UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN STEEL CONCRETE REINFORCING BARS FROM BELARUS, CHINA, KOREA, LATVIA, AND MOLDOVA
Investigations Nos. 731-TA-873-874 and 877-879 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION
(USITC Publication No. 3440, July 2001)

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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova, and that an industry in the United States is threatened with material injury by reason of imports from China, of certain steel concrete reinforcing bars,[2] [3] provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective June 28, 2000, following receipt of petitions filed with the Commission and Commerce by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members.[4] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain steel concrete reinforcing bars from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine

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

[2] Chairman Stephen Koplan, Vice Chairman Deanna Tanner Okun, and Commissioner Lynn M. Bragg determine that a regional industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova of certain steel concrete reinforcing bars. Chairman Koplan and Vice Chairman Okun also determine that a regional industry in the United States is threatened with material injury by reason of imports from China of the subject merchandise. Commissioner Bragg determines that a regional industry in the United States is materially injured by reason of imports from China of certain steel concrete reinforcing bars. The defined region consists of all the states east of the Mississippi plus Arkansas, Louisiana, Missouri, and Texas, as well as the District of Columbia and Puerto Rico. Commissioner Marcia E. Miller, Commissioner Jennifer A. Hillman, and Commissioner Dennis M. Devaney determine that an industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova of certain steel concrete reinforcing bars and that an industry in the United States is threatened with material injury by reason of imports from China of the subject merchandise.

[3] The Commission determines that critical circumstances do not exist with respect to subject imports from China and Korea.

[4] The individual members of RTAC on whose behalf the petitions were filed are as follows: 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); Nucor Steel (Darlington, SC); and Riverview Steel (Glassport, PA).

were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)).[5] Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of February 14, 2001 (66 FR 10317). The hearing was held in Washington, DC, on April 5, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[5] On May 15, 2001, the Commission made affirmative determinations of material injury with respect to imports from Indonesia, Poland, and Ukraine of certain steel concrete reinforcing bars (see *Certain Steel Concrete Reinforcing Bars from Indonesia, Poland, and Ukraine, Investigations Nos. 731-TA-875, 880, and 882 (Final)*, USITC Pub. 3425, May 2001).

VIEWS OF THE COMMISSION

Based on the record in these investigations, Chairman Koplan and Vice Chairman Okun determine that a regional industry producing concrete steel reinforcing bars ("rebar") is materially injured by reason of subject imports from Belarus, Korea, Latvia, and Moldova that are sold in the United States at less than fair value ("LTFV"). With respect to China, Chairman Koplan and Vice Chairman Okun find that a regional industry is threatened with material injury by reason of subject imports from China that are sold in the United States at LTFV. Commissioner Bragg determines that a regional industry in the United States is materially injured by reason of subject imports from Belarus, China, Korea, Latvia, and Moldova that are sold in the United States at LTFV. Commissioners Miller, Hillman, and Devaney determine that a domestic industry producing rebar in the United States is materially injured by reason of subject imports from Belarus, Korea, Latvia, and Moldova that are sold in the United States at LTFV. Commissioners Miller, Hillman, and Devaney also determine that a domestic industry in the United States is threatened with material injury by reason of subject imports from China that are sold in the United States at LTFV. Finally, the Commission determines that critical circumstances do not exist with respect to those subject imports from China and Korea subject to affirmative critical circumstances findings.

On June 30, 2000, petitions were filed regarding subject imports from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela. In the preliminary determinations, the Commission terminated its investigations with respect to Austria, Japan, Russia, and Venezuela.[1] On April 11, 2001, Commerce issued its final determinations with respect to Indonesia, Poland, and Ukraine,[2] and the Commission made affirmative determinations with respect to those countries on May 15, 2001.

For the remainder of these views, Chairman Koplan, Vice Chairman Okun, and Commissioner Bragg's views based on a regional industry analysis are presented first, followed by Commissioners Miller, Hillman, and Devaney's views based on a national industry analysis.

VIEWS OF CHAIRMAN KOPLAN, VICE CHAIRMAN OKUN, AND COMMISSIONER BRAGG

As noted above, the instant investigations arose out of a group of simultaneously filed petitions that also included the petitions for our recently completed investigations of rebar from Indonesia, Poland, and Ukraine.[3] In our determinations with respect to Indonesia, Poland, and Ukraine, we cumulated the volume and price effects of the subject imports from Belarus, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.[4] Under Section 771(7)(G)(iii) of the Tariff Act of 1930,[5] as amended ("the Act"), we are required to make our material injury determinations in the instant investigations on the same record as that

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[1] In its preliminary investigations the Commission conducted a regional industry analysis as proposed by the petitioners. In so doing, the Commission found that subject imports from Japan were not sufficiently concentrated in the region and therefore rendered a negative determination. The Commission also found that the imports of rebar from Austria, Russia, and Venezuela were negligible. Preliminary Determination at 3. (Commissioner Bragg dissenting with respect to Austria, Japan, Russia, and Venezuela.)

[2] 66 Fed. Reg.18753 (Apr. 11, 2001).

[3] Certain Steel Concrete Reinforcing Bars From Indonesia, Poland, and Ukraine, Inv. Nos. 731-TA-875, 880, and 882 (Final) USITC Pub. No. 3425 (May 2001). ("USITC Pub. 3425").

