

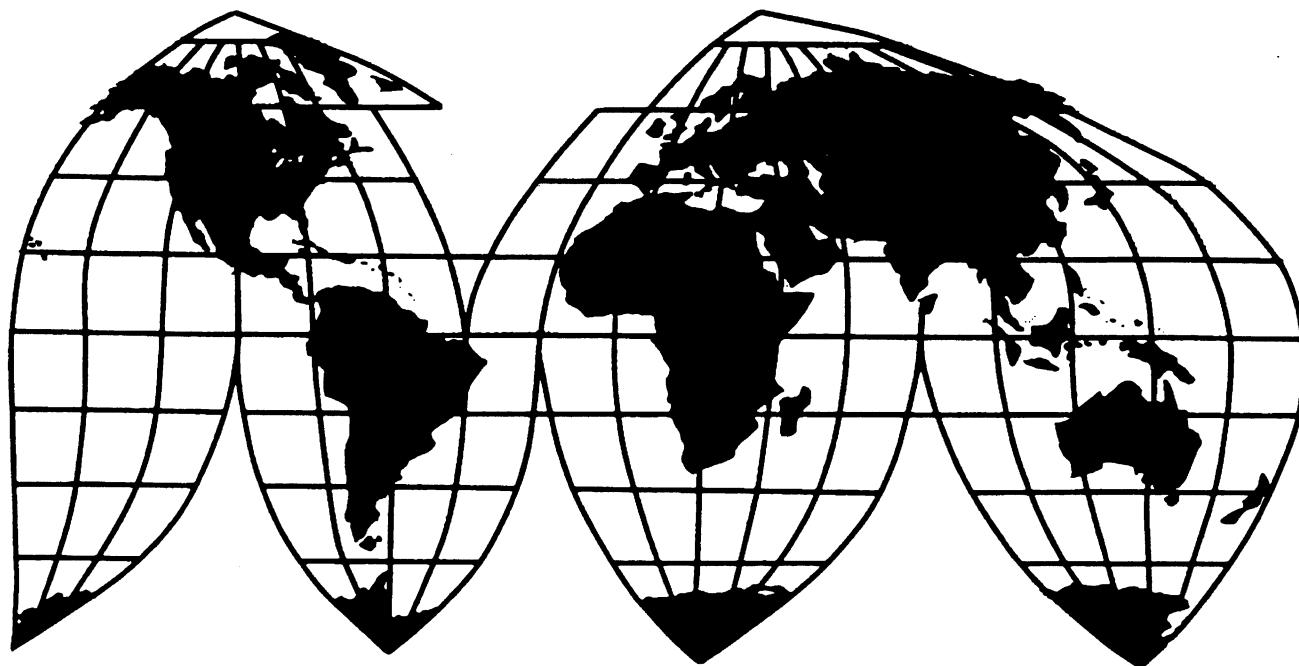
Circular Seamless Stainless Steel Hollow Products From Japan

Investigation No. 731-TA-859 (Remand)

Publication 3475

December 2001

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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VIEWS OF THE COMMISSION ON REMAND¹

Pursuant to the opinion and order dated September 19, 2001, by Judge Jane A. Restani of the U.S. Court of International Trade remanding the Commission's determination on circular seamless stainless steel hollow products from Japan in Altx, Inc. v. United States, Court No. 00-09-00477, Chairman Stephen Koplan and Vice Chairman Deanna Turner Okun reaffirm their original determination that the domestic industry is materially injured by reason of subject imports that are being sold at less than fair value. Commissioner Dennis M. Devaney joins their views.²

¹ Chairman Koplan, Vice Chairman Okun and Commissioner Devaney determine that the domestic industry is materially injured by reason of subject imports from Japan. Commissioners Bragg, Miller and Hillman determine that the domestic industry is not materially injured, nor threatened with material injury, by reason of subject imports from Japan.

² Commissioner Devaney approached his determination on the merits in this case in the same manner that he has approached his decisional responsibilities in every case he has participated in since being appointed by the President to the U.S. International Trade Commission in January, 2001. He reviewed the entire record, discussed the issues with his staff, read the pleadings, and reviewed the staff memoranda prepared by responsible career officials in the agency with respect to the case. The only difference in this instance from the routine decisional process was that Commissioner Devaney had the opportunity to read Judge Restani's opinion remanding the case to the Commission prior to his vote. Commissioner Devaney has followed the same general approach to decision-making during all of his adjudicatory service including his tenures as a member of the National Labor Relations Board, General Counsel of the Federal Labor Relations Authority, and member of the U.S. Merit Systems Protection Board.

