

UNITED STATES INTERNATIONAL TRADE COMMISSION

CIRCULAR SEAMLESS STAINLESS STEEL HOLLOW PRODUCTS FROM JAPAN

Investigation No. 731-TA-859 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3344, SEPTEMBER 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of circular seamless stainless steel hollow products³ that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective October 26, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Altx, Inc., Watervliet, NY; American Extruded Products Corp., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik, Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products - IXP Buffalo, Buffalo, NY;⁴ and United Steelworkers of America, AFL-CIO/CLC, Pittsburgh, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of circular seamless stainless steel hollow products from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 10, 2000 (65 *FR* 30133). The hearing was held in

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

²Chairman Koplán and Vice Chairman Okun dissenting.

³For purposes of this investigation, Commerce has defined the subject merchandise as "pipes, tubes, redraw hollows, and hollow bars, of circular cross-section, containing 10.5 percent or more by weight chromium, regardless of production process, outside diameter, wall thickness, length, industry specification (domestic, foreign or proprietary), grade or intended use. Common specifications for the subject circular seamless stainless steel hollow products include, but are not limited to, ASTM-A-213, ASTM-A-268, ASTM-A-269, ASTM-A-270, ASTM-A-271, ASTM-A-312, ASTM-A-376, ASTM-A-498, ASTM-A-511, ASTM-A-632, ASTM-A-731, ASTM-A-771, ASTM-A-789, ASTM-A-790, ASTM-A-826 and their proprietary or foreign equivalents."

The products subject to this investigation are covered by statistical reporting numbers 7304.10.5020; 7304.10.5050; 7304.10.5080; 7304.41.3005; 7304.41.3015; 7304.41.3045; 7304.41.6005; 7304.41.6015; 7304.41.6045; 7304.49.0005; 7304.49.0015; 7304.49.0045; and 7304.49.0060 of the Harmonized Tariff Schedule of the United States (HTS).

⁴On June 7, 2000, International Extruded withdrew from participation as a petitioner in this investigation.

Washington, DC, on July 12, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 25, 2000. The views of the Commission are contained in USITC Publication 3344 (September 2000), entitled *Circular Seamless Stainless Steel Hollow Products from Japan: Investigation No. 731-TA-859 (Final)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of circular seamless stainless steel hollow products (“CSSSHP”) from Japan that are sold in the United States at less than fair value (“LTFV”).⁵

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁶ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁷ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁸

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁹ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.¹⁰ The Commission looks for clear dividing lines among possible like products and disregards minor variations.¹¹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as

⁵ Chairman Koplun and Vice Chairman Okun determine that the domestic industry is materially injured by reason of LTFV subject imports. They join Section I of these views.

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(4)(A).

⁸ 19 U.S.C. § 1677(10).

⁹ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (CIT 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (CIT 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (CIT 1996).

¹⁰ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

¹¹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹²

B. Product Description

In its final determination, Commerce described the merchandise within the scope of its investigation as follows, in part:¹³

seamless stainless steel hollow products, including pipes, tubes, redraw hollows, and hollow bars, of circular cross section, containing 10.5 percent or more by weight chromium, regardless of production process, outside diameter, wall thickness, length, industry specification (domestic, foreign or proprietary), grade or intended use.¹⁴

Seamless stainless steel hollow products are produced by either of two high temperature processes to form a central cavity in a solid steel billet: the rotary piercing process or the hot extrusion process. Because most grades of stainless steel do not lend themselves to the rotary piercing process, almost all hollow products are produced by the extrusion process. This process requires a cylindrical billet with an axial hole, which is drilled through the entire length of the billet. The billet is then heated to hot-forming temperature (2,200 degrees Fahrenheit) and the hole is hot expanded by forcing a piercing die through the drilled hole. The billet is then reheated and forced through a die and over an internal mandrel, forming a hot-finished hollow section.¹⁵