[4] Commissioner Bragg engaged in a cumulated analysis of the volume and price effects of subject imports from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.

[5] 19 U.S.C. § 1677(7)(G)(iii).

of the determinations regarding subject imports from Indonesia, Poland, and Ukraine, except that the record in these investigations also includes Commerce's final determinations and parties' final comments. The record in these investigations is otherwise identical to that in the investigations regarding imports from Indonesia, Poland, and Ukraine with respect to domestic like product, regional industry,[6] negligibility, cumulation, and material injury. Therefore, in these investigations, we adopt the findings and analysis in our determinations regarding imports from Indonesia, Poland, and Ukraine for the like product, domestic industry, cumulation, material injury, and captive production.

With respect to the material injury analysis, we note that Commerce modified the dumping margins somewhat from its preliminary determinations. These changes to the margins do not alter our conclusions that a regional industry is materially injured by reason of the cumulated subject imports.[7]

Accordingly, we determine that a regional industry in the United States is materially injured by reason of subject imports from Belarus, Korea, Latvia, and Moldova for the reasons set forth in our determinations with respect to imports from Indonesia, Poland, and Ukraine.[8] Our determination with respect to China is set forth below.

I. NEGLIGIBILITY

The statute provides that imports from a subject country corresponding to a domestic like product that account for less than 3 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.[9] By operation of law, a finding of negligibility terminates the Commission's investigations with respect to such imports.[10] The Commission is authorized to make "reasonable estimates on the basis of

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[6] In our determinations regarding subject imports from Indonesia, Poland, and Ukraine, we found a regional industry for rebar, which included 30 contiguous states from New England to Texas and from the Gulf of Mexico north on both sides of the Mississippi up to the Canadian border, plus the District of Columbia and Puerto Rico. The thirty states included in the region were 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. USITC Pub. 3425 at 7.

[7] Commerce's final antidumping duty margins are as follows: Belarus-114.53 percent; Latvia-17.21 percent; Moldova, 232.86 percent; China, 133.00 percent; and Korea, Dongkuk Steel Mill Co., Ltd., 22.89 percent, Hanbo Iron & Steel Co., Ltd.,102.28 percent, and all others, 22.89 percent. Commerce's Final Determinations Regarding Belarus, Latvia, Moldova, the People's Republic of China, and the Republic of Korea. 66 Fed. Reg. 33524 (June 22, 2001).

[8] As set forth in the final determinations regarding subject imports from Indonesia, Poland, and Ukraine, Commissioner Bragg finds that subject imports from China are not negligible. She therefore included subject imports from China in her cumulative analysis in those proceedings, and does so again for purposes of these final determinations regarding subject imports from Belarus, China, Korea, Latvia, and Moldova. Accordingly, Commissioner Bragg determines that a regional industry in the United States is materially injured by reason of subject imports from Belarus, China, Korea, Latvia, and Moldova.

[9] 19 U.S.C. § 1677(24)(A)(i)(I).

[10] 19 U.S.C. § 1671b(a)(1), 19 U.S.C. § 1673b(a)(1).

available statistics" of pertinent import levels for purposes of deciding negligibility.[11]

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.[12]

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."[13] [14]

In the final determinations on Indonesia, Poland, and Ukraine, we determined that although the subject imports from China exported for sale into the region were less than the 3-percent threshold, because Commerce had not made its final determination with respect to China, we did not determine whether imports from China would imminently exceed 3 percent of such merchandise exported for sale into the region.[15] [16]

We find that there is a potential that subject imports from China will imminently account for more than 3 percent of all such merchandise exported for sale into the region, and therefore we do not treat such imports as being negligible for purposes of an analysis of threat of material injury. Although subject imports were below the 3-percent threshold for the twelve months preceding the filing of the petition, imports from China into the region rose significantly at the end of the period of investigation, increasing from 17,417 short tons in 1999 to 123,217 short tons in 2000.[17] Subject imports from China in calendar year 2000 accounted for *** percent of the total imports into the region. We find it likely that imports from China will remain above 3 percent of total imports into the region. There is considerable production capacity in China. In 2000, rebar production in China was estimated to be 29,450,386 short tons,[18] which was almost six times apparent consumption in the region during the same year.[19] Moreover, over the period examined, Chinese exports to all countries increased, albeit unevenly, by more than 63 percent,

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[11] 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").

[12] 19 U.S.C. § 1677(24)(A)(iv).

[13] 19 U.S.C. § 1677(24)(D).

[14] Commissioner Bragg does not join the remainder of this section or Section II of this opinion. As set forth in detail at footnote 49 in the determinations regarding subject imports from Indonesia, Poland, and Ukraine, Commissioner Bragg finds that subject imports from China are not negligible.

[15] USITC Pub. 3425 at 13.

[16] According to official import statistics, the percentage of imports into the region from China was 3.2 percent of total imports, which is above the statutory threshold for negligibility. Confidential Staff Report ("CR") and ("PR") at Table IV-9. However, *** of rebar that were reported as imports from China into the region entered the Port of New Orleans and were shipped directly to the importer of record located in ***, which is outside of the 30-state region. Because the first sale of this merchandise occurred outside of the region, we do not consider it to be "exported for sale in the regional market" in our assessment of negligibility. USITC Pub. 3425 at 13.

