Crushed Limestone from Mexico, Inv. No. 731-TA-562 (Preliminary), USITC Pub. 2533 (July 1992)("Limestone"). See also Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 920 (Ct. Int'l Trade 1981)(court cautioned against "arbitrary or free handed sculpting of regional markets.").

²⁹ See, e.g., Limestone, USITC Pub. 2533; Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 (April 1992), *aff'd*, Feldspar Corp v. United States, 825 F. Supp. 1095 (Ct. Int'l Trade 1993); Gray Portland Cement and Cement Clinker from Mexico ("Mexico Cement"), Inv. No. 731-TA-451 (Final), USITC Pub. 2305 (August 1990), *aff'd*, Cemex, S.A. v. United States, 790 F. Supp. 290 (Ct. Int'l Trade 1992), *aff'd*, 989 F.2d 1202 (Fed. Cir. 1993). Rebar is used in tandem with cement to make reinforced concrete, which dictates a close correlation in markets for both commodity products. Petitioners argued that this correlation supported treating rebar like cement for purposes of a regional industry analysis. Petitioners' Br. at 16-17.

³⁰ Rebar from Turkey, at 10-11.

³¹ CR and PR at Table V-1.

³² CR at II-2, PR at II-1. Three of the 16 responding regional domestic producers reported that at least 50 percent of sales are to customers within 0-100 miles. Of the 25 responding importers, 16 reported that at least 50 percent of sales are to customers within 100 miles. Although the evidence in the record indicates that most sales to customers occurred within five hundred miles, the questionnaires only asked how many sales to customers were within 100 -1000 miles of the producing mills. Commissioners Miller, Hillman, and Askey intend to explore this issue further in any final phase of these investigations. CR at II-2, PR at II-1.

We therefore determine for purposes of these preliminary investigations, that a regional analysis is appropriate and have accepted the petitioners' definition of the region.^{33 34 35}

Alternative Regions

In considering alternative regions, the Commission has looked to whether there was competition among the imports and the domestic producers in the region and in the proposed alternatives to the region. The Commission has not required actual competition but only that there were "no current or future limitations on sales by the petitioner in these states."^{36 37}

Respondents have argued for the exclusion of Puerto Rico from the proposed region.³⁸ While there is no domestic producer of rebar in Puerto Rico, there have been shipments into Puerto Rico of both subject imports and rebar produced within the region. In the May 1999-April 2000 period, 224,858

³³ Commissioners Miller, Hillman, and Askey intend to revisit the appropriateness of a regional industry in any final phase of these investigations. For example, they recognize that there are similar trends concerning subject import volumes and average unit prices within and outside the region. They therefore invite the parties to address what factors the Commission should consider in determining whether a regional analysis is appropriate.

³⁴ Chairman Koplan and Vice-Chairman Okun do not intend to revisit the appropriateness of a regional industry analysis in any final phase of these investigations.

³⁵ Commissioner Bragg is satisfied with both the appropriateness of a regional industry analysis in these preliminary investigations, as well as the definition of the regional industry; barring any unforeseeable developments in the record, she does not intend to revisit these issues in any final phase investigations.

To the extent there is any question that a national, as opposed to regional industry analysis, is warranted in these investigations, Commissioner Bragg would consider this an additional factor raising important and outcome determinative questions of fact and law, which mitigates strongly in favor of an affirmative preliminary determination with regard to Japan. *See* Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela; *see also* American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986).

³⁶ Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary), USITC Pub. 2415 at 20-22 (Aug. 1991)(Commission included states to which petitioner did not ship, noting that there was evidence of actual marketing by petitioner in those states). *See, e.g.,* Certain Fresh Potatoes from Canada ("Round White Potatoes"), Inv. No. 731-TA-124 (Preliminary), USITC Pub. 1364 (March 1983)(marketing of round white potatoes in the states of New Jersey, Delaware, and Maryland, even though there were no producers of the like product in those states, was enough to include those states in the region); Offshore Platform Jackets and Piles from the Republic of Korea and Japan, ("Offshore Platform Jackets") Inv. Nos. 701-TA-248 (Final) and 731-TA-259 and 260 (Final), USITC 1848 at 8-10 (May 1986).

³⁷ In the past, the Commission has added states to make a region contiguous when there have been non-region states between the states in the proposed non-contiguous region. *See, e.g.,* Gray Portland Cement and Cement Clinker From Mexico, Inv. No. 731-TA-451 (Preliminary), USITC Pub. 2235 at 13-16 (Nov. 1989) (Commission included the Gulf states to make proposed separate Southwest and Florida regions contiguous). The Commission, however, has rejected adding to a proposed region the closest geographically located states (North Carolina, South Carolina, Georgia and Florida) for the sole purpose of making an island territory, Puerto Rico (included in the proposed region), contiguous to the region to be assessed. Nepheline Syenite, USITC Pub. 2415 at 21 and 22 (August 1991).

³⁸ In prior regional industry cases, even though there was no production within Puerto Rico, the Commission included it in the region, because (1) demand was not met to any substantial degree by shipments from domestic producers outside of the region and (2) shipments from regional producers competed with imports. Conversely, the Commission did not include another state in that region because it did not meet the criteria for inclusion. Nepheline Syenite, USITC Pub. 2415 at 22 (August 1991).

tons of subject imports were exported to Puerto Rico.³⁹ Additionally, respondents acknowledge that regional producers ship to Puerto Rico. Moreover, there is no evidence in these preliminary investigations that demand in Puerto Rico is supplied by domestic producers outside of the region to any substantial degree.⁴⁰ For the foregoing reasons, we include Puerto Rico in the region, for purposes of the preliminary phase of these investigations.

Respondents also argue for the exclusion of Texas from the region, relying on the Commission's finding in Rebar from Turkey that Texas was a market separate and isolated from the regional industry in that case, since there were only limited shipments into Texas by regional producers and very minimal shipments into the region by Texas producers.⁴¹ The record in these investigations, however, indicates that Texas mills regularly ship into the rest of the region, with the ***.⁴² At the same time, non-Texan regional mills regularly ship to Texas. For example, ***. As for subject imports into Texas, Houston is now the entry port for one-third of all subject imports. Therefore, we find that Texas should be included in the region for purposes of these preliminary investigations.⁴³

2. Market Isolation Criteria

a. Sales of "all or almost all" within the region

Producers in the region shipped more than 93.1 percent of their U.S. shipments of rebar within the region throughout the period of investigation.⁴⁴ We find that this level satisfies the statutory market isolation criterion of Section 771(4)(C)(i) of the Act that "producers within such market sell all or almost all of their production of the domestic like product in that market."⁴⁵

³⁹ Petition Volume I, Exhibit 5, citing official imports statistics.

⁴⁰ Questionnaire responses from domestic producers outside region that provided shipments by state.

⁴¹ Belarusian Respondent's Br. at 7-10; Moldovan Respondent's Br. at 2.

⁴² Producers' Questionnaire Responses.

⁴³ Although the Petitioners did not include the states of Iowa, Oklahoma, and Minnesota in the proposed region, the proximity of these states and the presence of two domestic producers of rebar in these states raises the issue of whether they should be included in the region. According to the record, less than *** percent of regional producers' shipments is shipped to these states and *** percent of rebar production from those states was shipped into the region during the period of investigation. Producer Questionnaire Responses. While regional shipments into these states were low, shipments from these three states into the region appear to be ***. For purposes of the preliminary phase of these investigations, we determine that Oklahoma, Iowa and Minnesota should not be included in the region but plan to revisit the issue in any final phase of these investigations.

⁴⁴ CR and PR at Table I-1. Regional producers' shipments in the region as a share of their total U.S. shipments were 93.5 percent in 1997, 93.5 percent in 1998, 93.1 percent in 1999. Id. In the interim periods, regional producers' shipments as a share of their total U.S. shipments were 94.6 in January-March 1999 and 94.4 percent in January-March 2000. Id.

⁴⁵ 19 U.S.C. § 1677(4)(C)(i). This is within the range the Commission previously has considered sufficient to satisfy this criterion. See Texas Crushed Stone, 822 F. Supp. 773, aff'd, 35 F.3rd 1535 (Fed. Cir. 1994); Cemex, S.A. v. United States, 790 F. Supp. at 292-294, aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

b. Demand in region supplied by U.S. producers outside region

The percentage of consumption in the region that was supplied by U.S. producers outside the region was very low during the period of investigation.⁴⁶ The share of regional consumption supplied by U.S. producers outside the region was 3.9 percent in 1997, 3.4 percent in 1998, and 3.5 percent in 1999. In the interim periods, the share of regional consumption supplied by U.S. producers outside the region was 4.3 percent in January-March 1999 and 3.5 percent in January-March 2000. These percentages fall within the range⁴⁷ that the Commission previously has found to satisfy the second market isolation criterion of Section 771(C)(4)(ii) that "demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States."⁴⁸

Having found that the two market isolation criteria have been satisfied, we determine that a regional industry exists for purposes of these preliminary investigations.

3. Concentration of Imports⁴⁹

In the second step of the regional industry analysis, we determine whether the statutory requirement of concentration of imports within the pertinent region is satisfied. The statute does not define concentration. The legislative history to the URAA indicates that "no precise mathematical formula is reliable in determining the minimum percentage which constitutes sufficient concentration."⁵⁰ The SAA provides that concentration of imports will be found to exist "if the ratio of the subject imports to consumption is clearly higher in the regional market than in the rest of the U.S. market, and if such imports into the region account for a substantial proportion of total subject imports entering the United States."^{51 52}

⁴⁶ CR and PR at Table I-1.

⁴⁷ The Court of International Trade has suggested that a level of 12 percent of total supply from outside of the region may be too high to be considered insubstantial "in the abstract," but nonetheless affirmed a Commission determination holding that the market isolation criteria were satisfied when 12 percent of regional consumption was supplied by producers outside the region. Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 919-920 (Ct. Int'l Trade 1981). The Commission has found that an average of 10.5 percent was acceptable and on several occasions that percentages of outside supply of less than 10 percent were acceptable. See, e.g., Gray Portland Cement and Cement Clinker from Venezuela ("Venezuela Cement"), Inv. Nos. 303-TA-21 (Preliminary) and 731-TA-519 (Preliminary), USITC Pub. 2400 at 8-10 (July 1991); Mexico Cement, USITC Pub. 2305 at 15 (between 8 and 8.3 percent acceptable); Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 at 4, 14 (March 1980)(5.5 percent acceptable); Portland Hydraulic Cement from Australia and Japan, ("Portland Hydraulic Cement") Inv. Nos. 731-TA-108 and 109, USITC Pub. 1310 at 9 (November 1982)(less than 10 percent acceptable). It determined in one case that 30 percent was too large, and in a second that percentages that ranged between 25 and 50 percent were too large. See Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 at 7 (June 1982); 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, Inv. No. 731-TA-261 (Preliminary), USITC Pub. 1710 at 8 (June 1985).

⁴⁸ 19 U.S.C. § 1677(4)(C)(ii).

⁴⁹ Commissioner Bragg dissenting with respect to Japan. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁵⁰ SAA at 190.

⁵¹ SAA at 190.