Small diameter¹⁶ or thin walled products and products requiring particularly close dimensional tolerances are cold-finished.¹⁷ Cold finishing consists of cold tube-reducing by rolling on an internal mandrel, or cold-drawing by pulling through a die, usually with an internal plug or mandrel to form the inside of the tube. To produce cold-finished products, seamless redraw hollows are first pickled in acid to remove scale and oxides from both the outside and inside surfaces. They are then rinsed in water and coated, by dipping, with a lubricant for cold drawing. The hollow is pulled through a die and over an internal mandrel, reducing the outside diameter and increasing the length. The mandrel inside the hollow controls the inside diameter and the wall thickness. An alternate method of cold working, commonly used on seamless stainless steel, is tube reducing. In this method, a pair of rolls having tapered grooves are rolled and reciprocated along the outside of the tube so that a reduction of both the diameter and the wall

¹² Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹³ Pursuant to petitioners' request that the scope be changed to clarify the exemption for oil country tubular goods ("OCTG"), the current scope differs from that considered during the preliminary investigation.

¹⁴ For the remainder of the scope, *see* Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Circular Seamless Stainless Steel Hollow Products from Japan, A-588-853 in Confidential Report ("CR")/Public Report ("PR") at Appendix A.

¹⁵ CR at I-7, PR at I-6.

¹⁶ While the minimum diameter for hot finishing differs among producers because of differences in equipment capabilities, hot-finished pipe or tubing is produced with a diameter as small as one inch. CR at I-8, PR at I-6.

¹⁷ CR at I-7, PR at I-6.

thickness is accomplished against a fixed, tapered mandrel on the inside of the tube.¹⁸ For very small diameter tubes or for tubes requiring substantial cross-sectional reduction, the sequence of annealing, pickling, and cold drawing may be repeated one or more times.¹⁹

C. Domestic Like Product

In its preliminary determination, the Commission found a single domestic like product consisting of hot- and cold-finished circular stainless steel hollow products, including pipes, tubes, redraw hollows, and hollow bars.²⁰ The like product issues before the Commission in the preliminary phase of this investigation were whether hot-finished and cold-finished hollow products constitute a single domestic like product; whether extreme-temperature hollow products constitute a separate domestic like product; and, whether redraw hollows constitute a separate domestic like product. The Commission found one like product consisting of all hot- and cold-finished hollow products, including redraw hollows. In this final phase investigation, we consider two issues: whether hot- and cold-finished hollow products constitute separate domestic like products, and whether ultra high purity 316L redraw hollows comprise a separate domestic like product.

1. Cold-Finished vs. Hot-Finished

In the final phase of this investigation, petitioners argue that the Commission should determine that circular seamless stainless steel hollow products constitute a single domestic like product. Respondents contend that the Commission should determine that hot- and cold-finished hollow products comprise separate domestic like products.

Although there are merits to both arguments, in the absence of a clear dividing line, we determine that hot- and cold-finished hollow products comprise a single domestic like product.

The record indicates that hot-finished and cold-finished hollow products share the same important physical characteristics (they are produced without seams from stainless steel billets) and common uses (the corrosion-resistant transport of liquids or gas in the chemical, petrochemical, dairy, semiconductor, and paper industries). Both are used for corrosion resistance or hygienic needs; they are also used in certain medical devices.²¹ However, cold finishing generally results in hollow products with less eccentricity, closer dimensional tolerances, smoother surfaces, greater hardness and other differences in metallurgic properties, and lower wall thickness ratios than hot-finished products. Certain sizes of hollow products can be produced only by cold finishing, although there is overlap in the one- to 24-inch size range.²²

¹⁸ This process of tube reducing is sometimes called “pilgering.”

¹⁹ CR at I-7 - I-8, PR at I-6.

²⁰ Circular Seamless Stainless Steel Hollow Products from Japan, Inv. No. 731-TA-859 (Preliminary), USITC Pub. 3262, at 5 (Dec. 1999).

²¹ CR at I-6, PR at I-5.

²² CR at I-8, II-1 -II-2 & Table I-1, PR at I-6, II-1 & Table I-1. Petitioners state that the most common reason for cold finishing a product is to achieve a diameter that cannot be produced by extrusion. Petitioners’ Prehearing Brief at 10.