[17] CR at Table IV-4.

[18] CR at VII-5, PR at VII-2.

[19] In 2000, apparent consumption in the region was *** million short tons. CR and PR at Table IV-6.

suggesting an increased emphasis on exports.[20]

We therefore find that there is a potential that subject imports from China will imminently exceed the 3-percent threshold. Accordingly, we consider below whether a regional industry is threatened with material injury by reason of subject imports from China.

II. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

A. Statutory Threat Factors

Section 771(7)(F) of the Act directs the Commission to consider whether the U.S. industry is threatened with material injury by reason of subject merchandise.[21] While an analysis of any statutory threat factors necessarily involves projection of future events, "such a determination may not be made on the basis of mere conjecture or supposition."[22] Further direction is provided by the amendment to Section 771(7)(F)(ii), which adds that the Commission shall consider 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 issues.[23] In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. [24]

B. Cumulation For Purposes of Threat

Cumulation for threat analysis is set forth in section 771(7)(H) of the Act.[25] This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.[26] In this respect the provision preserves the Commission's discretion to cumulate imports in analyzing the threat of material injury. The limitations concerning what imports are eligible for cumulation and the exceptions for cumulation are applicable to cumulation for threat as well as to cumulation for present material injury.[27] In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar

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[20] CR at VII-5, PR at VII-2.

[21] 19 U.S.C. §§ 1673b(a) and1677(7)(F)(II).

[22] 19 U.S.C. §§ 1677(7)(F)(ii); see e.g., S. Rep. No. 249 at 88-89; see also Metallverken Nederland B.V. v. United States, 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990).

[23] 19 U.S.C. §1677(7)(F)(ii). While the language referring to imports being imminent (instead of "actual injury" being imminent and threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice," the existing statutory language, "and judicial precedent interpreting the statute."

[24] Factors I and VII regarding countervailable subsidies and raw and processed agriculture products, respectively, are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(iii)(I) and (VII).

[25] 19 U.S.C. § 1677(H).

[26] Kerns-Liebers v. United States, 19 CIT 87 (1995).

[27] To be eligible for cumulation for threat analysis, the imports must be from countries with respect to which petitions were filed or investigations were self-initiated on the same day, and the imports must compete with each other and with the domestic like product in the United States market. Cumulation for threat analysis is precluded in the four instances in which it is precluded for material injury analysis.

margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.[28]

For the reasons discussed in the final determinations on Indonesia, Poland, and Ukraine, we find that imports from China are negligible for purposes of present material injury. As noted above, however, there is a potential that such imports will imminently exceed the statutory negligibility thresholds. Imports that are negligible for purposes of present material injury are not precluded from cumulation with other imports for purposes of making a threat determination as long as the Commission finds that there is a potential for such imports to imminently exceed the statutory negligibility thresholds.

In our previous determinations with respect to Indonesia, Poland, and Ukraine, we found that rebar is a fungible commodity product and that customers perceive subject imports from China and other subject countries to be interchangeable with the domestic like product. Although we find that the subject imports from China and other subject imports compete with each other and with the domestic like product in the U.S. market, we do not exercise our discretion to cumulate imports from the other subject countries for purposes of the threat analysis of subject imports from China. We find the different volume and price trends between imports from China and the other subject imports to be significant. During the period examined, the volume of China's subject imports into the region rose sharply from 17,417 short tons in 1998 to 123,217 short tons in 2000.[29] In contrast, the trends in volumes of subject imports from most the other subject countries were mixed over the period of investigation.[30] Additionally, while the market share held by subject imports from China increased from 0.0 percent in 1998 to *** percent in 2000, most of the other subject countries' market shares declined or fluctuated over the same period.[31] Furthermore, although all subject imports from all countries undersold the domestic like product, the margins of underselling from China were higher than those from the other subject countries.[32]

C. Statutory Threat Factors

Based on an evaluation of the relevant statutory factors, we find that the producers of all or almost all of the domestic like product within the region are threatened with material injury by reason of the subject imports from China that are sold in the United States at less than fair value.

The record shows that there is substantial production capacity to produce rebar in China. In 2000, production capacity for rebar in China was estimated to be at least 29.5 million short tons,[33] almost six times apparent consumption in the region during the same year.[34] Rebar production in China increased steadily during the period of investigation, rising from 22.9 million short tons in 1998 to 26.9 million short tons in 1999 and to 29.5 million short tons in 2000. While the only Chinese firm that responded to the

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[28] See Torrington Co. v. United States, 790 F. Supp. 1161, 1172 (Ct. Int'l Trade 1992) (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).

[29] CR and PR at Table IV-1.

[30] CR and PR at Table IV-1.

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

[32] CR and PR at Table V-6.

[33] CR at VII-5, PR at VII-2.

[34] In 2000, apparent consumption was *** million short tons. CR and PR at Table IV-4.