⁵² In the past, the Commission only considered the import penetration ratio in particular circumstances where imports outside the region were widely dispersed or the regional industry was a significant portion of the national industry. This Commission practice was affirmed by Texas Crushed Stone, 35 F.3d 1535 (Fed. Cir. 1994). See also Gray Portland Cement and Cement Clinker from Japan ("Japan Cement"), Inv. 731-TA-461 (Final), USITC

The SAA cautions that there is no "benchmark" for determining what constitutes a concentration; rather it should be decided on a case-by-case basis.⁵³ The courts have affirmed the Commission's case-by-case approach to applying the statute.⁵⁴

In these investigations, the issue has been raised as to whether subject imports should be aggregated for purposes of determining import concentration. Relying upon the URAA amendment of the statute which provides for cumulative assessment in regional industry cases, the Petitioners argue that a "cumulative assessment of imports from non-negligible respondent countries is required to give full effect to the cumulation provisions which are mandatory when statutory conditions are met."⁵⁵ Petitioners maintain that on a cumulative basis, the market shares of dumped imports from the respondent countries meet the ratio of imports to consumption test.⁵⁶ Respondents, however, argue that the Commission must consider concentration of imports on a country-by-country basis, not on an aggregated basis as suggested by petitioners. They maintain that cumulation enters into the analysis only after the Commission has determined the appropriateness of conducting a regional industry analysis.⁵⁷

Whether or not subject imports should be cumulated for purposes of determining import concentration requires examining both the regional industry and cumulation provisions of the Act. Section 771(4)(C) of the Act, which sets forth the criteria for making a determination based on the effects of subject imports on a regional industry, does not specify that imports should be aggregated to determine whether there is sufficient import concentration.⁵⁸ At the same time, the cumulation provision, section 771(7)(G)(i) of the Act, merely provides that only imports within the region are to be cumulated in assessing injury or threat in regional industry cases.⁵⁹ The only clause of the cumulation provision specifically addressing the interplay of cumulation and regional determinations, subparagraph (iv), refers only to assessing injury. Moreover, the cumulation provision of the statute contains no instruction on whether the Commission must or may aggregate subject imports in order to determine whether the requisite import concentration level is satisfied.⁶⁰ In fact, the cumulation provision of the statute appears to assume that the decision to conduct a regional industry analysis has already taken place.^{61 62}

Based upon the reading of these provisions together and the statute as a whole, we do not believe that the statutory language provides that subject imports into the region should be cumulated for purposes

Pub. 2376 at 21, n. 47 (April 1991)(the Commission "would not consider it of much weight if Southern California represented but a very small share of overall U.S. consumption").

⁵³ SAA at 190. See also Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 614-615 (Ct. Int'l Trade 1993).

⁵⁴ Texas Crushed Stone, 35 F.3d 1535 (Fed. Cir. 1994); Cemex, 790 F. Supp. at 292-294 (Ct. Int'l Trade 1992), aff'd, 989 F.2d 1202 (Fed. Cir. 1993).

⁵⁵ Petitioners' Br. at 26.

⁵⁶ Petitioners' Br. at 27.

⁵⁷ Belarusian Respondent's Br. at 7-10 and Moldovan Respondent's Br. at 13.

⁵⁸ 19 U.S.C. § 1677(4)(c).

⁵⁹ 19 U.S.C. § 1677 (7)(G)(i).

⁶⁰ 19 U.S.C. 1671(7)(G)(iv).

⁶¹ 19 U.S.C. 1677(7)(G)(iv) begins with the statement: "In an investigation which involves a regional industry . . ."

⁶² Petitioners also rely on Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA-293, 294, and 296 (Final), USITC Pub. 1907 (Nov. 1986). We do not find this case to be of particular guidance for although the Commission referred to "cumulated" imports in passing, the Commission did not determine if there was sufficient import concentration. Id. at 6-7.

of determining whether there is sufficient import concentration within the region. We therefore conduct our analysis of import concentration on a country-by-country basis.

The Commission historically has found concentration percentages higher than 80 percent of total imports subject to investigation to be sufficient,⁶³ but the requisite concentration has also been found at levels as low as 61 percent.⁶⁴ The percentage of total imports, where applicable, from each subject country into the region, with the exception of Japan and Korea, was 94.0 to 100.0 percent in 1997, 94.6 to 100.0 percent in 1998 and ranged from 92.0 to 100.0 percent in 1999. In the interim periods, the percentage of total imports of rebar from each subject country, except for Japan and Korea, remained at 100.0 percent.

The percentage of total imports from Korea and the percentage of total imports from Japan into the region were lower than the other subject countries. The percentage of total imports from Korea was 0.0 percent in 1997, 76.9 percent in 1998, and 68.7 percent in 1999. In the interim periods, the percentage of total imports from Korea was 78.2 percent during the first quarter of 1999 and 85.1 percent during the first quarter of 2000. With respect to Japan, the percentage of total imports from Japan into the region was 0.0 percent in 1997, 55.6 percent in 1998, and 66.0 percent in 1999. In the interim periods, the percentage of total imports from Japan was 80.8 percent during the first quarter of 1999 but 0.0 percent during the first quarter of 2000.⁶⁵

The SAA provides that “concentration [of imports] will be found to exist if the ratio of the subject imports to consumption is clearly higher in the regional market than the rest of the U.S. market”⁶⁶ The ratio of imports to consumption in the region for each of the subject countries, other than Japan and Korea, was consistently higher than the ratio of imports to consumption outside the region for these subject countries throughout the period of investigation being zero or virtually zero outside the region and appreciably higher within the region.⁶⁷ However, for Korea and Japan, the ratio of imports of consumption inside and outside the region varied. The ratio of imports from Korea to consumption inside the region was 0.0 percent in 1997, 8.7 percent in 1998, and 5.3 percent in 1999. In the interim period, the ratio of imports from Korea to consumption inside the region was 5.6 percent in the first quarter of 1999 and 11.0 percent in the first quarter of 2000. The ratio of imports from Korea to consumption outside the region was 0.9 percent in 1997, 5.5 percent in 1998, and 5.5 percent in 1999. In the interim periods, the ratio of imports from Korea to consumption outside the region was 3.8 percent in the first quarter of 1999 and 5.1 percent in the first quarter of 2000. The ratio of imports from Japan to consumption inside the region was 0.0 percent in 1997, 0.8 percent in 1998 and 2.8 percent in 1999. In the interim periods, the ratio of imports from Japan to consumption inside the region was 2.2 percent in the first quarter of 1999

⁶³ See, e.g., Portland Hydraulic Cement, USITC Pub. 1310 at 10 (99 percent); Offshore Platform Jackets, USITC Pub. 1848 at 10 (100 percent); Sugars and Sirups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (March 1980) (96 percent).

⁶⁴ See Round White Potatoes, USITC Pub. 1463 at 7; In the final investigation of cement from Japan, a majority of the Commissioners found an import concentration level between 61.2 percent and 73.7 percent to be sufficient. Japan Cement, USITC Pub. 2376 at 20 and 21, 48-50, aff'd, although remanded on other grounds, Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 615 (Ct. Int'l Trade (1993)); see also SAA at 190. cf. Certain Steel Wire Nails from the Republic of Korea, Inv. No. 731-TA-26 (Final), USITC Pub. 1088 at 11 and 12 (Aug. 1980)(43 percent found to meet concentration test). See also Venezuela Cement, USITC Pub. 2400 at 10 and 11 (63.5 percent to 100 percent found to be sufficient). Other Commission determinations have questioned whether the concentration was sufficient when the percentages of imports ranged from 66.3 percent to 79.2 percent. See e.g., Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987);

⁶⁵ CR and PR at Table I-1.

⁶⁶ SAA at 190.

⁶⁷ CR and PR at Table I-1.

and 0.0 percent in the first quarter of 2000. The ratio of imports from Japan to consumption outside the region, was 0.0 percent in 1997, 1.3 percent in 1998, and 3.3 percent in 1999. In the interim periods, the ratio of consumption for imports from Japan outside the region was 1.3 percent in the first quarter of 1999 and 2.2 percent in first quarter 2000.⁶⁸

The percentages for each of the subject countries, other than Korea and Japan, are in the range found to be sufficient in previous Commission determinations, but the cases of Korean and Japanese import percentages present closer questions.⁶⁹

With respect to Korea, its percentages of total imports into the region were low in both 1998 and 1999,⁷⁰ but close to the range that was found to be sufficient in previous Commission determinations. Moreover, by the first quarter of 2000, the percentage of imports from Korea into the region was 85.1 percent, above the 80 percent generally found to be sufficient. As noted above, the ratio of imports from Korea to consumption inside the region was mostly higher than outside the region in 1998 and both interim periods. By the first quarter of 2000, however, the ratio of imports from Korea to consumption in the region was considerably higher, at 11.0 percent compared with the 5.1 percent outside the region.⁷¹ Since 1998 imports from Korea within the region have exceeded those outside the region and given the fact that Korean market penetration within the region is currently more than double its market penetration outside the region, we find that Korean subject imports are sufficiently concentrated within the region for purposes of our preliminary determinations.⁷²

As for Japan, the percentage of total imports in the region was 55.6 percent in 1998 and 66.0 percent in 1999, which are lower than the range of percentages found to be sufficient in previous Commission determinations. Although in the interim period of January-March 1999, the percentage of total imports from Japan in the region was 80.8 percent, it was 0.0 percent not only in the interim period of January-March 2000 but for the last 10 months for which data are available (September 1999-June 2000). Additionally, Japanese market penetration was lower inside the region than outside in 1998, 1999, and in

⁶⁸ CR and PR at Table I-1.

⁶⁹ Commissioner Askey requests that the parties brief the issue of import concentration in greater detail in any final phase of these investigations. Specifically, she requests that the parties discuss how the Commission should view the direction that “[C]oncentration will be found to exist if the ratio of the subject imports to consumption is *clearly higher* in the regional market than in the rest of the U.S. market” SAA at 190 (emphasis supplied). For example, if a country’s ratio of subject imports to consumption outside the region is zero but 0.5 percent within the region, is the latter ratio “clearly higher” than the former? Additionally, the parties should discuss the time frame the Commission should use for its import concentration analysis. For example, should the Commission focus on the most recent year or the period to be examined?

⁷⁰ CR and PR at Table I-1.

⁷¹ CR and PR at Table I-1.

⁷² Commissioner Bragg notes that the percentage of total imports from Korea into the proposed region was 0.0 percent in 1997; 76.9 percent in 1998; and 68.7 percent in 1999, as well as 78.2 percent during the first quarter of 1999 and 85.1 percent during the first quarter of 2000. Commissioner Bragg believes it is important, however, to consider these figures in conjunction with the actual volumes of such imports during each period.

Commissioner Bragg notes in this regard that substantial volumes of imports from Korea did not begin entering the United States generally until 1998; moreover, in the first three months of 2000, total imports from Korea into the United States were almost half that for all of 1999 (the vast majority of which entered the proposed region). Finally, Commissioner Bragg notes that for the entire period of investigation, the percentage of imports from Korea into the region was 74.0 percent of total imports from Korea into the United States. Based upon all the foregoing, Commissioner Bragg finds that subject imports from Korea are sufficiently concentrated within the region.