There is some interchangeability in the use of hot- and cold-finished products.²³ However, because hot-finished products are considerably less expensive than cold-finished products, cold-finished products generally are used when hot-finished products will not meet the desired specifications.²⁴ Substitution of hot- and cold-finished products is becoming more common, primarily due to technological improvements in the hot-finished product.²⁵ Some applications, such as boiler tubes, are shifting to some extent from the use of cold-finished to hot-finished hollow products. In addition, some producers give their hot-finished products a “cold pass” to meet specifications and quality standards that other producers can meet with a hot-finished product.²⁶

Production of cold-finished hollow products involves the processing of hot- or cold-finished hollows (redraw hollows) by employees on additional equipment not otherwise needed for the production of hot-finished hollow products, *i.e.*, cold-drawing and/or tube-reducing equipment.²⁷ Finishing operations, such as testing, pickling, annealing, and straightening are common to hot- and cold-finished hollow products.²⁸ Two domestic producers, ALTech/ALTX and Timken, produce both cold- and hot-finished hollow products.²⁹

Producers and purchasers appear to perceive some similarities in hot- and cold-finished hollow products. Producers acknowledge distinctions based on tolerance, appearance/surface finish, and size, but generally report that a degree of overlap exists.³⁰ Purchasers indicate that they can use hot- and cold-finished product interchangeably,³¹ but that this occurs based on factors such as lead time concerns, rather than based on the products’ physical characteristics.³²

The channels of distribution for both are the same, including end users and distributors.³³ Moreover, both hot- and cold-finished hollow products are often sold by the same companies.³⁴

Prices for hollow products vary by material composition, size, and finishing.³⁵ Cold-finished hollow products may be sold at unit values over twice that of hot-finished hollow products, although some cold-finished products that compete more directly with hot-finished products are sold at a premium of only

²³ CR/PR at II-1; *see* Tr. at 197 (Mr. Bootz). Forty-seven percent of responding purchasers stated that hot- and cold-finished products can sometimes be physically substituted for one another; 23 percent reported they could be substituted. Twenty percent of purchasers stated that substitution was routine and seven percent said it was routine in some cases. CR/PR at II-1 nn.1 & 2.

²⁴ CR/PR at II-1.

²⁵ CR at II-21, PR at II-12.

²⁶ Tr. at 161-62 (Mr. Breckinridge), 165-66 (Mr. Johnson); Respondents’ Posthearing Brief at 5; *see* Respondents’ Posthearing Brief, Part II at 20.

²⁷ CR at I-10 & Table III-7, PR at I-8 & Table III-7.

²⁸ Petitioners’ Prehearing Brief at 20.

²⁹ CR/PR at Table III-1.

³⁰ Petitioners’ Prehearing Brief at 13-24; Petitioners’ Posthearing Brief at 4-5.

³¹ CR/PR at II-1, Tr. at 197 (Mr. Bootz), 242-43 (Mr. Curran).

³² Tr. at 194-95 (Mr. Breckinridge).

³³ CR at Table I-3, II-4, PR at Table I-3, II-3.

³⁴ *See* CR/PR at Table III-1; Sandvik’s and PEXCO’s Producer Questionnaire Responses.

³⁵ CR at I-13, PR at I-9.

10 to 15 percent.³⁶ Cold finishing can add as little as three to five percent to cost, although much higher percentages are typical.³⁷

In conclusion, we find that hot- and cold-finished hollow products comprise a single domestic like product due to the overlap in characteristics and uses, at least some degree of interchangeability, the fact that two domestic producers make both products on similar equipment, a degree of overlap based on customer and producer perceptions, and the same channels of distribution.

2. Ultra High Purity 316L Redraw Hollows

Plymouth Tube Company (“Plymouth Tube”) argues for the first time in this final phase investigation that the Commission should determine that ultra high purity 316L redraw hollows comprise a separate domestic like product. Cold-finished tubes made from these redraw hollows are used for gas distribution by the semiconductor industry.