Commission's request for information reported *** capacity utilization rates, its capacity utilization generally declined throughout the period of investigation.[35] We note that the firm accounted for only *** percent of all Chinese rebar production.[36] The record shows this firm's exports of rebar and as well exports from China as a whole have increased.[37] Indeed, the record indicates that Chinese exports increased unevenly by 63 percent over the three-year period of investigation.[38]

Although subject rebar from China only began to enter the regional market in 1999, the increase in volume of Chinese subject imports into the regional market has been rapid, increasing from just 17,417 short tons in 1999 to 123,217 in 2000.[39] At the same time, Chinese subject imports' share of the regional market, increased from *** percent of apparent regional consumption in 1999 to *** percent in 2000.[40]

Given the Chinese production capacity in relation to regional apparent consumption, the increasing reliance of Chinese subject producers on their export markets, the rapid increase of Chinese subject imports, and the continuing demand for rebar in the regional market, we find that subject imports from China are likely to increase substantially.

We also find that subject imports from China are likely to have significant depressing or suppressing price effects in the regional market. As we have previously found, price is a significant factor in purchasing decisions, as rebar is a commodity product. Morever, subject imports and the domestic product of the same size are comparable and generally interchangeable when used in the same applications.[41]

There has been significant underselling by the subject imports from China throughout the period of investigation. For the four products for which the Commission collected data, the subject imports from China undersold the domestic like product in the region in all quarterly pricing comparisons. Generally, the margins of underselling of Chinese rebar ranged from *** to *** percent and we conclude that this underselling is likely to continue. [42]

Because rebar is a highly fungible, commodity product , and there is no evidence of a shift in product mix over the period of investigation, the average unit value ("AUVs") data in these investigations

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[35] CR at VII-5, PR at VII-2.

[36] CR at VII-5, PR at VII-2.

[37] With respect to production capacity and operations, the Chinese home market, and Chinese exports, the Commission staff requested information from 17 Chinese firms, but received limited information. Only one firm, Laiwu Steel Group, Ltd. ("Laiwu"), submitted a questionnaire response. According to Laiwu, it estimates that it accounted for only *** percent of all rebar production in China in 2000 and that it accounted for *** percent of all rebar exported from China to the United States in 2000. Laiwu's capacity utilization rates for rebar were *** percent in 1998, *** percent in 1999, and *** percent in 2000. CR at VII-5, PR at VII-2. Laiwu's inventories *** during the period of investigation. CR at VII-6, PR at VII-2-3.

Home market shipments accounted for *** percent of Laiwu's total shipments in 1998, *** percent in 1999, and *** percent in 2000. At the same time, Laiwu's exports to other countries as a share of its total shipments accounted for *** percent in 1998, *** percent in 1999, and *** percent in 2000. CR at VII-5, PR at VII-2.

No information is available as to what percentage of Laiwu's rebar is shipped to the region.

[38] CR at VII-5, PR at VII-2.

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

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

[41] USITC Pub. 3425 at 18.

[42] CR and PR at Table V-6 and V-7.

provide a reliable basis for price comparisons. Throughout the period of investigation, Chinese subject imports' AUVs were much lower than AUVs for the domestic product sold in the region. Chinese subject imports' AUVs equaled $191.21 in 1999 and $222.78 in 2000, compared to the domestic like products' AUVs which were $274.19 in 1999 and $268.67 in 2000.[43]

Based on the record, and in light of our finding that the volume of subject imports from China is likely to increase substantially, the substitutability of Chinese subject rebar and the significant underselling of the Chinese product, we find that subject imports from China are entering the region at prices that are likely to have a suppressing or depressing effect on domestic prices, and are likely to increase demand for Chinese subject imports.

We note that the regional industry experienced declines in several key indicators due to the subject imports from the other seven countries. Indeed, despite increasing apparent U.S. consumption within the region, generally increasing domestic sales quantities, and aggregate and per unit declines in cost of goods sold, the domestic producers were unable to gain overall market share and lost revenues in the face of the substantial price declines caused in significant part by subject imports.[44] As noted earlier, from 1998 to 2000, regional apparent consumption of rebar increased from *** million short tons to *** million short tons, while regional producers' share of the regional market declined.[45] In addition, regional producers' capacity utilization remained low throughout the period of investigation.[46]

Total sales of regional producers' rebar increased during 1998-2000, from 3.8 million short tons in 1998 to 4.3 million short tons in 2000.[47] Although regional producers' sales increased, average unit values dropped over the same period, from $309.16 per ton in 1998 to $274.68 per ton in 1999 and $269.20 per ton in 2000, far outpacing the decline in raw material costs.[48] As net sales values per pound declined, operating income also fell for almost all regional producers. Overall, operating income declined from $75.8 million in 1998 to $55.6 million in 1999 and to $11.6 million in 2000.

The record indicates that in 1998, seven of the 21 regional producers reported operating losses. By 2000, the number of regional producers reporting operating losses had doubled.[49] Moreover, for the remaining regional producers, operating income declined during the same period.[50]

As the volumes of subject imports from China continue to increase, the price pressure exerted by these imports will increase, resulting in further reductions in prices or suppression of price increases and leading to further losses in regional industry revenues and profitability for all companies. We view the falling net sales value per pound for the domestic rebar during the period of investigation as an indicator that other measures of the regional industry's condition will in turn further deteriorate in the near future if the escalating price pressure exerted by subject imports from China continues.