January-March 2000.⁷³ Thus, we find that imports of rebar from Japan are not sufficiently concentrated in the region. We therefore find there is no reasonable indication that a regional industry in the United States is materially injured or threatened with material injury by reason of the allegedly LTFV imports of rebar from Japan.^{74 75}

Based on a comparison of the market share of subject imports in the region to the market share of subject imports outside of the region, as well as consideration of the proportion of total subject imports that enter the region, we find that subject imports from Austria, Belarus, China, Indonesia, Latvia, Korea, Moldova, Poland, Russia, Ukraine and Venezuela are sufficiently concentrated in the region. Therefore, we proceed to the issue of whether there is a reasonable indication of material injury or threat thereof by subject imports from these eleven countries on a regional industry basis.⁷⁶

IV. RELATED PARTIES

Having defined the domestic industry as producers of rebar within the region, we must further determine whether any producer of the domestic like product should be excluded from the domestic industry as a related party pursuant to 19 U.S.C. § 1677(4)(B). Section 1677(4)(B) allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or that are themselves importers.⁷⁷ Exclusion of such producers is within the Commission's discretion based upon the facts presented in each case.⁷⁸

There are three companies that may be considered "related parties" under (ii)(II) or (III) of the related parties provision based on ownership interests. Birmingham Steel Corp. *** owns Port Everglades

⁷³ CR and PR at Table I-1. There were not any imports from Japan into the United States in 1997. CR and PR at Table I-4.

⁷⁴ See 19 U.S.C. § 1077(4)(c). In Texas Crushed Stone, the Federal Circuit upheld the Commission's determination to terminate the investigation upon finding that the import concentration was not sufficient. 35 F.3d at 1543.

⁷⁵ Commissioner Bragg dissenting. Commissioner Bragg finds that subject imports from Japan are sufficiently concentrated within the region for purposes of these preliminary phase investigations. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports From Austria, Japan, Russia, and Venezuela.

⁷⁶ Commissioner Bragg finds that imports from Japan are also sufficiently concentrated within the region, and has included imports from Japan in her injury analysis. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁷⁷ 19 U.S.C. § 1677(4)(A).

⁷⁸ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.* whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.* whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016, at 14 n.81 (Feb. 1997).

Steel Corp. (“PESCO”), which has imported *** from *** and Venezuela. *** which imported subject imports from ***. *** imported subject rebar from ***.⁷⁹

Consequently, we consider whether “appropriate circumstances” exist to exclude any of these companies from the domestic industry. None of these domestic producers import the subject product, nor did they report purchases of subject merchandise from their related companies or other sources.⁸⁰ Of the producers in question, *** had operating margins substantially higher than other regional producers. However, there is no evidence that any of these producers derive any concrete benefits, or operate in a manner that is different from any other regional producer or affiliated importers. All either *** or are petitioners.⁸¹

Based upon the facts on the record at this time, we do not find that appropriate circumstances exist to exclude any of these producers under the related parties provision of the statute.⁸²

V. NEGLIGIBLE IMPORTS⁸³

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.⁸⁴ By operation of law, a finding of negligibility terminates the Commission’s investigations with respect to such imports.⁸⁵ The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.⁸⁶ In addition, when the Commission makes a regional industry determination, the statute provides that its negligibility analysis “shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.”⁸⁷

The statute also provides that, even if imports are found to be negligible for purposes of present material injury, they shall not be treated as negligible for purposes of a threat analysis should the Commission determine that there is a potential that imports from the country concerned will imminently account for more than 3 percent of all such merchandise imported into the United States, or that there is a potential that the aggregate volumes of imports from the several countries with negligible imports will imminently exceed 7 percent of all such merchandise imported into the United States.⁸⁸

⁷⁹ CR at IV-1-2 and PR at IV-1.

⁸⁰ Moreover, Birmingham’s domestic production of rebar in the region was *** than reported purchases of subject merchandise by its subsidiary, PESCO. In its questionnaire response, PESCO reported imports ***. CR and PR at IV-1, n.2. By contrast, Birmingham’s regional production was *** short tons in 1997, *** short tons in 1998, and *** short tons in 1999. CR and PR at Table F-1.

⁸¹ CR and PR at Table III-1.

⁸² Commissioner Bragg finds that, even when the subject imports from Japan are considered, appropriate circumstances do not exist to exclude any related party from the domestic industry.

⁸³ Commissioner Bragg dissenting with regard to Austria, Russia, and Venezuela. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁸⁴ 19 U.S.C. § 1677(24)(A)(i)(I).

⁸⁵ 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

⁸⁶ 19 U.S.C. § 1677(24)(C); see also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 856 (1994) (“SAA”).

⁸⁷ 19 U.S.C. § 1677(24)(D).

⁸⁸ 19 U.S.C. § 1677(24)(A)(iv).

Negligibility is an issue in these investigations with respect to subject imports from Austria, Russia, and Venezuela. To evaluate negligibility, we have used official U.S. import statistics for imports for the 12-month period preceding the filing of the petitions, *i.e.*, June 1999-May 2000. During this period, the subject imports from Austria, Russia, and Venezuela are each below 3 percent of all rebar imports into the region, and together account for less than 7 percent of all such imports into the region.⁸⁹ Accordingly, imports from these countries are negligible for purposes of assessing present material injury.

We do not find, pursuant to 19 U.S.C. § 1677(24)(A)(iv), that subject imports from Austria, Russia, or Venezuela will imminently account for more than 3 percent individually, nor more than 7 percent in the aggregate, of the total volume of rebar imports into the region.⁹⁰

Austria's share of total imports for consumption in the region remained low during the period of investigation, at 1.0 percent in 1997, less than 0.05 percent in 1998, and 2.4 percent in 1999.⁹¹ In the interim periods, Austria's share of total imports for consumption in the region was 6.6 percent in January-March 1999 and 1.0 percent in January-March 2000.^{92 93 94}

At the same time, Austria's capacity utilization rates for rebar remained *** at *** percent in 1997, *** percent in 1998, and *** percent in 1999.⁹⁵ In the interim periods, Austria's capacity utilization was *** percent in January-March 1999 and *** percent in January-March 2000.⁹⁶ Austria's capacity utilization rates for 2000 and 2001 are projected to be *** percent and *** percent, respectively.⁹⁷

*** of Austria's rebar production is absorbed by its home market. Home market shipments accounted for *** percent of Austrian rebar total shipments in 1997, *** percent in 1998, and *** percent in 1999.⁹⁸ In the interim periods, home market shipments accounted for *** percent of Austrian rebar total shipments in January-March 1999 and *** percent in January-March 2000.⁹⁹ At the same time, exports of Austrian rebar to other countries accounted for *** percent in 1997, *** percent in 1998, and *** percent

⁸⁹ Subject imports into the region from Austria, Russia, and Venezuela account for 0.9 percent, 2.5 percent, and 2.1 percent of total imports respectively; imports from these three countries together account for less than 7 percent of total imports. CR at IV-12, PR at IV-13.

⁹⁰ Commissioner Bragg dissenting. Commissioner Bragg does not join in the remainder of Section IV of the opinion. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

⁹¹ CR and PR at Table IV-1R.

⁹² CR and PR at Table IV-1R.

⁹³ Imports of subject merchandise from Austria within the region were 5,695 short tons in 1997, 34 short tons in 1998, and 37,964 short tons in 1999. In the interim periods, imports of subject merchandise from Austria were 19,050 short tons in January-March 1999 and 4,635 short tons in January-March 2000. CR and PR at Table IV-1R.

⁹⁴ There is some question as to whether there were any imports from Austria of subject merchandise during the period of investigation. Official Government of Austria trade statistics show that there no exports of rebar from Austria to United States. Additionally, staff confirmed that the trading companies listed in the Net Import File as having imported subject merchandise from Austria did not import subject rebar from Austria in 1999. CR at VII-1-3, PR at VII-1.

⁹⁵ CR and PR at Table VII-1.

⁹⁶ CR and PR at Table VII-1.

⁹⁷ CR and PR at Table VII-1.

⁹⁸ CR and PR at Table VII-1.

⁹⁹ CR and PR at Table VII-1.

in 1999 of Austrian rebar total shipments.¹⁰⁰ In the interim periods, exports of Austrian rebar accounted for *** percent in January-March 1999 and *** percent in January-March 2000 of Austrian rebar total shipments.¹⁰¹

Russia's share of total imports for consumption in the region grew from less than 0.05 percent in 1997, to 3.1 percent in 1999.¹⁰² However, in the interim periods, Russia's share of total imports for consumption in the region declined from 1.4 percent in January-March 1999 to 0.8 percent in January-March 2000.^{103 104}

Unlike Austria, Russia's capacity utilization rates for rebar are *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁵ In the interim periods, Russia's capacity utilization rate was *** percent in January-March 1999 and *** percent in January-March 2000.¹⁰⁶ Russia's capacity utilization rates for 2000 and 2001 are projected to be *** percent and *** percent, respectively.¹⁰⁷

Home market shipments accounted for *** percent of Russian rebar total shipments in 1997, *** percent in 1998, and *** percent in 1999.¹⁰⁸ In the interim periods, home market shipments accounted for *** percent of Russian rebar total shipments in January-March 1999 and *** percent in January-March 2000.¹⁰⁹ Exports of Russian rebar to other countries accounted for *** percent in 1997, *** percent in 1998, and *** percent in 1999 of Russian rebar total shipments.¹¹⁰ In the interim periods, exports of Russian rebar accounted for *** percent in January-March 1999 and *** percent in January-March 2000 of Russian rebar total shipments.¹¹¹

Venezuela's share of total imports for consumption in the region generally declined during the period of investigation from 10.7 percent in 1997 to 2.1 percent in 1998, and rising slightly to 3.2 percent in 1999.¹¹² In the interim periods, Venezuela's share of total imports for consumption in the region was 3.1 percent in January-March 1999 and 0.0 percent in January-March 2000.^{113 114}

¹⁰⁰ CR and PR at Table VII-1.

¹⁰¹ CR and PR at Table VII-1.

¹⁰² CR and PR at Table IV-1R.

¹⁰³ CR and PR at Table IV-1R.

¹⁰⁴ At the same time, imports of subject merchandise from Russia into the region increased from 132 short tons in 1997 to 19,122 short tons in 1998 and 48,045 short tons in 1999, but in the interim periods, imports of subject merchandise from Russia were 4,121 short tons in January-March 1999 and 3,558 short tons in January-March 2000. CR and PR at Table IV-1R.

¹⁰⁵ CR at Table VII- 9, PR at VII-10.

¹⁰⁶ CR at Table VII- 9, PR at VII-10.

¹⁰⁷ CR at Table VII- 9, PR at VII-10.

¹⁰⁸ CR at Table VII- 9, PR at VII-10.

¹⁰⁹ CR at Table VII- 9, PR at VII-10.

¹¹⁰ CR at Table VII- 9, PR at VII-10.

¹¹¹ CR at Table VII- 9; PR at VII-10.

¹¹² CR and PR at Table IV-1R.

¹¹³ CR and PR at Table IV-1R.

¹¹⁴ Imports of subject merchandise from Venezuela into the region were 61,014 short tons in 1997, 20,969 short tons in 1998, and 49,706 short tons in 1999. In the interim periods, imports of subject merchandise from Venezuela were 9,023 short tons in January-March 1999 and there were no such imports in January-March 2000. CR and PR at Table IV-1R.