Plymouth Tube states that it has been unable to procure ultra high purity 316L redraw hollows from any domestic producer.³⁸ Thus, ultra high purity 316L redraw hollow could not be found to be a separate domestic like product. Because there is no domestic production of this product, we must identify the domestic product that is most similar in characteristics and uses with the article subject to this investigation.³⁹ We find that circular seamless stainless steel pipes, tubes, redraw hollows, and hollow bars are most similar to ultra high purity 316L redraw hollows.

In sum, we again determine that there is a single like product, coextensive with the scope, consisting of hot- and cold-finished circular seamless stainless steel hollow products, including pipes, tubes, redraw hollows, and hollow bars.

D. Domestic Industry

1. Generally

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”⁴⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁴¹ We find one domestic industry in this investigation and define it as all domestic producers of circular seamless stainless steel hollow products, whether hot- or cold-finished, including pipes, tubes, redraw hollows, and hollow bars.

³⁶ CR/PR at II-1 & n.3.

³⁷ See Tr. at 84 (Mr. Andriola).

³⁸ See Plymouth Tube’s Prehearing Brief at 2-7.

³⁹ See Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-393-396 & 731-TA-829-840 (Preliminary), USITC Pub. 3214, at 10 n.58 (July 1999).

⁴⁰ 19 U.S.C. § 1677(4)(A).

⁴¹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

2. Related Parties

We also must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry a producer that is related to an exporter or importer of subject merchandise, or which is itself an importer.⁴² Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.⁴³

In the preliminary phase of the investigation, the Commission considered whether to exclude three domestic producers under the related party provision: Pennsylvania Extruded Tube Co. USA Inc. ("PEXCO"), a joint venture owned in part by Sumitomo Metal Industries, Ltd., a Japanese producer of the subject merchandise,⁴⁴ and *** and ***, both believed to have imported subject hollow products throughout the period of investigation. The Commission did not find that PEXCO is a related party and determined that appropriate circumstances did not exist to exclude *** and *** from the domestic industry.⁴⁵

None of the additional information gathered during this final phase of the investigation indicates that Sumitomo, the Japanese producer, is in a position to exercise control of PEXCO. There is consequently no reason to revisit our conclusion in the preliminary determination that PEXCO is not a related party.

The record in this final phase investigation indicates that *** and *** purchased, rather than imported directly, the subject merchandise from Japan.⁴⁶ Five other domestic producers also purchased subject hollow products during the period: ***.⁴⁷ No domestic producer directly imported subject merchandise during the period of investigation.

In previous investigations the Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if that producer controls large volumes of imports. We have found such control to exist where the domestic producer was responsible for a predominant proportion of an

⁴² 19 U.S.C. § 1677(4)(B).

⁴³ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l. Trade 1989), *aff'd without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l. Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l. Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016, at 14 n.81 (Feb. 1997).

⁴⁴ Sumitomo Metal Industries of Japan owns 30 percent of PEXCO, while Sandvik Steel of Sweden owns 70 percent. CR at III-2, PR at III-1.

⁴⁵ USITC Pub. 3262 at 10-11.

⁴⁶ CR/PR at Table III-6 n.1.

⁴⁷ CR/PR at Table III-5.

importer's purchases and the importer's purchases were substantial.⁴⁸ However, in this case, we do not find that any producer purchased sufficient subject imports to be considered as exercising control over a large volume of imports. The amount of purchases for each domestic producer relative to total subject imports during 1999 is as follows: ***.⁴⁹ Accordingly, we determine that these firms are not related parties within the meaning of the statute.⁵⁰

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation. In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵¹ The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁵² In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵³ No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁵⁴

For the reasons discussed below, we determine that the domestic industry producing certain circular seamless stainless steel hollow products is not materially injured by reason of LTFV imports from Japan.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in this investigation. First, the demand for hollow products is a derived demand, determined in large part by the activity level of a number of consuming industries including energy, pharmaceuticals, aerospace, chemicals and

⁴⁸ See USITC Pub. 3262 at 11 n.55; Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil, Inv. No. 731-TA-572 (Final), USITC Pub. 2662, at 18-19 (July 1993); Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. No. 731-TA-520 (Final), USITC Pub. 2528, at 12-13 (June 1992).