**DISSENTING VIEWS ON REMAND
OF COMMISSIONERS BRAGG, MILLER, AND HILLMAN**

BACKGROUND

In August 2000, the Commission determined that an industry in the United States was neither materially injured nor threatened with material injury by reason of imports of circular seamless stainless steel hollow products (“CSSSHP”) from Japan that the U.S. Department of Commerce (“Commerce”) determined were sold in the United States at less than fair value (“LTFV”).¹ That determination was appealed to the U.S. Court of International Trade (“Court”). On September 19, 2001, the Court remanded the determination to the Commission, ordering the Commission to provide additional explanation with respect to its findings regarding the volume, price, impact, and threat of material injury of subject imports. Altx, Inc. v. United States, Court No. 00-09-00477, Slip Op. 01-116 (Sept. 19, 2001). On November 19, 2001, the Commission, by a 3-3 vote, determined on remand that the industry producing circular seamless stainless steel hollow products is materially injured by reason of subject imports.² For the reasons discussed below, we again make a negative determination and dissent from the Commission’s determination of injury and, pursuant to the Court’s order, provide additional explanation for our views.

We have considered the record as a whole and determine to adopt our prior views regarding the domestic like product and industry, as well as the conditions of competition.³ Below we present our findings as to the volume, price effects and impact of the subject imports on the domestic industry, and as to the threat of material injury to the domestic industry by reason of the subject imports.

¹ Circular Seamless Stainless Steel Hollow Products from Japan, Inv. No. 731-TA-859 (Final), USITC Pub. 3344 (Aug. 2000). Chairman Koplan and Vice Chairman Okun determined that an industry in the United States was materially injured by reason of imports of hollow products from Japan.

² Chairman Koplan, Vice Chairman Okun, and Commissioner Devaney make an affirmative determination on remand. Commissioners Bragg, Miller, and Hillman reach a negative determination on remand. Under 19 U.S.C. § 1677(11), a tie vote by the Commission is considered an affirmative vote.

³USITC Pub. 3344 at 3-11.

I. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

A. Volume of the Subject Imports

Section 771(7)(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.”^{4 5}

Although the quantity of subject imports⁶ almost doubled between 1997 and 1998, it decreased significantly between 1998 and 1999, and was lower in interim 2000 than in interim 1999.⁷ Subject import market share, as measured by quantity, rose between 1997 and 1998, then decreased between 1998 and 1999, and was much lower in interim 2000 than in interim 1999.⁸ During the period that subject import volumes increased, several important indicators of the domestic industry’s condition, including production, capacity utilization, net sales, operating income, and operating income ratio all rose to their peak annual

⁴19 U.S.C. § 1677(7)(C)(i).

⁵We have again used official import statistics (as adjusted) in analyzing volume due to discrepancies between the official statistics and data collected through questionnaires. CR at IV-6 n.12, PR at IV-3 n.12. We have adjusted the official statistics to account for misclassified imports. See CR at IV-3 - IV-5, PR at IV-2.

⁶ As noted in our original discussion of conditions of competition, it appears that at least 20 percent of subject imports are of types not produced domestically. See CR/PR at Table I-2. Additionally, there appear to be ranges of product for which domestic supply is viewed as non-viable by certain purchasers. See CR at II-26 - II-27, PR at II-16. Notwithstanding the attenuated competition between some subject imports and the domestic like product for some range of product, there remains substantial competitive overlap between these products. CR at II-23, II-26 - II-27, PR at II-13 - II-17; CR/PR at Table I-2.

⁷Subject imports rose from *** short tons in 1997 to *** short tons in 1998, then declined to *** short tons in 1999. Subject imports were *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. CR/PR at Table IV-5.

⁸As measured by quantity, subject import market share increased from *** percent in 1997 to *** percent in 1998, then decreased to *** percent in 1999. It was *** percent in Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. CR/PR at Table IV-5. The ratio of subject imports relative to domestic production was *** percent in 1997, *** percent in 1998 and *** percent in 1999. It was *** percent in Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. Compare CR/PR at Table III-2 with CR/PR at Table IV-4.

levels for the period. These indicators subsequently fell from 1998 to 1999, at the same time that subject import levels and subject import market share were falling.⁹