Venezuela's capacity utilization rates for rebar were ***, at *** percent in 1997, *** percent in 1998, and *** percent in 1999.¹¹⁵ In the interim periods, Venezuela's capacity utilization rate was *** percent in January-March 1999 and *** percent in January-March 2000.¹¹⁶ Venezuela's capacity utilization rates for 2000 and 2001 are projected to be *** percent and *** percent, respectively.¹¹⁷

Home market shipments accounted for *** percent of Venezuelan total shipments of rebar in 1997, *** percent in 1998, and *** percent in 1999. In the interim periods, home market shipments accounted for *** percent of Venezuelan total shipments of rebar in January-March 1999 and *** percent in January-March 2000.¹¹⁸ Exports of Venezuelan rebar to other countries accounted for *** percent in 1997, *** percent in 1998, and *** in 1999 of Venezuelan rebar total shipments.¹¹⁹ In the interim periods, exports of Venezuelan rebar accounted for *** percent in January-March 1999 and *** percent in January-March 2000 of Venezuelan rebar total shipments.¹²⁰

With respect to Austria and Venezuela, we note the extremely low or decreasing volumes of imports and market shares, the relative importance of their home markets and their relatively *** capacity utilization rates throughout the period. With respect to Russia, we discern that, although the volume of Russian subject imports into the region generally increased, comparison of the interim periods indicates that imports from Russia into the region are lower. While Russia's capacity utilization levels ***, they have ***.¹²¹ Accordingly, we find no record evidence demonstrating a potential that subject imports from Austria, Russia and Venezuela will imminently exceed the 3- and 7- percent negligibility thresholds for the countries individually and collectively, respectively, and the investigations with respect to these countries are therefore terminated.

VI. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the United States market.¹²² The Act specifically excepts, however, imports from any country for which the investigation has been terminated.¹²³ Because the investigations with respect to imports from Japan, Austria, Russia, and Venezuela have been terminated, imports from these countries are not subject to cumulation.

¹¹⁵ CR at Table VII-11, PR at Table VII-12.

¹¹⁶ CR at Table VII-11, PR at Table VII-12.

¹¹⁷ CR at Table VII-11, PR at Table VII-12.

¹¹⁸ CR at Table VII-11, PR at Table VII-12.

¹¹⁹ CR at Table VII-11, PR at Table VII-12.

¹²⁰ CR at Table VII-11, PR at Table VII-12.

¹²¹ While we do not assign it great weight in our determination, we note that Russia has limited ability to increase the volume of shipments due to the Comprehensive Steel Agreement, which limits the volume of numerous steel products, including rebar, into the United States. CR at II-9, PR at II-6.

¹²² 19 U.S.C. § 1677(7)(G)(i).

¹²³ 19 U.S.C. § 1677(7)(c)(ii)(II).

In assessing whether subject imports compete with each other and with the domestic like product,¹²⁴ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject 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 geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.¹²⁵

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.¹²⁶ Only a “reasonable overlap” of competition is required.¹²⁷

B. Analysis

We have determined to cumulate the subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine. The petitions with respect to these subject countries were filed on the same day, and we find that there is a reasonable overlap of competition among imports from each of these eight countries and between these subject imports and the domestic like product.^{128 129}

1. Fungibility

¹²⁴ The SAA at 848 expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

¹²⁵ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 at 8, n.29 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

¹²⁶ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

¹²⁷ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

¹²⁸ Respondents have argued that two thirds of the U.S. rebar market is subject to “Buy America” or “Buy American” laws and therefore is not competitive with subject imports. Moldovan respondent’s Br. at 28-33; Latvian and Polish Respondents’ Br. at 2-8. However, it is unclear to what extent the U.S. rebar market is subject to Buy America type programs. We intend to explore this issue further in any final phase of these investigations.

¹²⁹ Commissioner Bragg finds that the cumulation analysis set forth above applies equally to subject imports from Japan. Therefore, Commissioner Bragg has cumulated imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, Ukraine, and Japan for purposes of assessing present material injury. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

The record in these preliminary investigations indicates that the subject imports from the eight countries are fungible with each other and with the domestic like product. In this regard, rebar sold in the region -- whether foreign or domestic -- meets the standards maintained by the American Society of Testing and Materials (“ASTM”).¹³⁰ Questionnaire responses indicate that the imports from the subject countries are viewed as interchangeable with the domestic like product and with each other.¹³¹

2. Geographic Overlap

The record demonstrates that subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine generally were present throughout the period of investigation in the same geographic markets in the region.¹³²

3. Channels of Distribution

The record also demonstrates that subject imports and the domestic like product are generally sold through the same channels of distribution.¹³³ Domestic and imported rebar from the subject countries are distributed to similar customers.¹³⁴ Domestic mills sell both to their own fabricators and to independent fabricators and distributors, with lesser amounts sold directly to steel service centers.¹³⁵ Currently, subject rebar is generally channeled through trading companies and distributors, with some sales directly to fabricators and service centers.¹³⁶ However, rebar from the subject countries has been reported to have made significant inroads into the fabricating sector compared with five years ago.¹³⁷ Moreover, one domestic producer indicated that it had lost sales to imports for its own fabricating operations.¹³⁸ Finally, both domestic producers and importers sell smaller amounts to building material dealers.¹³⁹

4. Simultaneous Presence

Domestically produced rebar was present in the region throughout the period for which data were collected. According to official import statistics, imports of subject rebar from Korea, Latvia, and Moldova entered the region in more than 24 of the 39 months from January 1997 through March 2000. Imports from China, Indonesia and Poland entered the United States in 10 or fewer months over the period.¹⁴⁰ Imports from Belarus and Ukraine generally were present in the region throughout the period of investigation.¹⁴¹

¹³⁰ CR at I-7-9, PR at I-5-7, Tr. at 59-60.

¹³¹ CR at II-12-14, PR at II-7-8.

¹³² CR at IV-7, PR at IV-6.

¹³³ CR at I-12, PR at I-9, Tr. at 23-24, 37, 120, 122.

¹³⁴ CR at I-12, PR at I-9, Tr. at 23-24, 37, 120, 122.

¹³⁵ CR at I-12, PR at I-9, Tr. at 23-24.

¹³⁶ CR at I-12, PR at I-9, Tr. at 23-24, 37.

¹³⁷ CR at I-12, PR at I-9, Tr. at 23-24, 37.

¹³⁸ CR at I-12, PR at I-9, Tr. at 23-24.

¹³⁹ CR at I-12, PR at I-9.

¹⁴⁰ CR and PR at Table IV-2.

¹⁴¹ CR and PR at Table IV-2.

Based on the entire record, we find a reasonable overlap of competition and cumulate subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine for purposes of our preliminary determinations.¹⁴²

VII. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS¹⁴³

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.¹⁴⁴ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁴⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁴⁶ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁴⁷ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁴⁸

A. Regional Industry Injury Analysis

Under a regional industry injury analysis, producers of “all or almost all” of the production in the region must be materially injured.¹⁴⁹ There is no specification in the statute or in prior Commission determinations as to what percentage of domestic production constitutes “all or almost all” in the context of regional injury analysis. The Court of International Trade (“CIT”) has held that, for determining the “all” criterion, a “numerical analysis would not be appropriate under the regional injury provision . . . [because] numerous factors must be considered and a quantitative analysis is inappropriate.”¹⁵⁰ The CIT has held that the “Commission did not err in failing to apply a fixed percentage test of eighty to eighty-five percent” in determining whether a regional industry was injured.¹⁵¹

Generally, after determining whether the aggregate regional data shows material injury, the Commission next examines individual producer data “as appropriate to determine whether anomalies exist

¹⁴² Commissioner Bragg includes imports from Japan in her cumulative analysis. See Dissenting Views of Commissioner Lynn M. Bragg Regarding Imports from Austria, Japan, Russia, and Venezuela.

¹⁴³ Commissioner Askey does not join subsections C-E of this section.

¹⁴⁴ 19 U.S.C. § 1673b(a).

¹⁴⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

¹⁴⁶ 19 U.S.C. § 1677(7)(A).

¹⁴⁷ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁸ Id.

¹⁴⁹ 19 U.S.C. § 1677(4)(c).

¹⁵⁰ Mitsubishi Materials Corp. v. United States, 820 F. Supp. 608, 616 and 617 (Ct. Int’l Trade 1993); Cemex, 790 F. Supp. at 294 (Ct. Int’l Trade 1992), aff’d, 989 F.2d 1202 (Fed. Cir. 1993).

¹⁵¹ Mitsubishi Materials, 820 F. Supp. at 616 and 617 (Ct. Int’l Trade 1993); Cemex, 790 F. Supp. at 294 (Ct. Int’l Trade 1992), aff’d, 989 F.2d 1202 (Fed. Cir. 1993).

that an aggregate industry analysis would disguise.”¹⁵² In examining individual producer data, the Commission is “not required to adopt the pure plant-by-plant inquiry” and “[u]se of either a straight aggregate or pure plant-by plant method in determining injury in a regional analysis is not mandated by statute or case law”¹⁵³

For the reasons discussed below, we determine that there is a reasonable indication that the regional industry producing rebar is materially injured by reason of subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine that are allegedly sold in the United States at less than fair value.¹⁵⁴

B. Conditions of Competition

There are several conditions of competition that are relevant to our analysis in these investigations.¹⁵⁵ First, the domestic industry captively consumes a significant portion of its domestic like product in the manufacture of downstream products.¹⁵⁶ We have considered whether the captive production provision requires us primarily to focus our analysis on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.¹⁵⁷ We determine that a

¹⁵² Rebar From Turkey at 23 and nn.141-142.

¹⁵³ Mitsubishi Materials, 820 F. Supp. at 617 and 618; accord, Mitsubishi Materials Corp. v. United States, 918 F.Supp. 422, 427 (Ct. Int’l Trade 1996)(aggregate analysis of regional producers sufficient to satisfy the “all or almost all” standard where industry conditions were common to each regional producer); Cemex, 790 at 294 and 295 (“to the extent that some safeguard is required to assure that the ‘all or almost all’ standard [was met].”). In Rebar From Turkey, the Commission analyzed both “the statutory factors regarding the aggregate regional industry” and “the performance of individual regional producers to look for anomalies as a safeguard . . . to assure that the ‘all or almost all’ standard [was] met.” Id. at 23 n. 142. The Commission also indicated that while its individual analysis was at the producer level, it further noted that “examination at the individual plant level would not change our findings.” Id.

¹⁵⁴ Commissioner Askey finds that there is a reasonable indication that the regional industry producing rebar is threatened with material injury by reason of subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine that are allegedly sold in the United States at less than fair value.

¹⁵⁵ CR at II-2 and II-11-12, PR at II-1, II-7-8.

¹⁵⁶ For domestic producers within the region, internal consumption plus company transfers accounted for 16.0 percent of regional producer’ total shipments in 1997 and 18.6 percent of their shipments in 1999. CR and PR at Table III-3R.

¹⁵⁷ As amended by the URAA, the Act contains a provision on captive production at section 771(7)(C)(iv), which provides:

(iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not

significant production of the domestic like product is both internally transferred and sold in the merchant market. However, the record indicates that rebar sold in the merchant market is generally used in the production of the same downstream products for which rebar is internally consumed. Accordingly, for purposes of these preliminary determinations, we find that the third criterion of the captive production provision is not satisfied. Consequently, the captive production provision does not apply in the preliminary phase of these investigations, although we will further examine this question in any final phase of these investigations.