⁴⁹ CR/PR at Tables III-5, IV-4. See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia, and the Philippines, Inv. Nos. 731-TA-864-867 (Preliminary), USITC Pub. 3281 (Feb. 2000) (purchases amounting to 24 percent of total imports not sufficient to constitute control).

⁵⁰ Chairman Koplán and Vice Chairman Okun do not join the remainder of this opinion. See their dissenting views.

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

⁵² 19 U.S.C. § 1677(7)(A).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

petrochemicals, and semiconductors.⁵⁵ No single industry has a predominant influence on demand. During the period of investigation, the demand in some industries increased while the demand in others decreased.⁵⁶ Apparent U.S. consumption of hollow products as a whole increased between 1997 and 1998, then fell in 1999, but there was an overall increase in consumption over the period of investigation.⁵⁷

Second, the price of stainless steel generally and the cost of certain raw materials (chiefly nickel and chromium) influence the price of hollow products. Since 1997, raw material costs have accounted for between 43 and 47 percent of the cost of hollow products.⁵⁸ The cost of raw materials decreased over the period examined, which is reflected in the decreasing cost of goods sold (“COGS”).⁵⁹

Third, for a large portion of subject imports there is a high degree of substitution with the domestic like product.⁶⁰ Nonetheless, there is an important segment of the market, including certain sizes and certain chemistry requirements, that the domestic producers are unable to supply.⁶¹ The parties strongly disagree regarding the extent of this lack of competition.⁶² It appears that at least 20 percent of subject imports as measured by volume are of types not produced domestically.⁶³ Additionally, there appear to be ranges of product, mainly hot-finished, for which domestic supply is viewed as non-viable by certain purchasers.⁶⁴

⁵⁵ CR at II-17, PR at II-10.

⁵⁶ CR at II-18, PR at II-11.

⁵⁷ Apparent U.S. consumption increased from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999. Apparent U.S. consumption was higher in Jan.-Mar. 2000 (*** short tons) than in Jan.-Mar. 1999 (*** short tons). CR/PR at Table IV-5.

⁵⁸ CR/PR at V-1.

⁵⁹ See CR/PR at Table VI-4. COGS per short ton fell from *** in 1997 to *** in 1999, and was *** in interim 2000 compared to *** in interim 1999. CR/PR at Table VI-4. We recognize that these changes in unit COGS may also reflect changes in product mix.

⁶⁰ CR at II-23, PR at II-13; CR/PR at Table I-2.

⁶¹ See CR at II-26, PR at II-16.

⁶² See CR at II-26, PR at II-16.

⁶³ See CR/PR at Table I-2.

⁶⁴ See CR at II-26- II-27, PR at II-16. In particular, there are deficiencies, or at least a perception of deficiencies by some purchasers, in the domestic production of hot-finished product between 3 and 10 inches in outer diameter. For example, PEXCO, the largest hot-finished producer, ***. PEXCO’s Producer Questionnaire Response, Section II-15. While American Extruded claims to be able to produce hot-finished pipe up to 6 inches, its capabilities are suspect in the eyes of many purchasers. CR at II-27, PR at II-16; Tr. at 157, 158 (Mr. Curran). Both its relatively low production levels and capacity utilization throughout the period lend support to this perception. CR/PR at Table III-2. ALTech Specialty Steel Corp. sought bankruptcy protection in 1997, Tr. at 156 (Mr. Curran), and subsequently ceased production of hollow products. Tubacex America purchased its production assets and facility in 1999, and is now operating them as the firm ALTX. CR/PR at Table III-1 n.1. As a result, some former ALTech customers now purchase from other sources, and questions linger about ALTX’s reliability as a supplier. CR at II-27, PR at II-16; CR/PR at Table III-5 n.5. (We note that ALTX did show a significant increase in production at the end of the period examined. CR/PR at Table III-2.) Finally, while International Extruded claims that it can produce down to 6 or 8 inches, it does not appear to actively seek business in sizes below 10 inches due to its press’ inefficiencies for such sizes. CR at II-27 n. 50, PR at 16 n.50. With respect to characteristics other than size, there are also several types of hollow products not produced domestically, or perceived as not produced domestically, including 316L redraw hollows, superhot finished boiler tubes, and certain
(continued...)