The Court asks us to consider petitioners' argument during their appeal that the improvement in the domestic industry's performance in 1998 was directly attributable to its ***, and that the domestic industry was in fact weakening between 1997 and 1998. We recognize that domestic shipments declined from 1997 to 1999.¹⁰ An examination of the domestic industry's total shipments minus *** does not lead us to find that the domestic industry's condition worsened in 1998. The indicators of the U.S. industry's condition, in particular operating income, predominantly reflects sales in the domestic market, given their much higher share of the value of ***, compared to ***, in every year of the investigation period. The value of *** was only *** percent of *** in 1997, *** percent in 1998 and *** percent in 1999. The interim 2000 share was less than *** percent.^{11 12}

⁹U.S. production of hollow products increased from *** short tons in 1997 to *** short tons in 1998, then decreased to *** short tons in 1999. It was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. Capacity utilization increased from 42.8 percent in 1997 to 45.4 percent in 1998, then declined to 38.9 percent in 1999. It was 31.4 percent in Jan.-Mar. 1999 and 52.3 percent in Jan.-Mar. 2000. CR/PR at Table III-2. The quantity of net sales rose from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999. The quantity of net sales was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. CR/PR at Table C-1. Operating income climbed from *** in 1997 to *** in 1998, then declined to *** in 1999. Operating income was *** in Jan.-Mar. 1999 and *** in Jan.-Mar. 2000. The ratio of operating income to sales was *** percent in 1997, rising to *** percent in 1998 and falling to *** percent in 1999. The ratio of operating income to sales was *** percent in Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. CR/PR at Table C-1.

¹⁰U.S. shipments declined from *** short tons in 1997 to *** short tons in 1998, then fell further to *** short tons in 1999. CR/PR at Table C-1.

¹¹See CR/PR at Table C-1.

¹²With respect to petitioners' insistence that controlling for *** reveals a weakening domestic industry, we note that neither the statute nor the legislative history requires the Commission to consider separately information regarding *** in making its injury determination. See 19 U.S.C. § 1677(7). The Commission may evaluate such information if pertinent, and has occasionally done so in the past. See, e.g., Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 358 (Ct. Int'l Trade 1986). Moreover, because the domestic industry did not either request that profitability or other data be collected separately for export shipments, or proffer that data itself (over which it has exclusive control), the Commission is not able to "control" for exports to assess the condition of the industry, other than to note the changes in shipment levels for domestic and export shipments. For example, the record suggests that the product mix differs between domestic and export shipments, given the substantial differences in shipment

We find the trends between 1998 and 1999 to be most relevant to our analysis in view of the fact that the domestic industry's condition was better overall in 1997 and 1998 than in 1999, and therefore any injury that occurred would be in 1999.¹³ As discussed above, subject import volume and market share fell between 1998 and 1999. At the same time, nonsubject import volume rose and nonsubject market share rose sharply.¹⁴ In fact, nonsubject market share was greater than subject market share for all of the period.¹⁵

As the Court directed, we have considered whether the filing of the petition on October 26, 1999, affected the volume of imports starting in the second half of 1999 and first half of 2000 such that we should give less weight to import volumes in these periods.¹⁶ The sharpest decline in subject imports

unit values. In 1999, the unit value of domestic shipments was *** per short ton, while the unit value of export shipments was *** per short ton. CR/PR at Table C-1. The record contains no information to explain these differences, nor does it contain data on cost of goods sold for each shipment type.

¹³See discussion below with respect to impact of the subject imports on the domestic industry. Because the statute does not require the Commission to examine a particular period of time, the Commission has discretion to examine the period that most reasonably allows it to determine whether the domestic industry is injured. Kenda Rubber Indus. Co. v. United States, 630 F. Supp. 354, 359 (Ct. Int'l Trade 1986). The Court has advocated the use of the most contemporaneous information possible in determining material injury. Saarstahl AG v. United States, 858 F. Supp. 196, 200 (Ct. Int'l Trade 1994). We note, however, that we have not disregarded the information regarding the beginning of the period of investigation; we simply view the more recent information to be more probative. Thus, while subject imports took market share from the nonsubject imports early in the period when the domestic industry's condition was healthy and improving, we find that subject imports' loss of market share to nonsubject imports later in the period, when the industry's condition declined, to be most probative of the relative (or lack of) significance of subject import volume.

¹⁴Nonsubject import volume was *** short tons in 1997, *** short tons in 1998 and *** short tons in 2000. It was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. Nonsubject market share was *** percent in 1997, *** percent in 1998 and *** percent in 1999. It was *** percent in Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. CR/PR at Table IV-5. Thus, unlike subject imports, the nonsubject imports increased their market share through 1999 and the first quarter of 2000. We note that some purchasers perceive nonsubject hollow products to be a generally more competitive alternative to Japanese products than the domestic product. CR at II-33, PR at II-20.