Rebar is primarily used for the reinforcement of concrete structures, and demand for rebar follows trends in construction.¹⁵⁸ In general, domestic producers and importers reported that the demand for rebar has increased, due to a strong economy and increases in construction.¹⁵⁹ Apparent U.S. consumption of rebar within the region increased from 4.3 million tons in 1997 to 5.5 million tons in 1999.¹⁶⁰ Apparent consumption within the region in the first quarter of 1999 was 1.2 million tons compared with 1.5 million in the first quarter of 2000.¹⁶¹

Rebar accounts for a very small share of the cost of a concrete structure. Several responding domestic producers reported that rebar accounts for less than 1 percent of the cost of such structures. There are at best limited substitutes for rebar.¹⁶² Of the 50 responses to Commission domestic producer and importer questionnaires, 22 reported that there were no substitutes, or no practical substitutes, for rebar in most applications.¹⁶³ Consequently, the demand for rebar is highly insensitive to any change in price.¹⁶⁴

Rebar is generally regarded as a commodity product and rebar of the same grade and dimensions is interchangeable regardless of origin.¹⁶⁵ Rebar is produced to standard specifications. The most common specification of rebar sold in the United States is of nonalloy billet steel (ASTM A615) in grade 60.¹⁶⁶ Grade 60 accounts for the largest share of both domestic regional production and subject imports.¹⁶⁷ Sizes 3, 4, 5, and 6 predominate, accounting for roughly 71 percent of the total tonnage of rebar shipped.¹⁶⁸ Imports were initially concentrated in these sizes, but have expanded to include all sizes, especially sizes 7,

generally used in the production of that downstream article,

19 U.S.C. § 1677(7)(C)(iv). The Statement of Administrative Action issued in conjunction with the URAA indicates that where a domestic like product is transferred internally for the production of another article coming within the definition of the domestic like product, such transfers do not constitute internal transfers for the production of a “downstream article” for purposes of the captive production provision. H. Doc. No. 103-316 at 853 (1994).

¹⁵⁸ CR at II-11, PR at II-7

¹⁵⁹ CR at II-11, PR at II-7.

¹⁶⁰ CR and PR at Table IV-4R.

¹⁶¹ CR and PR at Table IV-4R.

¹⁶² CR at II-11-12, PR at II-7.

¹⁶³ Other products which reportedly may be used in limited applications included prestressed wire concrete strand, and smooth bars. CR at II-11-12, PR at II-7.

¹⁶⁴ Petitioners’ Br. at 9-10.

¹⁶⁵ CR at II-12, PR at II-8.

¹⁶⁶ CR at II-12, PR at II-8. Rebar in longer lengths, *e.g.*, 60 feet, is preferred by fabricators to enable efficient cutting of the product into the necessary lengths with the least waste. Tr. at 45-47.

¹⁶⁷ CR at II-12, PR at II-8.

¹⁶⁸ CR at I-9, PR at I-7.

9, and 11. Imports were also primarily available in 20-foot lengths, which are easier to handle at the docks,¹⁶⁹ but increasing amounts of 40-foot lengths and 60-foot lengths have been entering the United States. However, logistical problems in transportation appear to limit the ability of importers to supply 60-foot lengths.¹⁷⁰ The interchangeability of domestic and imported rebar suggests that price is a significant factor in purchasing decisions.

Sales in the regional market by regional producers and importers take place primarily through distributors, service centers, and fabricators.¹⁷¹ Domestic producers generally reported that transportation costs accounted for 5 to 8 percent of the total delivered cost for U.S. inland transportation. Transportation charges for regional imports from the subject countries generally ranged from 8.9 percent to 14.6 percent, with the exception of Austria, which was 2.8 percent.¹⁷² Shipments of rebar are concentrated within 500 miles of the producing mill and port of entry.¹⁷³

Both subject and non-subject imports of rebar are excluded from federal and state projects subject to “Buy American” or “Buy America” laws. The parties disagree with regard to how much of the U.S. market is subject to these restrictions. Respondents assert that two thirds of the U.S. market is closed to imports while petitioners indicate that substantial shipments of rebar go into the building of hospitals, stadiums, office buildings etc., which are not subject to Buy America laws, as well as small projects such as patios, house foundations and driveways.¹⁷⁴ We intend to examine the extent to which consumption in the region is subject to these restrictions in any final phase of these investigations.

C. Volume of Subject Imports

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁷⁵ The cumulated volume of subject imports increased from 75,501 short tons in 1997 to 798,839 short tons in 1998, and then to 1.0 million short tons in 1999. In the interim periods, the volume of subject imports was 179,972 short tons in first quarter 1999, compared with 397,001 short tons in first quarter 2000.^{176 177}

¹⁶⁹ CR at I-9, PR at I-7.

¹⁷⁰ CR at I-10, PR at I-7.

¹⁷¹ CR at I-12, PR at I-7.

¹⁷² CR and PR at Table V-1.

¹⁷³ CR at II-2, PR at II-1.

¹⁷⁴ Petitioners’ Br. at 7-9.

¹⁷⁵ 19 U.S.C. § 1677(7)(C)(i).

¹⁷⁶ CR and PR at Table IV-1R .

¹⁷⁷ The volume of imports from nonsubject countries decreased between 1997 and 1998, but increased between 1998 and 1999 and was higher in interim 1999 than in interim 2000. See CR and PR at Table IV-1R. Nonsubject imports decreased from 495,499 short tons in 1997 to 191,623 short tons in 1998, and then increased to 527,843 short tons in 1999. Nonsubject imports were 109,579 short tons in interim 1999 and 53,843 short tons in interim 2000. See CR and PR at Table IV-1R. The share of apparent consumption within the region attributable to nonsubject imports decreased from 11.5 percent in 1997 to 4.1 percent in 1998 and then increased to 9.6 percent in 1999; nonsubject imports’ share of apparent consumption of 8.9 percent in interim 1999 was higher than the interim 2000 share of 3.7 percent. See CR and PR at Table IV-3 and Table IV-4R.

Subject imports' share of apparent consumption in the region measured by quantity, increased from 1.8 percent in 1997 to 17.2 percent in 1998, and 18.9 percent in 1999; the share in interim 1999 was 14.6 percent, as compared with 27.0 percent in interim 2000.¹⁷⁸

In contrast, regional producers' share of apparent regional consumption declined from 82.9 percent in 1997 to 68.0 percent in 1999.¹⁷⁹ Regional producers' market share declined further –from 72.3 percent in first quarter 1999 to 65.8 percent in first quarter 2000.¹⁸⁰

We find that the volume of subject imports, and the increase in volume, in both absolute terms and relative to apparent U.S. consumption, is significant.¹⁸¹

D. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁸²

The record in these preliminary investigations shows that price is a significant factor in purchasing decisions, as rebar is essentially a commodity product. As discussed above, subject imports and the domestic product of the same size are comparable and generally interchangeable when used in the same applications.

There has been significant underselling by the subject imports throughout the period of investigation. For the four products for which the Commission collected data, the subject imports undersold the domestic like product in 245 out of 274 quarterly pricing comparisons (*i.e.*, well over three-fourths of the pricing comparisons). In many comparisons, the margins of underselling exceeded *** percent.¹⁸³

Prices for both the domestic like product and the subject imports declined steadily throughout the period of investigation.¹⁸⁴ Moreover, the decline in domestic prices exceeded the decrease in raw material costs between 1998 and 1999 and again between interim 1999 and interim 2000.¹⁸⁵ In 1998, the average reported cost of raw materials per ton of rebar produced in the region was \$144.16 and the average value of rebar sold was \$299.23 per ton -- a spread of \$155.07 per ton. In 1999, the average cost of raw

¹⁷⁸ See CR and PR at Table IV-4R.

¹⁷⁹ CR and PR at Table IV-4R.

¹⁸⁰ CR and PR at Table IV-4R.

¹⁸¹ Commissioner Bragg concurs and finds that this conclusion is only strengthened when subject imports from Japan are also included in the cumulative analysis.

¹⁸² 19 U.S.C. § 1677(7)(C)(ii).

¹⁸³ CR and PR at Tables V-7-11.

¹⁸⁴ CR at V-13, PR at V-11.

¹⁸⁵ Compare CR and PR at Tables VI-2 and VI-3.

materials per ton of rebar produced in the region had fallen to \$122.90 while the average value of rebar sold was \$274.59 per ton, a spread of 151.69 per ton.^{186 187}

Petitioners alleged 57 instances of lost sales involving 34 purchasers totaling \$51.4 million and allegations of lost revenue involving 4 purchasers due to rebar imported from the subject countries. Commission staff were able to contact 33 purchasers cited for lost sales and all of the purchasers cited for lost revenues. Staff were able to confirm lost sales of \$22.9 million due to lower prices of the subject imports.¹⁸⁸

Accordingly, we find there is a reasonable indication that the subject imports have depressed or suppressed prices for the domestic like product in the regional market to a significant degree during the period of investigation.¹⁸⁹

E. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the regional industry.¹⁹⁰ 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 dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{191 192 193}

¹⁸⁶ In interim 2000 the unit raw material cost was higher at \$140.47 than in interim 1999 at \$119.92. CR and PR at Table VI-2. However, despite increased raw material costs, the average unit sales value was \$272.58 in interim 2000 which was slightly below the \$272.82 average unit sales value in interim 1999. Compare CR and PR at Tables VI-2 and VI-3.

¹⁸⁷ Commissioner Bragg notes that the per unit cost of goods sold for the regional industry declined from \$271.40 in 1997 to \$264.00 in 1998, and declined further in 1999 to \$244.47; comparison of interim data indicate that the unit COGS increased from \$238.10 in interim 1999 to \$247.72 in interim 2000. CR and PR Table C-1.

¹⁸⁸ CR at V-27, PR at V-20.

¹⁸⁹ Commissioner Bragg concurs and finds that this conclusion is only strengthened when subject imports from Japan are also included in the cumulative analysis.

¹⁹⁰ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885).

¹⁹¹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

¹⁹² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce relied on petitioners’ estimates of dumping margin ranges: Belarus: 49.06 to 56.48 percent; Indonesia: 71.01 percent; Latvia: 45.52 to 58.40 percent; Moldova: 49.07 percent; The People’s Republic of China: 59.98 percent; Poland: 53.54 percent; Korea: 86.69 to 102.28 percent; and Ukraine: 41.69 percent. 65 Fed. Reg. 45754 (July 25, 2000).