Several cold-finishers avoid purchasing domestically produced redraw hollows from PEXCO because of its close affiliation with Sandvik, their competitor in the cold-finished market. These cold-finishers argue that they cannot be dependent on their competitor for crucial upstream supplies.⁶⁵ Thus, because they viewed PEXCO as the only viable domestic source for certain sizes of redraw hollows (due to ALTech's bankruptcy),⁶⁶ these cold-finishers purchased imported redraw hollows, both subject and nonsubject.⁶⁷

Finally, nonsubject imports increased steadily and substantially over the period of investigation. Nonsubject imports' share of the domestic market rose substantially from 1997 to 1999, and was at its highest at the end of the period examined -- in Jan.-Mar. ("interim") 2000 -- such that they accounted for *** percent of apparent domestic consumption.⁶⁸ The record also indicates that some petitioning firms purchase nonsubject imports due to lack of domestic production.⁶⁹

B. 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."^{70 71}

Although the quantity of subject imports almost doubled between 1997 and 1998, it decreased significantly between 1998 and 1999, and was lower in interim 2000 than in interim 1999.⁷² The value of these imports also decreased substantially between 1998 and 1999, and was lower in interim 2000 than in interim 1999.⁷³ Subject import market share, as measured by quantity, decreased between 1998 and 1999,

⁶⁴(...continued)

light walled products. CR at II-26, PR at II-16, Tr. at 162 (Mr. Breckinridge), 166 (Mr. Johnson).

⁶⁵ Tr. at 157-58 (Mr. Curran).

⁶⁶ Tr. at 156 (Mr. Curran).

⁶⁷ CR/PR at Table III-5. Indeed, domestic cold-finishers accounted for over *** percent of subject imports in 1999. CR/PR Tables III-5, IV-4, C-1.

⁶⁸ Nonsubject imports increased from 16,860 short tons in 1997 to 19,058 short tons in 1998, and then rose to 20,865 short tons in 1999. Nonsubject imports were 3,955 short tons in Jan.-Mar. 1999 and 8,715 short tons in Jan.-Mar. 2000. Nonsubject imports' market share decreased from *** percent in 1997 to *** percent in 1998, then increased to *** percent in 1999. It was *** percent Jan.-Mar. 1999 and *** percent in Jan.-Mar. 2000. CR/PR at Table IV-5.

⁶⁹ CR/PR at Table III-5 nn. 2, 3, and 8.

⁷⁰ 19 U.S.C. § 1677(7)(C)(i).

⁷¹ We have 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.

⁷² Subject 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.

⁷³ The value of subject imports climbed from *** in 1997 to *** in 1998, then fell to *** in 1999. The value of subject imports was *** in Jan.-Mar. 1999 and was *** in Jan.-Mar. 2000. CR/PR at Table IV-4.

and was much lower in interim 2000 than in interim 1999.⁷⁴ Nonsubject market share was greater than subject market share for most of the period.⁷⁵ Indeed, from 1998 to 1999, the declining presence of subject imports in the U.S. market was more than made up for by increasing nonsubject import volumes even as apparent U.S. consumption declined.⁷⁶

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 post-petition information.⁷⁷ The sharpest decline in subject imports occurred between the second half of 1998 and the first half of 1999⁷⁸ -- well before the filing of the petition. Consequently, we do not consider the decline to be a function of the filing of the petition.⁷⁹

Finally, any increased competition from rising subject import volumes between 1997 and 1998 was at least somewhat attenuated in light of record evidence indicating a lack of competition between some subject imports and the domestic like product for some range of product.^{80 81 82}

In sum, although the absolute volume of subject imports nearly doubled between 1997 and 1998, it then declined consistently and substantially thereafter. In 1999, U.S. production, shipments, and capacity utilization were lower for the period than they were in prior years, and the domestic industry's market share was 8.4 percentage points lower.⁸³ These reductions, however, cannot be attributed to subject imports, which were substantially lower in both volume and market share in 1999 than they were in 1998.⁸⁴ In light

⁷⁴ As 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.