¹⁵In 1997, subject import and nonsubject import market shares (by volume) were, respectively, *** percent and *** percent. In 1998, they were *** and *** percent. In 1999, they were *** and *** percent. CR/PR at Table C-1.

¹⁶19 U.S.C. § 1677(7)(I) (if the Commission finds that a change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition is related to the pendency of the

occurred between the second half of 1998 and the first half of 1999¹⁷ -- well before the filing of the petition. Consequently, we do not consider the decline to be a function of the filing of the petition, or to reflect the impact of unspecified “rumors” that the petition was about to be filed, particularly given the lack of substantial support in the record as to such rumors.¹⁸

In sum, although the absolute volume of subject imports rose between 1997 and 1998, it then declined consistently and substantially thereafter. In 1999, U.S. production, shipments, capacity utilization, and operating income were lower than they were in prior years, and the domestic industry’s market share was 8.4 percentage points lower.¹⁹ These reductions, however, cannot be attributed to subject

investigation, the Commission *may* reduce the weight accorded to the data for the period after the filing of the petition). We note that the decision to accord less weight to the post-petition data is within our discretion and that it does not mention pre-petition information.

¹⁷See CR/PR at Table C-6.

¹⁸Petitioners argued that respondents were aware of the possibility of a petition in early to mid-1999 -- months before the filing of the petition. Petitioners’ Prehearing Brief at 65; Petitioners’ Posthearing Brief at 14. These alleged rumors are unsubstantiated in the record. PEXCO, a joint venture between Sandvik Steel and Sumitomo Metal Industries, could not become a petitioner until PEXCO’s management committee voted on the issue, *see* Amendment to the Petition at 1 (*filed* Nov. 9, 1999, adding PEXCO as a petitioner).. However, this fact does not provide any support for a contention that respondents were aware of the possibility of a petition in early to mid-1999. We note that 19 U.S.C. § 1677(7)(I) does not require consideration of “rumors” that theoretically could affect subject imports prior to the filing of the petition. While the Commission might, when the evidence indicates such an effect, choose to consider well-substantiated evidence of such pre-filing effects, such evidence does not exist here. Indeed, other than the single example cited by the petitioners, reflected in *** questionnaire response, the weight of the record evidence indicates a general lag of 13-26 weeks between placement of an order and arrival of imports. CR at II-29, PR at II-17. The record, therefore, does not support the conclusion that subject exports could be halted as quickly as petitioner speculates. Even were it possible to cancel orders as late in the process as petitioners assert, and even if such cancellations did occur in mid-1999 in response to rumors of a petition, such cancellations still would have occurred after the largest decline in the volume of subject imports.

¹⁹See CR/PR at Table C-1. The record does not support petitioners’ contention that subject imports in 1997 and 1998 had a material impact on the domestic industry in 1999. Importers’ inventories decreased from 1997 to 1998, which is contrary to the trend one would expect if merchandise present in 1997 were to have an adverse effect on the domestic industry in 1998. Moreover, in 1998, there was a large increase in consumption, from *** short tons to *** short tons, CR/PR at Table C-1, making it likely that 1997 and 1998 imports were consumed by 1998 and had cleared the market.

imports, which were substantially lower in both volume and market share in 1999 than they were in 1998.²⁰ In light of the factors discussed above, we do not conclude that the subject import volume is significant, notwithstanding the increases in subject import volume and market penetration from 1997 to 1998, and between the first and last years of the period of investigation.

In its opinion, the Court raised questions as to our treatment of the Commission's economic model (COMPAS) in this investigation. While we are mindful of the petitioners' arguments raised in their final comments with respect to the Commission's economic model, we did not rely on it in assessing the impact of subject imports on this industry. We have closely examined the empirical data in the record and determined it to be more useful than conclusions based on the results of the COMPAS model. While COMPAS has been a tool available to the Commission, it alone is not a substitute for considering the factors specified in the statute and the data on the record.²¹ The Court has repeatedly recognized that the Commission may reasonably reach a conclusion based upon facts in the record that vary from a theoretical economic model, and the Commission's findings regarding volume of subject imports and causation are not undermined by the results of the COMPAS model in this investigation.²² In fact, it is well settled that economic models "based on a set of assumptions, may be outweighed by real world data."²³ In this investigation in particular, we find this to be the case.²⁴

²⁰See CR/PR at Table IV-4.

²¹Commissioners Bragg, Miller and Hillman note that they do not generally rely on the COMPAS model in making their material injury determinations.