In sum, we find that significant volume of subject imports from China will cause the regional industry to lose additional market share and will suppress or depress prices to a significant degree, precipitating a further decline in the regional industry's profitability and aggravating its already

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[43] CR and PR at Tables IV-1 and C-1. We also note that Chinese subject AUVs were below non-subject AUVs in 1999 and 2000. CR and PR at Table C-1.

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

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

[46] Specifically, capacity utilization was 75.2 percent in 1998, 74.5 percent in 1999, and 75.5 percent in 2000. CR and PR at Table C-1.

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

[48] CR and PR at Tables C-1, VI-2, and VI-3.

[49] CR and PR at Table VI-1.

[50] CR and PR at Table VI-4.

deteriorating financial condition. We therefore find that the regional industry producing rebar is threatened with material injury by reason of subject imports from China. [51]

VIEWS OF COMMISSIONERS MILLER, HILLMAN, AND DEVANEY

As noted above, the instant investigations arose out of a group of simultaneously filed petitions that also included the petitions for our recently completed investigations of rebar from Indonesia, Poland, and Ukraine.[52] In our determinations with respect to Indonesia, Poland, and Ukraine, we engaged in a cumulated analysis of the volume and price effects of imports from Belarus, Korea, Latvia, Indonesia, Moldova, Poland, and Ukraine. Under Section 771(7)(G)(iii) of the Tariff Act of 1930,[53] as amended ("the Act"), we are required to make our material injury determinations in the instant investigations on the same record as that of the determinations regarding subject imports from Indonesia, Poland, and Ukraine, except that the record in these investigations also includes Commerce's final determinations and parties' final comments. The record in these investigations is otherwise identical to that in the investigations regarding imports from Indonesia, Poland, and Ukraine with respect to domestic like product, domestic industry, negligibility, cumulation, and material injury. Therefore, in these investigations, we adopt the findings and analysis in our determinations regarding imports from Indonesia, Poland and Ukraine for the like product, domestic industry, cumulation, material injury, and captive production.

With respect to the material injury analysis, we note that Commerce modified the dumping margins somewhat from its preliminary determinations.[54] These changes to the margins do not alter our conclusion that a domestic industry in the United States is materially injured by reason of the cumulated subject imports.

Accordingly, we determine that a domestic industry in the United States is materially injured by reason of subject imports from Belarus, Latvia, and Moldova. Our determination with respect to China is set forth below.

I. NEGLIGIBILITY

The legal standards for negligibility are provided in section I above of the Views of Chairman Koplan, Vice Chairman Okun, and Commissioner Bragg.

In our final determinations on Indonesia, Poland, and Ukraine, we found that the subject imports from China were negligible for purposes of determining present material injury,[55] but we did not address

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[51] Based on our negligibility finding we are precluded from making a present material injury finding with respect to the subject imports from China. Thus, we do not find that but for the suspension of liquidation we would have found present material injury by reason of subject imports from China.

[52] USITC Pub. 3425

[53] 19 U.S.C. § 1677(7)(G)(iii).

[54] Commerce's final antidumping duty margins are as follows: Belarus-114.53 percent, Latvia-17.21 percent, Moldova-232.86 percent, China-133.00 percent, and Korea–Dongkuk Steel Mill Co., Ltd., 22.89 percent, Hanbo Iron & Steel Co., Ltd., 102.28 percent, and all others, 22.89 percent. Commerce's Final Determinations Regarding Belarus, Latvia, Moldova, the People's Republic of China, and the Republic of Korea. 66 Fed. Reg. 335424 (June 22, 2001).

[55] Official import statistics indicate that subject imports from China into the U.S. market were 2.9 percent of the volume of total merchandise into the United States during the requisite period. CR and PR at Table IV-9.

the issue of whether subject imports from China would imminently exceed the 3-percent threshold.[56]

We find that there is a potential that subject imports from China will imminently exceed 3 percent of all imports in the U.S. market, and therefore we do not treat such imports from China as being negligible for purposes of analyzing threat of material injury. Although imports from China were below the 3-percent threshold for the twelve months prior to the filing of the petition; such imports rose significantly at the end of the period of investigation, increasing from 17,547 short tons in 1999 to 163,124 short tons in 2000.[57] Subject imports from China in the second half of 2000 rose to 114,351 short tons, from 48,773 short tons in the first half of 2000.[58] There is considerable production capacity in China. In 2000, production for rebar in China was estimated to be 29,450,386 short tons,[59] which was almost four times apparent consumption in the United States during the same year.[60] Moreover, China's exports increased, albeit unevenly, by more than 50 percent during the 3-year period of investigation.[61]

We therefore find that there is a potential for imports from China to imminently exceed the 3 percent threshold. Accordingly, we consider below whether a national industry is threatened with material injury by reason of subject imports from China.

II. THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM CHINA

The legal standards for determining threat of material injury and cumulation for purposes of threat are set forth in sections II A and B above of the Views of Chairman Koplan, Vice Chairman Okun, and Commissioner Bragg. [62]

As we found in our previous determinations with respect to Indonesia, Poland, and Ukraine, rebar is a fungible commodity product and customers perceive that subject imports from China are interchangeable with other subject imports and the domestic like product. Although we find that the subject imports from China compete with other subject imports and with the domestic like product in the U.S. market, we do not exercise our discretion to cumulate imports from the other subject countries for purposes of the threat analysis of subject imports from China.[63] We find the different volume and price trends between imports from China and the other subject imports to be significant. During the period examined, the volume of China's subject imports into the U.S. market rose from 17,547 short tons in 1999 to 163,124

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[56] USITC Pub. 3425 at 25.