¹⁹³ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See, e.g., Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

We find that the subject imports had a significant adverse impact on the regional industry. While the volume and market share of subject imports increased during the period of investigation, the regional industry experienced declines in several key indicators. Despite increasing apparent U.S. consumption within the region, generally increasing sales quantities, and aggregate and per unit declines in cost of goods sold, the domestic producers lost market share and revenues in the face of the substantial price declines caused in significant part by subject imports.¹⁹⁴

As noted earlier, from 1997 to 1999, regional apparent consumption of rebar increased from 4.3 million short tons to 5.5 million short tons in 1999,¹⁹⁵ while regional producers' regional shipments of rebar only rose slightly during 1997-1999.¹⁹⁶ Regional production also rose only slightly, from 3.9 million short tons in 1997 to 4.0 million short tons in 1999.¹⁹⁷ Regional producers' capacity utilization remained low throughout the period of investigation.¹⁹⁸

Total sales of regional producers' rebar increased during 1997-1999, from 3.8 million short tons in 1997 to 4.0 million short tons in 1999.¹⁹⁹ In the interim periods, total sales increased from 950,643 short tons in January-March 1999 to 1,032,054 short tons in January-March 2000.²⁰⁰ As regional producers' sales increased, average unit values dropped over the same period, from \$309.11 per ton in 1997 to \$301.10 per ton in 1998 and \$274.86 per ton in 1999, far outpacing the decline in raw material costs.²⁰¹

While we analyzed the statutory factors regarding the aggregate regional industry, we also examined the performance of individual regional producers to look for anomalies as a safeguard "to assure that the 'all or almost all' standard [was] met."²⁰² As net sales values per pound declined, operating income also fell for almost all regional producers. Operating income declined from \$91.1 million in 1997 to \$88.4 million in 1998 and to \$62.2 million in 1999 and was higher in interim 1999 at \$20.7 million than in interim 2000 at \$11.0 million. Moreover, six of the regional producers reported operating losses for interim 1999 and ten of *** regional producers reported operating losses for interim 2000.²⁰³

The adverse impact of the subject imports on the regional industry is also indicated by the lost sales that were confirmed by Commission staff.

In sum, there is a reasonable indication that the significant and increasing volume of subject imports has caused the regional industry to lose market share and has depressed prices to a significant

¹⁹⁴ CR and PR at Table C-1.

¹⁹⁵ CR and PR at Table IV-3.

¹⁹⁶ Regional producers' regional shipments of rebar increased from 3.6 million short tons in 1997 to 3.7 million short tons in 1999. CR and PR at table C-1.

¹⁹⁷ CR and PR at Table C-1.

¹⁹⁸ Specifically, capacity utilization was 62.8 percent in 1997, 61.7 percent in 1998, and 61.9 in 1999. In the interim periods, capacity utilization was 56.4 percent in interim 1999 compared with 62.6 percent in interim 2000. CR and PR at Table C-1.

¹⁹⁹ CR and PR at Table C-1.

²⁰⁰ CR and PR at Table C-1.

²⁰¹ CR and PR at Table C-1. In interim 2000, the raw materials cost was higher at \$140.47 per ton than in interim 1999 at \$119.92 per ton. CR and PR at Table VI-2. However, the average unit values were \$273.18 per ton in interim 1999 and \$272.47 per ton in interim 2000. CR and PR at Table C-1.

²⁰² Cemex, 790 F. Supp. at 296.

²⁰³ CR and PR at Table VI-4.

degree, resulting in a significant decline in the regional industry's profitability and deteriorating financial condition.²⁰⁴

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that a regional industry in the United States is materially injured by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, of steel concrete reinforcement bars that are allegedly sold in the United States at less than fair value.^{205 206}

We also make a negative determination with respect to imports of rebar from Japan due to insufficient concentration in the region.²⁰⁷ Finally, we find that imports of rebar from Austria, Russia, and Venezuela that are allegedly sold at LTFV in the United States are negligible.²⁰⁸

²⁰⁴ Commissioner Bragg concurs and finds that this conclusion is only strengthened when subject imports from Japan are also included in the cumulative analysis.

²⁰⁵ Commissioner Bragg also reaches an affirmative determination with regard to subject imports from Japan.

²⁰⁶ Commissioner Askey determines that there is a reasonable indication that a regional industry in the United States is threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine of rebar that are allegedly sold in the United States at less than fair value.

²⁰⁷ Commissioner Bragg dissenting.

²⁰⁸ Commissioner Bragg dissenting.

ADDITIONAL VIEWS OF COMMISSIONER THELMA J. ASKEY

I find that there is a reasonable indication that a regional industry producing steel concrete reinforcing bars (“rebar”) is threatened with material injury by reason of imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine that are alleged to be sold in the United States at less than fair value (“LTFV”). Because I found that imports from Austria, Russia and Venezuela are negligible and that the investigation concerning imports from Japan should be terminated because imports from Japan are not sufficiently concentrated in the region, I join with my colleagues in discussing those issues in the *Views of the Commission*. Additionally, my views on the domestic like product and the regional industry, my analysis regarding cumulation of imports for purposes of the present material injury determinations, and my description of the relevant conditions of competition are contained in the Commission’s views. Nevertheless, because I have concluded that the regional industry producing rebar is not suffering present material injury by reason of subject imports, I do not join my colleagues in their discussion of present material injury.

I. PRESENT MATERIAL INJURY

A. Volume

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”²⁰⁹ The cumulated volume of subject imports increased from 75,501 short tons in 1997 to 798,839 short tons in 1998, and then to 1,038,263 short tons in 1999. Subject imports were 397,001 short tons in first quarter 2000, compared to 179,972 short tons in first quarter 1999.²¹⁰ Subject imports’ share of apparent domestic consumption within the region increased from 1.8 percent in 1997 to 17.2 percent in 1998 and to 18.9 percent in 1999. Their share was 27.0 percent in interim 2000, as compared with 14.6 percent in interim 1999.²¹¹

Thus, the record indicates a large increase in the volume and market share of subject imports over the POI. However, I note that, during the same period, regional consumption increased by 27.6 percent between 1997 and 1999, from 4.3 million short tons to 5.5 million short tons, and by a further 18.9 percent comparing interim periods, from 1.2 million short tons in first quarter 1999 to 1.5 million tons in first quarter 2000.²¹² In other words, while subject import volume increased by almost 1 million tons between 1997 and 1999, domestic demand increased by 1.2 million tons.²¹³ Accordingly, increased imports may have been drawn into the U.S. market to a significant degree by the substantially increased demand during the period. Moreover, as I discuss below, I do not find that the record in the preliminary phase of these investigations indicates that these large volumes are causing a significant current impact on domestic profit levels, production levels and shipment levels.

Accordingly, I find that the volume of subject imports, while large, is not significant. However, I will reexamine this issue in any final phase of these investigations.

²⁰⁹ 19 U.S.C. § 1677(7)(C)(i).

²¹⁰ See CR and PR at Table C-1.

²¹¹ See CR and PR at Table C-1.

²¹² CR and PR at Table C-1.

²¹³ Shipments from domestic producers outside the region also increased between 1997 and 1999, by 16 percent, rising from 166,990 short tons in 1997 to 193,665 short tons in 1999. CR and PR at Table C-1.

B. Price

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.²¹⁴

The record in the preliminary phase of these investigations shows that price is a significant factor in purchasing decisions, as rebar appears to be essentially a commodity product. As discussed above, subject imports and the domestic product of the same size are comparable and generally interchangeable when used in the same application, although it is unclear to what extent “Buy America” requirements may limit the substitutability of the domestic and imported merchandise in this market. The record shows that the subject imports undersold the domestic like product in 245 of 274 price comparisons.²¹⁵ However, underselling margins varied considerably.²¹⁶ Subject import prices fluctuated somewhat but declined over the POI.²¹⁷ Between 1997 and first quarter 2000, prices for domestic products for which the Commission obtained price comparison data declined, particularly later in the POI, but to a lesser degree than did subject import prices.²¹⁸ Raw material price declines may have accounted for some of the price declines.²¹⁹ Staff confirmed lost sales of \$22.9 million, allegedly due to lower prices of subject imports.

Nevertheless, I do not find that subject imports have had a significant effect on domestic prices. First, while domestic subject import prices have declined, so have raw material prices. Moreover, although the unit value of regional producer shipments within the region declined by 13.1 percent during 1997-99, the unit value of their shipments outside the region declined by 9.9 percent,²²⁰ without additional information I find it unclear that subject imports are having a significant impact on prices within the region when the in-region unit value decline is so similar to the decline outside the region. Further, I note that while subject import volumes increased most substantially between 1997-98, the majority of domestic price declines appear to have occurred in 1999,²²¹ again making it difficult to conclude that subject imports caused the price declines.

²¹⁴ 19 U.S.C. § 1677(7)(C)(ii).

²¹⁵ See CR and PR at Table V-11.

²¹⁶ See CR and PR at Tables V-7-10. For example, margins of underselling ranged from 1.1-20.0 percent for Belarus, from 1.9-32.5 percent for Latvia, from 0.3-33.9 percent for Moldova and from 0.4-51.7 percent for Poland. CR and PR at Table V-11.

²¹⁷ See CR and PR at Tables V-3-6.

²¹⁸ See CR and PR at Tables V-3-6. For example, domestic producer prices for product 3 declined by \$23 in that period, while Korean prices declined by \$40, Indonesian prices declined by \$*** and Belarus prices declined by \$***. CR and PR at Table V-5. AUV data, which may be more probative with respect to a product such as rebar than to other products that have more substantial variations among different types, shows that subject import AUVs declined by \$100 between 1997 and 1999 while domestic AUVs for sales within the region declined by \$40. See CR and PR at Table C-1.

²¹⁹ See CR and PR at V-1.

²²⁰ CR and PR at Table C-1.

²²¹ See CR and PR at Table C-1.

In sum, while there has been a substantial amount of underselling on the part of the subject imports and domestic price declines, I find that the subject imports have not had a significant effect on domestic prices in the region. I will examine this issue more fully in any final phase of these investigations.

C. Impact

In examining the impact of the subject imports on the domestic industry, I consider all relevant economic factors that bear on the state of the regional industry.²²² 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 dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{223 224}

Because I have found no significant volume increases and price effects it is difficult to see how subject imports could be causing a significant impact on the regional industry. In 1999, the regional industry as a whole showed an operating income margin of 5.6 percent, with operating income of \$62.2 million and gross profit of \$123 million, and had shipments within the region of 3.7 million short tons worth \$1 billion.²²⁵ Generally, although domestic producer prices and profitability have declined somewhat over the POI, U.S. shipments within the region increased by 4.7 percent, production increased by 4.5 percent, net sales quantity increased by 4.9 percent, capital expenditures increased by 66.1 percent, and production workers, hours worked, wages paid and hourly wages all increased.²²⁶ Additionally, between 1997 and 1999, the ratio of gross profit to net sales remained relatively stable, between 11.1 and 12.3 percent, the regional industry’s operating income margin declined only slightly, from 7.7 percent in 1997 and 1998 to 5.6 percent in 1999, and net income as a ratio to net sales declined slightly from 5.3 percent in 1997 to 5.0 in 1998 and to 3.4 percent in 1999.²²⁷

Moreover, because these are regional industry investigations, the Commission is faced with a more stringent injury standard than in national cases, namely, the Commission must find that “the producers of all, or almost all, of the production within that market are being materially injured”²²⁸ In these investigations I have evaluated the financial condition of each of those producers to determine whether their condition satisfies the regional industry injury standard. As noted above, the regional industry is made up

²²² 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

²²³ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n.148 (Feb. 1999) .

²²⁴ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce relied on petitioners’ estimates of dumping margin ranges: Belarus: 49.06 to 56.48 percent; Indonesia: 71.01 percent; Latvia: 45.52 to 58.40 percent; Moldova: 49.07 percent; The People’s Republic of China: 59.98 percent; Poland; 53.54 percent; Korea; 86.69 to 102.28 percent; and Ukraine: 41.69 percent. 65 Fed. Reg. 45754 (July 25, 2000).