²²Acciai Speciali Terni, S.p.A. v. United States, 19 CIT 1051, 1058-59 (1995); see Alberta Pork Producers' Mktg. Bd. v. United States, 683 F. Supp. 1398, 1401 (Ct. Int'l Trade 1988) (Commission not "handcuffed" to consideration of economic model and is free to consider evidence in the record); Maine Potato Council v. United States, 617 F. Supp. 1088, 1090 (Ct. Int'l Trade 1985) ("[t]he Commission is not required to accept data which in the course of ordinary scientific research could properly be rejected").

²³Maine Potato Council v. United States, 613 F. Supp. 1237, 1244 n.8 (Ct. Int'l Trade 1985).

²⁴The COMPAS model relies, among other factors, on the antidumping margins estimated by Commerce. In this case, the margin estimated by Commerce was based on best information available. 65 Fed. Reg. 42985, 42985-86 (July 12, 2000). The model assumes that this margin will be passed through in full to the domestic market, *i.e.*, that the weighted average margin of 121.3 percent has resulted in a

B. Price Effects of the Subject Imports

Section 771(7)(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.

The Commission's questionnaires identified nine specific products for price comparisons. Pricing data are relatively sparse for most of these products, in large part because of the wide range of specifications possible for hollow products.²⁵ As noted above, although a portion of subject imports may not directly compete with the domestic like product, we find a substantial overlap of competition and where the domestic and Japanese hollow products compete, there is a significant degree of substitutability. Further, for these products price is an important consideration for purchasers,²⁶ although other considerations are also important, such as the ability to obtain specific products and the quality of the product.²⁷

The Court directed us to reconsider our finding on underselling in light of our reconsideration of the condition of the domestic industry. Domestic prices for many of the products declined for portions of the period examined. The pricing data collected indicate extensive underselling by subject imports

substantial decrease in the price of the subject imports in the U.S. market (by more than 50 percent). This suggests a pricing level for subject imports that is so high that they would not have been in the U.S. market at a Commerce-determined fair price. Given the historic and established role that these subject imports have played in the U.S. market, including product niches unfilled by domestic producers, we do not find this to be a reasonable conclusion, thus further limiting the usefulness of the COMPAS model in this investigation. Finally, the COMPAS model estimates the possible effect on revenue, but not profitability or other financial data such as cost of goods sold -- both important factors in our determination in this case.

²⁵CR at V-22, PR at V-9.

²⁶CR at II-24, PR at II-14; CR/PR at Table II-1.

²⁷CR at II-24, PR at II-14.

throughout the period of investigation,²⁸ and substantial margins of underselling. This underselling, viewed in isolation, could be considered significant. However, as noted above (and discussed in more detail below in our analysis of impact), we find the industry's condition to be strong in 1997-98, despite reported declines in domestic shipments.²⁹ The condition of the domestic industry improved markedly in 1998, when subject imports were at their peak, and while showing declines in 1999 in certain indicators such as operating income, remained favorable through interim 2000, despite persistent underselling by subject imports and declining domestic prices. For example, the quantity of net sales increased in 1998, as did gross profit. Operating income nearly doubled, as did net income.³⁰ We also note that the underselling was prevalent during periods when the domestic prices were stable or rising, as well as during periods of declining prices³¹ and at a time when the volumes of imports associated with the underselling were decreasing.³² The record does not support a conclusion that underselling by subject imports was reflected in operating declines by the industry; instead, the opposite occurred. Therefore, based on the lack of correlation between underselling and the condition of the domestic industry, we do not find the underselling to be significant.

The Court directed us to clarify our analysis of price depression or suppression. As noted above, underselling was prevalent during periods when domestic prices were stable, rising and falling. At least some of the price declines that did occur can be explained by the decline in input costs during the period examined. For example, while most of the collected pricing data indicate declines of about 10 percent or

²⁸CR/PR at Tables V-2 - V-10.

²⁹As noted earlier, our conclusion regarding the industry's performance is not changed by taking into account ***.

³⁰CR/PR at Table VI-1. As noted above, we have closely examined the empirical data in the record and determined it to be more useful than conclusions based on the COMPAS model.

³¹CR/PR at Tables V-2 - V-10.