[57] CR and PR at Table C-4. Indeed, subject imports from China actually exceeded 3 percent of total imports in a few months after the 12-month statutory period. Official Import Statistics. We note that subject imports from China had decreased by September 2000, but we attribute this decrease to the filing of the petitions in June 2000.

[58] OINV Memorandum Inv. Y-097.

[59] CR at VII-5, PR at VII-2.

[60] In 2000, apparent consumption was *** million short tons. CR and PR at Table IV-6

[61] CR at VII-5, PR at VII-2.

[62] Factors I and VII regarding countervailable subsidies and raw and processed agriculture products, respectively, are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(iii)(I) and (VII).

[63] Having found that subject imports from China are negligible for purposes of a present material injury analysis, Commissioner Miller does not exercise her discretion to cumulate subject imports from China with those from the other subject countries for purposes of a threat analysis on China. She does not join in the remainder of this paragraph.

short tons in 2000.[64] In contrast, changes in the volumes of subject imports from the other subject countries were mixed over the period of investigation.[65] Additionally, over the period of investigation, the market share held by subject imports from China increased from *** percent to *** percent, while most of the other subject countries' market shares declined or fluctuated over the same period.[66] Furthermore, although all subject imports from all countries undersold the domestic like product, the margins of underselling for China were greater than those for the other subject countries throughout the period of investigation.[67] [68]

On the basis of our finding that subject imports from China are negligible for purposes of determining material injury, we are precluded from making a present material injury finding with respect to subject imports from China.[69] Thus, although we make an affirmative threat finding for China, we do not find that "but for the suspension of liquidation" we would have found present material injury by reason of subject imports. [70]

Based on an evaluation of the relevant statutory factors, we find that the domestic industry is threatened with material injury by reason of the subject imports from China that are sold in the United States at LTFV.

The record shows that there is substantial production capacity for rebar in China. Rebar production in China has steadily increased during the period of investigation from 22.9 million short tons in 1998 to 26.9 million short tons in 1999, and to 29.5 million short tons in 2000. As stated earlier, in 2000, production capacity for rebar in China was estimated to be 29.5 million short tons,[71] almost four times U.S. apparent consumption during the same year.[72] The one Chinese firm that responded to the Commission's requests for information indicated that it had some available capacity, and the record shows that this firm's exports of rebar, as well exports from China as a whole, have increased rapidly.[73] Indeed, Chinese exports of rebar increased, albeit unevenly, by 63 percent during the period examined, suggesting

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[64] CR and PR at Table C-4.

[65] CR and PR at Table IV-1.

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

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

[68] Commerce's final antidumping duty margin for China was 133.00 percent. Commerce's Final Determinations Regarding Belarus, Latvia, Moldova, the People's Republic of China, and the Republic of Korea. 66 Fed. Reg. 18796 (June 23, 2001).

[69] See 19 U.S.C. § 1677(24)(A)(i)(I).

[70] Cf. 19 U.SC. § 1673d(b)(4)(B).

[71] CR at VII-5, PR at VII-2.

[72] In 2000, apparent consumption was *** million short tons. CR and PR at Table IV-8.

[73] With respect to production capacity and operations, the Chinese home market, and exports from China, the Commission staff requested information from 17 Chinese firms, but received limited information. Only one firm, Laiwu Steel Group, Ltd. ("Laiwu"), submitted a questionnaire response. Laiwu estimates that it accounted for *** percent of all rebar production in China in 2000 and for *** percent of all rebar exported from China to the United States in 2000. Laiwu's capacity utilization rates for rebar were *** percent in 1998, *** percent in 1999, and *** percent in 1999. CR at VII-1, 4-5, Table VII-2.

Home market shipments accounted for *** percent of Laiwu's total shipments in 1998, *** percent in 1999, and *** percent in 2000. At the same time, Laiwu's exports to other countries as a share of total shipments accounted for *** percent in 1998, *** percent in 1999, and *** percent in 2000 of its rebar production. CR at VII-1, VII-5, Table VII-2 , PR at VII-1, VII-2, Table VII-2.

an increased emphasis on exports.[74]

Furthermore, subject imports from China only began to enter the U.S. market in 1999. Penetration of the U.S. market has been fairly rapid, with imports increasing substantially from 1998 to 2000.[75] At the same time, the share of the domestic market held by subject imports from China also increased from *** percent of U.S. apparent consumption in 1999 to *** percent in 2000.[76] The volume of subject imports from China increased from 17,547 short tons on 1999 to 163,124 short tons in 2000, and was 114,351 short tons in the second half of 2000, as compared to 48,773 short tons in the first half of 2000.[77]

Given the Chinese production capacity in relation to U.S. apparent consumption, the increasing reliance of Chinese subject producers on their export markets, the rapid market penetration of subject imports from China and the continuing demand for rebar in the U.S. market, we find that subject imports from China are likely to increase substantially.