²²⁵ CR and PR at Table C-1.

²²⁶ CR and PR at Table C-1.

²²⁷ CR and PR at Table VI-1.

²²⁸ 19 U.S.C. § 1677(4)(C).

of 19 producers²²⁹ and the Commission has collected individual data for each. In 1999, nine producers representing nearly three-quarters of regional producers' sales showed operating income margins of 5.6 percent or higher.²³⁰ Additionally, more than *** of the industry showed operating margins of 7.5 percent or higher.²³¹ In fact, more than *** of the industry showed operating margins of 9.0 percent or higher and producers representing nearly *** of the regional industry had returns of between *** and *** percent.²³² In other words, 73.7 percent of the industry showed operating returns of between 5.6 and *** percent. As a general matter, I find it difficult to find that there is material injury by reason of subject imports when such a substantial portion of the industry is experiencing such positive returns. I find such a finding even more difficult when, as in this case, I am faced with a regional industry injury standard that requires that I find that "all, or almost all" of the industry is experiencing material injury.

In sum, while the record indicates that there is a reasonable indication that some of the industry may be experiencing a negative impact as a result of subject imports, I do not believe that the record satisfies the stringent requirement that producers of "all, or almost all" of the domestic like product within the region are experiencing present material injury as a result of subject imports. Nevertheless, as I discuss below, given the worsening trends for those producers, I find that there is a reasonable indication that the producers of "all, or almost all" production within the region are threatened with material injury.

II. THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."²³³ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."²³⁴ In making my determinations, I have considered all factors that are relevant to these investigations.²³⁵ Because these are regional industry investigations, my threat analysis is based upon the statutory requirement that I find that "the producers of all, or almost all, of the production within market are being . . . threatened with material injury, . . ."²³⁶

Based on an evaluation of the relevant statutory factors, I find that the producers of all, or almost all, of the production within the relevant market in the United States are threatened with material injury by reason of imports of rebar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine that are sold in the United States at less than fair value.

²²⁹ There was an additional toll-producer within the region whose data was not included with the other producers.

²³⁰ CR and PR at Table VI-6.

²³¹ CR and PR at Table VI-6.

²³² CR and PR at Table VI-6.

²³³ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

²³⁴ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

²³⁵ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

²³⁶ 19 U.S.C. § 1677(4)(C).

A. Cumulation for Purposes of Threat Analysis

Cumulation for threat analysis is treated in Section 771(7)(H) of the Act.²³⁷ This provision leaves to the Commission’s discretion cumulation of imports in analyzing threat of material injury. In deciding whether to cumulate the subject imports for purposes of making threat determinations, the Commission has often considered whether the imports are increasing at similar rates, whether the imports have similar margins of underselling, and whether the imports have similar pricing patterns.²³⁸

Based on an evaluation of the relevant criteria, I have exercised my discretion to cumulate the subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine. As discussed in the Commission’s views, I find a reasonable overlap of competition between these subject imports and the domestic like product.²³⁹ Finding no significant differences in the conditions of competition or trends of the volume or prices of imports from the subject countries, I exercise my discretion to cumulate those subject imports for purposes of my analysis of threat of material injury. Also, as discussed in the Commission’s Views, I find imports from Austria, Russia and Venezuela to be negligible. I do not find a likelihood that imports from those countries will individually exceed 3.0 percent of subject imports or collectively 7.0 percent of subject imports within a reasonably foreseeable time period.

B. Threat of Material Injury by Reason of LTFV Imports from Cumulated Subject Countries

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”²⁴⁰ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.²⁴¹ In making my decision, I have considered all statutory factors that are relevant.²⁴²

As discussed above, I have found that there have been large increases in the volumes of subject imports over the POI. Subject import shipments increased by roughly one million tons between 1997 and 1999, and increased by an additional 121 percent comparing interim periods, from 179,972 short tons in first quarter 1999 to 397,000 short tons in first quarter 2000.²⁴³ During this period, cumulated subject imports’ market share increased from 1.8 percent of regional consumption in 1997 to 18.9 percent in 1999

²³⁷ 19 U.S.C. § 1677(7)(H).

²³⁸ See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission’s determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int’l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int’l Trade 1988).

²³⁹ CR and PR at Table IV-3.

²⁴⁰ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

²⁴¹ 19 U.S.C. § (7)(F)(ii).

²⁴² 19 U.S.C. § (7)(F)(I).

²⁴³ See CR and PR at Table C-1.

and further to 27.1 percent in interim 2000.²⁴⁴ This suggests that the subject imports have shown a significant rate of increase in volume and market penetration and that there is a reasonable indication that imports may increase substantially in the imminent future.

Moreover, available data show that production capacity in the cumulated subject countries is projected to increase significantly, by roughly *** short tons in 2000-01²⁴⁵ and some subject countries show current available excess capacity.²⁴⁶ Accordingly, given the rapid and substantial increase in imports over the period of investigation -- and in the first quarter of 2000 in particular -- and the projected increase in capacity, for purposes of the preliminary phase of these investigations, there is a reasonable indication that cumulated subject imports may increase substantially in the imminent future.

The record also indicates that subject merchandise from cumulated countries undersold the domestic like product in 245 of 274 price comparisons²⁴⁷ and subject import prices declined throughout the period.²⁴⁸ Domestic prices fluctuated somewhat during the first two years but then declined to period lows in 1999 and interim 2000.²⁴⁹ As noted above, I do not find that subject imports have caused significant current price effects. Nevertheless, based upon the record in the preliminary phase of these investigations, I find that there is a reasonable indication that subject import prices may continue to decline in the imminent future and cause substantial price suppression or depression for U.S. producers, given the reasonable indication that subject import volumes may continue to increase substantially in the imminent future.

I also find that there is a reasonable indication that increased volumes of subject imports may have a material adverse effect upon the performance of producers of “all, or almost all” of the like product within the region. As discussed above, the profitability of the industry declined during the period of investigation. Given that there is a reasonable likelihood that subject import volumes will continue to increase and that such increases would have significant adverse price depressing or suppressing effects upon domestic prices, there is a reasonable indication in these preliminary investigations that the declines in the industry’s financial indicators may continue. Individual company data show that, for example, the top seven mills in 1997, each having an operating income margin of 10 percent or greater, accounted for 57.1 percent of the regional industry’s sales. By contrast, in 1999, only three mills, accounting for 19.8 percent of the regional industry’s sales had this operating margin.²⁵⁰ In 1997, 5 regional producers representing *** percent of sales experienced negative operating margins, and a further *** mills, representing a further *** percent of the domestic industry experienced operating margins of between zero and 5 percent. In 1999, 10 mills, representing roughly *** of regional sales, experienced operating income margins of less than 5.0 percent and 6 of those, who represented *** percent of production, experienced negative operating margins.²⁵¹ Accordingly, there has been a decline in regional producer financial indicators, and I conclude

²⁴⁴ See CR and PR at Table C-1.

²⁴⁵ Questionnaire data shows significant projected increases in production capacity in *** in 2000 and in *** in 2001, while production capacity is projected to remain stable in ***. *** capacity is enormous, at *** short tons in 1999 and its capacity utilization is ***, at *** percent in 1999. CR at Tables VII-2, VII-5-8, and VII-10; PR at Tables VII-2, VII-6-9 and VII-11.

²⁴⁶ *Id.*

²⁴⁷ See CR and PR at Table V-11.

²⁴⁸ See CR and PR at Table C-1.

²⁴⁹ Per-ton prices for product 1 declined from \$339.07 in early 1997 to \$319.60 in first quarter 2000; for product 2 they declined from \$301.95 in early 1997 to \$279.75 in first quarter 2000; for product 3 they declined from \$293.67 in 1997 to \$270.13 in first quarter 2000; and for product 4 from \$287.28 in early 1997 to \$269.99 in first quarter 2000. CR and PR at Tables V-3-6.

²⁵⁰ CR at VI-10-11, PR at VI-6.

²⁵¹ CR and PR at Table VI-6.

that there is a reasonable likelihood that producers of “all or substantially all” production of the domestic like product are threatened with material injury in the imminent future.²⁵²

Therefore, I find that all or almost all of the regional industry producing rebar is threatened with material injury by reason of subject imports of rebar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine.

CONCLUSION

For the reasons stated above, I determine that the regional domestic industry producing steel concrete reinforcing bars is threatened with material injury by reason of imports of rebar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland and Ukraine that are sold in the United States at less than fair value.

²⁵² With respect to inventories of subject merchandise, most importers reported maintaining no inventories of subject rebar in the United States, instead ordering from foreign suppliers on behalf of their customers. CR at VII-27; PR at VII-10. Available data show that inventories have been relatively low during the POI. CR at Table VII-12; PR at Table VII-13. Questionnaire data on U.S. importers’ recent arrivals and current orders, i.e., since March 31, 2000, show *** short tons. CR at VII-27; PR at VII-10. Most questionnaires were received in mid-July, so this information apparently largely reflects second quarter 2000 orders and arrivals. By way of contrast, actual imports for first quarter 2000 were 397,001 short tons. See CR and PR at Table C-1.

**DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG
REGARDING IMPORTS FROM AUSTRIA, JAPAN, RUSSIA, AND VENEZUELA**

Although I concur with my colleagues in finding that there is not a potential that subject imports from Austria, Russia, and Venezuela, when considered individually, will imminently exceed 3 percent of total imports into the United States, I further determine that there is a potential that subject imports from these three countries, when considered in the aggregate, will imminently account for more than 7 percent of all such merchandise imported into the United States. Consequently, I engage in a threat analysis with regard to imports from these three subject countries.

In addition, I find that imports from Japan are sufficiently concentrated within the region, and therefore include subject imports from Japan in a cumulative analysis of present material injury with imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine. Based upon my cumulative analysis and as noted in the views of the majority, I find a reasonable indication that the regional industry has suffered present material injury by reason of imports from these nine subject countries.

I therefore dissent from the views of the majority with regard to subject imports from Austria, Japan, Russia, and Venezuela, and provide my dissenting views below.

II. Austria, Russia, and Venezuela

Negligibility—

I first note that individually, subject imports from Austria, Russia, and Venezuela, each accounted for more than 3 percent of total imports at some point during the period of investigation; however, the most recent data indicate that subject imports from each of these countries accounted for a declining share of total imports and are not likely to imminently exceed 3 percent of total imports individually.²⁵³

Specifically, subject imports from Austria into the region accounted for 1.0 percent of total imports in 1997; less than 0.05 percent in 1998; 2.4 percent in 1999; 6.6 percent in interim 1999; and 1.0 percent in interim 2000. Subject imports from Russia accounted for less than 0.05 percent of total imports into the region in 1997; 1.9 percent in 1998; 3.1 percent in 1999; 1.4 percent in interim 1999; and 0.8 percent in interim 2000. Lastly, subject imports from Venezuela accounted for 10.7 percent of total imports into the region in 1997; 2.1 percent in 1998; 3.2 percent in 1999; 3.1 percent in interim 1999; and 0.0 percent in interim 2000.

I also note that during the 12 month period prior to the filing of the petition, subject imports from Austria accounted for 0.9 percent of total imports into the region, while subject imports from Russia accounted for 2.5 percent and subject imports from Venezuela accounted for 2.1 percent. Based upon these figures, as well as the declining share of imports for each of these three countries evidenced over the latter end of the period of investigation, I determine that subject imports from Austria, Russia, and Venezuela, considered individually, will not imminently exceed 3 percent of total imports.