³²CR/PR at Table C-1.

less between the first quarter of 1997 and the fourth quarter of 1998 (with some price levels increasing),³³ unit raw material costs fell 11 percent between 1997 and 1998, and the total unit cost of goods sold declined 11 percent between 1997 and 1998.³⁴ Even when the costs for certain raw material components (nickel and chromium) increased in 1999, overall input costs continued to fall.³⁵ Thus, the trend in input costs in 1999 is consistent with the trend in prices for that year. We note that demand, as measured by apparent consumption, fell in 1999 as well. While demand rose in 1998, input costs fell at the same time and the industry's condition improved.³⁶ As discussed earlier, we find the 1998-99 trends to be most relevant to our analysis. Thus, notwithstanding the increase in demand in 1998, we find that the weight of the evidence supports our finding of no significant price depression or suppression by reason of subject imports.

The Court directed us to reconsider, and to provide additional explanation of, the price effect of nonsubject imports. As discussed earlier, nonsubject imports were greater than subject imports in terms of both absolute volume and market share throughout the period. In 1999, nonsubject imports surged to their highest volume and market share for the full-year period, at the same time that subject import volume and market share fell and declining market prices coincided with falling indicators of the domestic industry's condition. Several purchasers indicated that for certain products, prices for imports from Europe were lower than those from Japan³⁷ and one large purchaser stated that European producers were the price

³³See CR/PR at Tables V-2 through V-10.

³⁴CR/PR at Table VI-4. The ratio of COGS to net sales declined from *** percent to *** percent during that same period. CR/PR at Table C-1.

³⁵CR/PR at V-I, Table V-1. Consistent with the data in Table VI-4 (showing that producers' raw material costs declined in both 1998 and 1999), the data on billets/bars in Table V-1 show prices falling slightly or stabilizing in 1999. The last two columns of this table also exhibit continued decreases in input costs in the first half of 1999, and little change in the second half of 1999,

³⁶U.S. apparent consumption rose from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999. U.S. apparent consumption was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. CR/PR at Table C-1.

³⁷CR at II-34, PR at II-21.

leaders from June 1998 to November 1999.³⁸ Any such price leadership would have coincided with the surge in nonsubject import volumes and the decline in the domestic industry's condition.³⁹

Further, petitioners failed to provide allegations of lost sales or revenues with the petition as provided for in the Commission's rules.⁴⁰ Allegations submitted at a later date were largely incomplete. The Commission sought to verify these and also sought other allegations in the final phase of the investigation. The Commission was able to confirm lost sales allegations accounting for only a very small fraction of annual sales.⁴¹

Accordingly, we do not find that the underselling by the subject imports is significant. Nor do we find that the subject imports have suppressed or depressed the prices for the domestic like product to a significant degree.

C. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." 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

³⁸Tr. at 151-52 (Mr. Bootz).

³⁹There is evidence in the record that while price leadership exists, it is diffused among several of the largest firms, including some nonsubject producers and domestic producers Sandvik and DMV. Other evidence suggests that only the strongest firms are true price leaders and Sandvik is often mentioned in this regard, especially over the period examined. CR at II-10, PR at II-6. We note that the Court has recognized that lack of price leadership by subject producers or evidence of price leadership by the domestic producers supports a finding of no adverse price effects by reason of subject imports. *See, e.g., Angus Chemical Co. v. United States*, 20 CIT 1255, 1269, 944 F. Supp. 943, 954 (1996), *aff'd*, 140 F.3d 1478 (Fed. Cir. 1998); *Maverick Tube Corp. v. United States*, 12 CIT 444, 453-54, 687 F. Supp. 1569, 1578 (1988).

⁴⁰19 C.F.R. § 207.11(b)(2)(v).

⁴¹*See* CR at V-29, V-32, PR at V-13, V-14, CR/PR at Table C-1.

industry.”⁴² ⁴³ For the reasons discussed below, we conclude that subject imports of CSSSHP have not adversely affected the domestic industry.

U.S. apparent consumption fluctuated over the period of investigation, ending higher in 1999 than in 1997, as noted above. The domestic industry’s condition improved from 1997 to 1998, when subject imports registered their only increase. The domestic industry’s condition then declined in 1999, as subject imports fell and nonsubject imports gained a substantial share of the domestic market.

The quantity of domestic producers’ total shipments was steady between 1997 and 1998, then decreased in 1999, when apparent U.S. consumption and subject imports declined by a greater amount.⁴⁴ U.S. production increased from 1997 to 1998, then decreased between 1998 and 1999, when apparent U.S. consumption declined and subject imports also decreased to a greater extent.⁴⁵ Total U.S. capacity was essentially steady from 1997 to 1998, then fell in 1999. Capacity utilization increased from 1997 to 1998, then fell in 1999.⁴⁶

⁴²19 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).