We also find that subject imports from China are likely to have significant depressing or suppressing effects on U.S. prices. As rebar is a commodity product, we have previously found that price is a significant factor in purchasing decisions. Morever, subject imports and the domestic product of the same size are comparable and generally interchangeable when used in the same applications.[78]

There has been significant underselling by the subject imports from China throughout the period of investigation. For the four products for which the Commission collected data, the subject imports from China undersold the domestic like product in all quarterly pricing comparisons.[79] The margins of underselling of Chinese rebar ranged from *** to *** percent.[80]

Since rebar is a highly fungible, commodity product and there is no evidence of a shift in product mix over the period of investigation,[81] average unit value ("AUVs") data in these investigations provide a reliable basis for price comparisons. Throughout the period of investigation, the AUVs of subject imports' from China were much lower than AUVs for the domestic product sold in the U.S. market. Chinese subject imports' AUVs equaled $191.47 in 1999 and $222.34 in 2000, compared to the domestic like products' AUVs, which were $275.28 in 1999 and $270.42 in 2000.[82]

Based on the record and in light of our findings as to the likelihood of substantially increased imports from China, the substitutability of Chinese subject rebar and the significant underselling by the Chinese product, we find that subject imports from China are entering the U.S. market at prices that are likely to have a significant suppressing or depressing effect on domestic prices, and are likely to increase demand for further subject imports from China.

We note that the domestic industry experienced declines in several key indicators over the period of investigation. As we previously found, from 1998 to 2000, U.S. apparent consumption of rebar increased from *** million short tons to *** million short tons in 2000.[83] Although the volume of domestic producers'

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[74] CR at VII-5, PR at VII-2.
[75] CR and PR at Table C-4.
[76] CR and PR at Table IV-8.
[77] CR and PR at Table C-4, Inv.-Y-097.
[78] USITC Pub. 3425 at 18, 27.
[79] We note that price comparisons were conducted on a regional basis.
[80] CR and PR at Table V-6.
[81] CR and PR at Table C-4.
[82] CR and PR at Table C-4, Table IV-8.
[83] CR and PR at Table C-4.

U.S. shipments generally increased,[84] the value declined due to a drop in average unit values.[85]

As a result, operating income declined from $103.9 million in 1998 to $44.6 million in 2000.[86] At the same time, the domestic industry's operating margin declined, dropping from 5.8 percent in 1998 to 2.5 percent in 2000. In addition, as operating profits dwindled, capital expenditures were severely curtailed, falling from $156.5 million in 1998 to $65.6 million in 2000.[87]

We find that, as the volumes of subject imports from China continue to increase, the price pressure exerted by these imports will increase, resulting in further reductions in prices or suppression of price increases and leading to further losses in the U.S. industry's revenues and profitability. We view the falling net sales value per short ton for the domestic rebar industry during the period of investigation as an indicator that other measures of the U.S. industry's condition will deteriorate further in the near future as the escalating price pressure exerted by subject imports from China continues.

In sum, we find that the likely significant volume of subject imports from China will cause the national rebar industry to lose further market share and will depress prices to a significant degree, precipitating a further decline in the U.S. industry's profitability and aggravating its already deteriorating financial condition. We therefore find that the U.S. industry producing rebar is threatened with material injury by reason of subject imports from China.

VIEWS OF THE COMMISSION ON CRITICAL CIRCUMSTANCES

Commerce made affirmative critical circumstances determinations with respect to certain imports from China and Korea. Because our determination with respect to China is based on the threat of material injury, we do not make a critical circumstances finding with respect to those subject imports from China.[88]

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[84] U.S. producers' U.S. shipments increased from 5.8 million short tons in 1998 to 6.2 million short tons in 1999 to 6.3 million short tons in 2000. The value of U.S. producers' U.S. shipments decreased unevenly, from $1.76 billion in 1998 to $1.70 billion in 1999 to $1.71 billion in 2000. CR and PR at Table C-4.

[85] CR and PR at Table C-1, Table VI-2, and Table VI-3.

[86] CR and PR at Table C-4.

[87] CR and PR at Table C-4.

[88] In pre-URAA cases, the Commission would not reach the issue of critical circumstances when it made a determination of threat of material injury on the basis that "a finding that retroactive imposition of antidumping duties is necessary to prevent the recurrence of material injury would be inconsistent with [a] finding that the domestic industry is threatened with material injury at this time." E.g. Stainless Steel Flanges from India and Taiwan, Inv. Nos. 731-TA-639-640 (Final), USITC Pub. 2724 at I-21 n. 112 (Feb. 1994). Congress amended the critical circumstances provision in the URAA and eliminated any statutory reference to "recurrence of material injury." The Commission has determined that the URAA did not require it to modify its practice of not reaching the issue of critical circumstances when it makes an affirmative threat determination. In Collated Roofing Nails from China and Taiwan, Inv. Nos. 731-TA-757 and 759 (Final), USITC Pub. 3070 at 24-25 (Nov. 1997), the Commission noted that a critical circumstances finding would not have any practical utility in a threat case where duties imposed from the date of the final determination – not from the date of suspension of liquidation. Further, the Commission found that the statute still required a finding of material injury by reason of subject imports in order to trigger a critical circumstances determination, thus rendering a critical circumstances finding inappropriate in threat cases.