Considered in the aggregate, subject imports from Austria, Russia, and Venezuela, accounted for 5.5 percent of total imports into the region during the 12 month period prior to the filing of the petition. Over the period of investigation, however, imports from these three subject countries accounted for 11.7 percent of total imports into the region in 1997; 4.0 percent in 1998; 8.7 percent in 1999; 11.1 percent in interim 1999; and 1.8 percent in interim 2000.

²⁵³ See Confidential Report (“CR”) and Public Report (“PR”) Table IV-1R.

I further note in this regard that the most recent data on the record indicate that capacity utilization in Russia during the first three months of 2000 was *** percent, while during the same period capacity utilization in Venezuela stood at *** and capacity utilization in Austria stood at *** percent.²⁵⁴ Although when considered individually it is not apparent that subject imports from any of these three countries will imminently exceed 3 percent of total imports, what is apparent is that producers in each of these countries have demonstrated the capacity to supply well over 3 percent of total imports during some portion of the period of investigation. Coupled with the foregoing capacity utilization data, I find that there is a potential that imports from these three subject countries in the aggregate will imminently account for more than 7 percent of total imports into the region.

Consequently, I do not treat imports from Austria, Russia, and Venezuela, as being negligible for purposes of assessing whether there is a reasonable indication of threat of material injury to the regional industry in these preliminary phase investigations.

Threat of Material Injury–

In assessing whether the regional industry is threatened with material injury by reason of subject imports from Austria, Russia, and Venezuela, the statute directs the Commission to consider “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted”²⁵⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,”²⁵⁶ and considers the threat factors²⁵⁷ as a whole; indeed, the presence or absence of any such factor is not dispositive of the Commission’s determination.²⁵⁸ In making my determination, I have considered all statutory factors that are relevant to these investigations.²⁵⁹

The statute provides that the Commission may, in determining threat of material injury, cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.²⁶⁰ I note that I have joined my colleagues in cumulating subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine. Upon review of the four factors traditionally considered by the Commission for purposes of assessing cumulation, I am satisfied that imports from all twelve subject countries should be cumulated for purposes of my threat analysis, based upon a reasonable overlap of competition.²⁶¹

For purposes of assessing the threat of material injury posed by subject imports from Austria, Russia, and Venezuela, I am mindful of the fact that I have joined my colleagues in finding a reasonable

²⁵⁴ CR at Tables VII-1, VII-9, and VII-11; PR at Tables VII-1, VII-10, and VII-12.

²⁵⁵ 19 U.S.C. § 1677(7)(F)(ii).

²⁵⁶ *Id.*

²⁵⁷ 19 U.S.C. § 1677(7)(F)(i).

²⁵⁸ *See* 19 U.S.C. § 1677(7)(F)(ii).

²⁵⁹ 19 U.S.C. § 1677(7)(F)(i). I note that factor (I) is not relevant, as it addresses the nature of any countervailable subsidies, and imports from Austria, Russia, and Venezuela are subject solely to antidumping investigations. Factor (VII) is also not relevant, as it concerns raw and processed agricultural products.

²⁶⁰ *See* 19 U.S.C. § 1677(7)(H).

²⁶¹ For additional discussion of my approach to cumulation in a similar context, I refer to my dissenting views regarding imports from Germany in Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373 (Final) and 731-TA-769-775 (Final), USITC Pub. 3126 (Sept. 1998).

indication that the regional industry is materially injured by reason of cumulated imports of rebar from the remaining countries subject to these preliminary investigations (other than Japan).²⁶² When assessed in conjunction with the reasonable indication of present material injury caused by cumulated subject imports from the remaining nine countries, I determine that there is a reasonable indication that future imports from Austria, Russia, and Venezuela, pose an imminent threat of material injury to the regional industry.

In particular, I note that during 1999, unused capacity in Russia was equivalent to *** percent of apparent regional consumption that year, while unused capacity for Venezuela was equivalent to *** percent of apparent regional consumption that year; with regard to Austria, unused capacity was equivalent to *** percent of apparent regional consumption in 1999.²⁶³ Data for interim 2000 indicate there continue to be *** amounts of unused capacity in both Russia and Venezuela.²⁶⁴

Second, I note that subject imports from Russia and Venezuela undersold the domestic like product in 38 out of 54 quarterly pricing comparisons, for an incidence of underselling of over 70 percent.²⁶⁵ In addition, a comparison of the average unit values (“AUVs”) of subject imports from Austria, Russia, and Venezuela into the region, versus the AUVs for regional U.S. producers, indicates that subject import price levels are substantially below those of the domestic like product.²⁶⁶

Based upon the foregoing, I find that subject imports from Austria, Russia, and Venezuela, are likely to enter the region in significant volumes and at prices that will have significant negative price effects on the regional market. Coupled with the evidence indicating present material injury by reason of imports from the nine other subject countries, I find that there is a reasonable indication that subject imports from Austria, Russia, and Venezuela, imminently threaten material injury to the regional industry.

III. Japan

Concentration of Imports—

I note that the percentage of total imports from Japan into the region was: 0.0 percent in 1997; 55.6 percent in 1998; and 66.0 percent in 1999. In addition, the percentage was 80.8 percent during the first quarter of 1999 but 0.0 percent during the first quarter of 2000. I believe it is important to consider these figures in comparison to the actual volume of imports during each period, as summarized in the following table (import volumes are reported in short tons):

²⁶² I note, however, that unlike the majority, I also cumulated subject imports from Japan with subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, for purposes of assessing present material injury.

²⁶³ CR at Tables VII-1, VII-9, VII-11, and C-1; PR at Tables VII-1, VII-10, VII-12, and C-1.

²⁶⁴ I note that Russia and the United States have entered into a comprehensive agreement limiting the export of steel products, including rebar, into the U.S. market for the next four years; specifically, imports of hot-rolled bars (including rebar) from Russia are limited to 40,000 metric tons per year under the agreement (out of a total 85,000 metric ton limit). I further note, however, that the agreement provides that any residual (*i.e.* unused) export limit for the overall hot-rolled category would be available for additional rebar and light-shape exports; moreover, the agreement provides that up to 15 percent of the total 85,000 ton limit may be carried over to the following calendar year, if not used during the previous year. Consequently, up to 97,750 metric tons of rebar may theoretically be exported from Russia to the United States in a given calendar year, even with the agreement in place. *See* CR at VII-22-23, PR at VII-8..

²⁶⁵ *See* CR and PR Table V-11.

²⁶⁶ *See* CR and PR Table C-1.

| <u>Year</u> | <u>Imports Into Region</u> | <u>Total Imports Into U.S.</u> |
|----------------------------|----------------------------|--------------------------------|
| 1997 | 0 | 0 |
| 1998 | 36,886 | 66,341 |
| 1999 | 153,149 | 231,985 |
| Interim 1999 | 27,252 | 33,744 |
| Interim 2000 | 0 | 12,524 |
| TOTAL: 1997 - Interim 2000 | 190,035 | 310,850 |

Thus, although there were no imports from Japan in 1997 and the percentage of Japanese imports into the region was only 55.6 percent in 1998, as the foregoing table illustrates, substantial volumes of imports did not begin entering the United States generally until 1999; indeed, Japanese imports into the United States in 1999 account for more than two-thirds of total Japanese imports entered during the entire period of investigation. In addition, I note that for the entire period of investigation, the percentage of Japanese imports into the region was 61.1 percent of total Japanese imports into the United States.

With regard to import penetration, the following table compares the ratio of Japanese imports to apparent consumption within the proposed region and outside the proposed region:

| <u>Year</u> | <u>Import Penetration Within Region</u> | <u>Import Penetration Outside Region</u> |
|----------------------------|---|--|
| 1997 | 0.0 percent | 0.0 percent |
| 1998 | 0.8 percent | 1.3 percent |
| 1999 | 2.8 percent | 3.3 percent |
| Interim 1999 | 2.2 percent | 1.3 percent |
| Interim 2000 | 0.0 percent | 2.2 percent |
| TOTAL: 1997 - Interim 2000 | 1.2 percent | 1.6 percent |

Thus, over the entire period of investigation, the import penetration of subject imports from Japan within the region was only 0.4 percent less than the import penetration of Japanese imports outside the region.

In my view, a comparison of Japanese imports into the region versus total Japanese imports into the United States during the period of investigation clearly supports a finding of sufficient import concentration; in particular, I find probative the comparison of aggregate data for the entire period of investigation, rather than yearly comparisons, because the aggregate data better account for underlying import volumes. This, however, is only one of the two criteria identified in legislative history for evaluating import concentration.²⁶⁷

The remaining criteria, *i.e.* import penetration, appears at first glance to support an alternative conclusion because, over the entire period of investigation, Japanese import penetration outside the region exceeded Japanese import penetration within the region, albeit by a slight margin.

²⁶⁷ See Statement of Administrative Action to the Uruguay Round Agreements Act at 190.

As an initial matter, however, it is not apparent to me that an aggregate 0.4 percent difference in import penetration fails to satisfy the SAA's criterion that import concentration within the region be "clearly higher" than import concentration in the rest of the United States. In my view, this raises an important and potentially outcome determinative question of fact and law that mitigates strongly in favor of an affirmative preliminary determination with regard to Japan.²⁶⁸ More importantly, it is not apparent to me that both criteria necessarily must be satisfied in order to find a sufficient concentration of imports. I would very much prefer to have addressed this issue in any final phase investigations following additional input from the parties.

In any event, based upon the relative concentration of Japanese imports within the region over the entire period of investigation, I find that subject imports from Japan are sufficiently concentrated for purposes of these preliminary phase investigations.

Reasonable Indication of Present Material Injury—

As noted in the views of the majority, I find there is a reasonable overlap of competition among subject imports from Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, and Ukraine, and between subject imports and the domestic like product. Accordingly, I have engaged in a cumulative analysis with regard to imports from these nine subject countries.

I join in the analysis and conclusion of the majority that there is a reasonable indication of present material injury by reason of subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine. I further determine that this cumulative analysis is only strengthened by the inclusion of subject imports from Japan. Accordingly, I render an affirmative determination finding a reasonable indication of present material injury by reason of subject imports from Japan.

IV. Conclusion

In sum, I find that there is a potential that subject imports from Austria, Russia, and Venezuela, will imminently account for more than 7 percent of total imports into the region, and that subject imports from Japan are sufficiently concentrated within the region.

Based upon a cumulative analysis of subject imports from all twelve subject countries, I find there is a reasonable indication that the domestic rebar industry is threatened with material injury by reason of subject imports from Austria, Russia, and Venezuela.

In addition, based upon a cumulative analysis of subject imports from Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, and Ukraine, I find a reasonable indication that the regional industry has suffered present material injury by reason of imports from these nine subject countries.

Accordingly, I respectfully dissent from the determinations of the majority with regard to imports from Austria, Japan, Russia, and Venezuela, in these preliminary phase investigations.

²⁶⁸ See American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986). Indeed, it appears to me that if the most recent 12 month period prior to the filing of the petition is considered, the Japanese import penetration within the region may well be larger than the Japanese import penetration outside the region.