⁴³As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider “the magnitude of the margin of dumping” in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce’s final antidumping duty margins ranged from 62.14 percent to 156.81 percent. 65 Fed. Reg. 42985, 42986 (July 12, 2000).

⁴⁴U.S. producers’ total shipments increased in quantity from 15,900 short tons in 1997 to 15,907 short tons in 1998, then decreased to 14,691 short tons in 1999. They were 3,439 short tons in Jan.-Mar. 1999 and 4,965 short tons in Jan.-Mar. 2000. CR/PR at Table III-3. As discussed earlier, an examination of the available information regarding the domestic industry’s performance minus *** does not lead us to find that subject imports are having an adverse impact.

⁴⁵U.S. production was *** short tons in 1997, then rose to *** short tons in 1998, and fell to *** short tons in 1999. It was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. CR/PR at Table III-2.

⁴⁶U.S. capacity declined from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999. Capacity was *** short tons in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. Capacity utilization was 42.8 percent in 1997 and rose to 45.4 percent in 1998, then fell to 38.9 percent in 1999. It was 31.4 percent in Jan.-Mar. 1999 and 52.3 percent in Jan.-Mar. 2000. CR/PR at Table III-2. While capacity utilization never exceeded 52.3 percent, the domestic industry registered a range of favorable operating results that remained favorable throughout the period.

The average number of production and related workers declined steadily between 1997 and 1999⁴⁷ and the hours worked by production and related workers⁴⁸ and wages paid to them⁴⁹ followed the same trend. However, productivity rose substantially over the entire period.⁵⁰

Operating income increased by over 50 percent from 1997 to 1998, when the volume of subject imports surged, then fell substantially in 1999 (but to only slightly below the 1997 level), when the volume of subject imports decreased substantially.⁵¹ The operating income margin also increased from 1997 to 1998, then fell in 1999 (but remained above the 1997 level).⁵²

Capital expenditures experienced a large increase between 1997 and 1998, then decreased between 1998 and 1999 (but remained above the 1997 level).⁵³ Research and development expenses declined steadily between 1997 and 1999.⁵⁴

U.S. producers' end-of-period inventories increased steadily over the period.⁵⁵ Nearly all the

⁴⁷The average number of production and related workers declined from 1,064 in 1997 to 1,000 in 1998, then decreased to 945 in 1999. It was 942 in Jan.-Mar. 1999 and 1,005 in Jan.-Mar. 2000. CR/PR at Table III-7.

⁴⁸Hours worked fell from 1.6 million in 1997 to 1.5 million in 1998, then to 1.4 million in 1999. Hours worked were 362,000 in Jan.-Mar. 1999 and 408,000 in Jan.-Mar. 2000. CR/PR at Table III-7.

⁴⁹Wages paid were \$23.0 million in 1997, \$22.2 million in 1998, and \$21.5 million in 1999. They were \$5.5 million in Jan.-Mar. 1999 and \$6.8 million in Jan.-Mar. 2000. CR/PR at Table III-7.

⁵⁰Productivity, expressed in tons per 1,000 hours, was *** in 1997, *** in 1998 and *** in 1999. It was *** in Jan.-Mar. 1999 and *** in Jan.-Mar. 2000. CR/PR at Table C-1.

⁵¹Operating income was *** in 1997, *** in 1998, and *** in 1999. It was *** in Jan.-Mar. 1999 and *** in Jan.-Mar. 2000. CR/PR at Table VI-1.

⁵²The ratio of operating income to net sales was *** percent in 1997, *** percent in 1998, and *** percent in 1999. It was *** percent in Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. CR/PR at Table VI-1.

⁵³Capital expenditures rose from \$6.4 million in 1997 to \$16.0 million in 1998, then declined to \$7.0 million in 1999. Capital expenditures were \$3.0 million in Jan.-Mar. 1999 and \$3.9 million in Jan.-Mar. 2000. CR/PR at Table VI-5.

⁵⁴Research and development expenses were *** in 1997, *** in 1998, and *** in 1999. They were *** in Jan.-Mar. 1999 and *** in Jan.-Mar. 2000. CR/PR at Table VI-5.