[89] For subject imports from Korea, as to which we have made a present material injury determination, we must further determine "whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued."[90] The URAA Statement of Administrative Action ("SAA") indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of the relief, the importers have seriously undermined the remedial effect of the order."[91]

Commerce has made an affirmative critical circumstances determination with respect to one Korean exporter, Hanbo. The information contained in the record on subject imports from Korea is not broken out on a company-by-company basis. However, Hanbo reportedly accounts for *** percent of Korea's production of the subject merchandise.[92]

Consistent with Commission practice, in considering the timing and volume of imports, we have compared import quantities prior to the filing of the petition with those subsequent to the filing of the petition.[93] The record contains monthly export data for the firms subject to the affirmative Commerce

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[89] Given her present material injury finding and Commerce's final affirmative critical circumstances determination with respect to subject imports from China, Commissioner Bragg addresses the issue of whether Chinese subject imports are likely to undermine seriously the remedial effect of the orders to be issued. The record indicates that the volume of subject imports from China increased from 36,824 short tons in the six-month period before the filing of the petition (January-June 2000) to 86,335 short tons in the six-month period after the filing of the petition (July-December 2000). Commission staff's calculations based on official Commerce statistics. This increase in volume of approximately 50,000 short tons after the filing of the petition is equivalent to *** percent of 2000 apparent U.S. consumption and 1.2 percent of 2000 domestic production. Commission staff's calculations based on official Commerce statistics and CR and PR at Table C-1. The record also indicates that in the first quarter after the filing of the petition, the price of Chinese subject imports increased. CR and PR at Tables V-2-V-5. Although prices for Chinese subject imports subsequently declined in the second quarter after the filing of the petition, these latter prices generally did not fall below price levels reported for the period immediately preceding the filing of the petition. CR and PR at Tables V-2-V-5. Based on the foregoing, Commissioner Bragg determines that subject imports from China subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order to be issued. Accordingly, she makes a negative critical circumstances determination regarding Chinese subject imports.

[90] 19 U.S.C. § 1673d(b)(4)(A)(i)(emphasis added). The statute further provides that in making this determination:

the Commission shall consider, among other factors it considers relevant--

> (I) the timing and volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

[91] SAA at 877.

[92] Commission staff's estimate from foreign producer questionnaire responses.

[93] See Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997).

critical circumstances determination.[94] We have examined the data included in the six-month periods before and after the filing of the petitions.

Exports from Korea were lower in the period following the filing of the petition than in the period preceding it. [95] The record does not contain information specifically concerning U.S. importers' inventories of the firm subject to Commerce's affirmative critical circumstances findings. The closest proxies are end-of-period inventories of all subject imports from Korea for the years 1999 and 2000. The end-of-period inventories for subject imports from Korea were *** short tons for 1999 and *** short tons for 2000.[96]

We determine that imports of rebar subject to affirmative critical circumstances findings by Commerce will not seriously undermine the remedial effect of the antidumping order as the volume of subject imports from Korea at issue and importers' inventory levels of Korean subject merchandise were significantly lower in the months after the filing of the petition as in the months prior to the filing of the petition.[97]

Accordingly, we make a negative critical circumstances determination concerning those imports of rebar from Korea that are subject to a final affirmative critical circumstances finding by Commerce.

CONCLUSION

For the foregoing reasons, Chairman Koplan and Vice Chairman Okun determine that a regional industry producing rebar in the United States is materially injured by reason of subject imports from Belarus, Korea, Latvia, and Moldova that are sold in the United States at LTFV. With respect to China, Chairman Koplan and Vice Chairman Okun find that a regional industry is threatened with material injury by reason of subject imports from China that are sold in the United States at LTFV. Commissioner Bragg determines that a regional industry in the United States is materially injured by reason of subject imports from Belarus, China, Korea, Latvia, and Moldova that are sold in the United States at LTFV. Commissioners Miller, Hillman, and Devaney determine that a domestic industry producing rebar in the United States is materially injured by reason of subject imports from Belarus, Korea, Latvia, and Moldova that are sold in the United States at LTFV. Commissioners Miller, Hillman, and Devaney also determine that a domestic industry in the United States is threatened with material injury by reason of subject imports from China that are sold in the United States at LTFV. Finally, the Commission determines that critical circumstances do not exist with respect to those subject imports from China and Korea that were subject to affirmative critical circumstances findings.

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[94] We note that imports from Korea that were shipped into the 30 states which comprise the region as found by Chairman Koplan, Vice Chairman Okun, and Commissioner Bragg are lower than on a national basis. Although the total volume of subject imports shipped into the region on a monthly basis are not in the record, Chairman Koplan, Vice Chairman Okun, and Commissioner Bragg believe that import figures on a national basis are comparable to import trends in the region for the twelve- month period examined.

[95] The volume of subject imports from Korea into the United States decreased from 253,034 short tons in the six months prior to the filing of the petition, to 10,569 tons in the six months after the filing. Memorandum INV-Y-097, May 11, 2001.

[96] CR and PT at Table VII-9.

[97] We acknowledge petitioner's argument that increased inventories should be apparent at the distributor level. Petitioner's Posthearing Brief at 10-12. We do not, however, find this to be a sufficient basis on which to make an affirmative critical circumstances finding.