⁵⁵End-of-period inventories increased from 2,111 short tons in 1997 to 2,626 short tons in 1998, then climbed to 2,854 short tons in 1999. They were 2,436 short tons in Jan.-Mar. 1999 and 4,979 short tons in Jan.-Mar. 2000. CR/PR at Table III-6.

inventories were held by cold-finishers,⁵⁶ who purchased a significant portion of their redraw hollows from non-domestic and nonsubject sources throughout the period of investigation.⁵⁷ Nonsubject import volumes showed a steady and substantial increase over the period of investigation⁵⁸ and were, to some degree, displacing the domestic product.⁵⁹

Thus, although the volume of subject imports increased between 1997 and 1998, important indicators of the domestic industry's condition, including shipments, U.S. production, operating income, and capital expenditures, improved, indicating that material injury to the domestic industry did not occur in 1998 by reason of subject imports.⁶⁰ These indicators then declined in 1999 (although the operating income ratio remained above the 1997 level, and operating income was only slightly below the 1997 level), but this coincided with both a sharp decline in subject imports and a sharp increase in nonsubject import market share. In view of the lack of significant volume and price effects, the favorable profitability and overall improvement in the financial condition of the domestic industry, and the lack of correlation between the presence of subject imports and trends in several important indicia of the domestic industry's condition, we do not find that the subject imports are having a significant adverse impact on the domestic industry.⁶¹

⁵⁶See CR/PR at Table III-6.

⁵⁷See CR/PR at Table III-4.

⁵⁸See CR/PR at Table IV-5.

⁵⁹CR/PR at Table III-6 n.1. In addition, the increase in inventories during interim 2000 as compared to interim 1999 reflects ***. While we examine the domestic industry as a whole, we are mindful of ALTech's filing for bankruptcy protection in 1997, which we do not find to be attributable to subject imports. See Tr. at 25 (Mr. Peak); CR at II-27, PR at II-16; CR/PR at Table III-1 n.1.

⁶⁰As discussed earlier, we do not find that the domestic industry's favorable performance during the beginning of the period examined was primarily attributable to ***.

⁶¹The Court directed us to reconsider petitioners' arguments regarding the semiannual data. As an initial matter, we do not discount the available semiannual data nor do we deem them unreliable. However, we note that they are not directly comparable to the annual data due to the absence of semiannual data from three domestic producers. We have weighed the evidence in the record and determine that the annual data is most probative. In this instance, we have closely examined the entire record and assessed the relative probative value of the evidence within it. We determine to utilize the most complete data available in making our injury determination. Nonetheless, the semiannual data (contained in CR/PR at Table C-6) show that the quantity of subject imports increased from Jan.-June 1998 to July-Dec. 1998, but then

Conclusion

For the foregoing reasons, we find that the industry in the United States producing circular seamless stainless steel hollow products is not materially injured by reason of imports of circular seamless stainless steel hollow products from Japan that are sold in the United States at less than fair value.

II. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

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.”⁶² The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”⁶³ In making our determination, we have considered all factors that are relevant to this investigation.^{64 65}

The Court directed us to reevaluate our threat determination in light of our reconsideration of

decreased substantially in both Jan.-June 1999 and July-Dec. 1999, both in absolute terms and in market share. Although the increase in subject import volume in the second half of 1998 coincided with declines in several indicia of the condition of the domestic industry, when subject imports declined substantially in the first half of 1999 (to a level below that in the first half of 1998), these same indicia continued to decline. As explained earlier, we have focused on the end of the period of investigation in making our injury determination. Consideration of the semiannual data for this period do not lead us to a conclusion contrary to that reached upon consideration of the annual data, as described above.

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

⁶³19 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.” Metallwerken 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).

⁶⁴19 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).

⁶⁵Commissioner Bragg notes that her evaluation of the threat of material injury includes her assessment of the current condition and performance trends of the domestic industry, as discussed in Section II.D.

present material injury. As discussed above, we have reevaluated our findings pertaining to the volume and price effects of the subject imports and have reaffirmed those findings. We adopt our prior reviews regarding the threat of material injury by reason of the subject imports and, based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of imports of circular seamless stainless steel hollow products from Japan that are sold in the United States at less than fair value.⁶⁶

CONCLUSION

For the reasons stated above, we determine that the domestic industry producing circular seamless stainless steel hollow products is not materially injured nor threatened with material injury by reason of imports of circular seamless stainless steel hollow products from Japan that are sold in the United States at less than fair value.

⁶⁶We note in particular that we again find, as explained above, that nonsubject imports displaced subject imports and the domestic like product. We also note that any future increased volumes of subject imports would likely be primarily at the expense of nonsubject imports. USITC Pub. 3344 at 17. We also reaffirm that we did not find significant price depression or suppression by reason of subject imports. Accordingly, we find that there is not a likelihood that the subject imports are likely to enter the U.S. market at prices that will have a significant depressing or suppressing effect on prices for the domestic like product or increase demand for further imports.