⁷⁵ 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.

⁷⁶ See CR/PR at Table IV-5. We note that some purchasers perceive nonsubject hollow products to be a generally more competitive alternative to Japanese products than the domestic products. CR at II-33, PR at II-20.

⁷⁷ 19 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 investigation, the Commission may reduce the weight accorded to the data for the period after the filing of the petition).

⁷⁸ See CR/PR at Table C-6.

⁷⁹ Petitioners argued that respondents were aware of the possibility of a petition in early to mid-1999. Petitioners' Prehearing Brief at 65; Petitioners' Posthearing Brief at 14. Even if respondents were aware a few months into 1999, we do not find it credible that the drop in imports in the first half of 1999 can be attributed to such knowledge, given the time lag between placement of the order and arrival of the imports, typically 13-26 weeks. CR at II-29, PR at II-17.

⁸⁰ CR at II-23, II-26 - II-27, PR at II-13 - II-17; CR/PR at Table I-2. In addition, some of the increase in subject imports was likely due to ALTech's bankruptcy, after which domestic cold-drawers sought new sources of supply. Tr. at 156-58 (Mr. Curran).

⁸¹ Commissioner Bragg concurs that there is a substantial overlap of competition among these products.

⁸² Commissioners Miller and Hillman recognize that allegations have been made about attenuated competition between the subject imports and domestic hollow products. They believe that the record supports finding that there remains substantial competitive overlap between these products.

⁸³ See CR/PR at Table C-1.

⁸⁴ See CR/PR at Table IV-4.

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.

C. 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.

As noted above, although a share of subject imports does not compete with the domestic like product, where there is competition there is a significant degree of substitutability between the domestic like product and the subject imports. Further, price is an important consideration for purchasers,⁸⁵ although other nonprice considerations are also important, such as the ability to obtain specific products and the quality of the product.⁸⁶

The Commission's questionnaires identified nine specific products for price comparisons. Domestic prices for many of the products declined for portions of the period examined. At the same time, the pricing data collected indicate extensive underselling by subject imports throughout the period of investigation.⁸⁷ However, underselling was occurring during periods when domestic prices were stable or rising, indicating a lack of price depression or suppression. Moreover, the condition of the domestic industry improved markedly in 1998, when imports were at their peak, and again in interim 2000, as explained below, despite persistent underselling.

At least some of the price declines can be explained by the substantial decline in the raw material costs during the initial part of the period examined. Indeed, while most of the collected pricing data indicate declines of about 10 percent or less between the first quarter of 1997 and the fourth quarter of 1998 (with some price levels actually evidencing increases),⁸⁸ the unit cost of goods sold for the domestic industry declined 11 percent between 1997 and 1998.⁸⁹

In addition, while much of the collected domestic pricing data indicate further declines of about 13 percent or less between the fourth quarter of 1998 and the fourth quarter of 1999 (with price levels actually increasing for a number of products),⁹⁰ apparent U.S. consumption declined 11.3 percent between 1998 and 1999, while at the same time subject import volume declined over 35 percent.⁹¹ We find that price declines evidenced between 1998 and 1999 are attributable in significant part to a softening of demand, and not in response to substantially declining volumes of subject imports.

Finally, one large purchaser stated that European producers were the price leaders from June 1998 to November 1999.⁹² Any such price leadership would have coincided with the surge in nonsubject import volumes.

⁸⁵ CR at II-24, PR at II-14; CR/PR at Table II-1.

⁸⁶ CR at II-24, PR at II-14.

⁸⁷ CR/PR at Tables V-2 - V-10.

⁸⁸ See CR/PR at Tables V-2 through V-10.

⁸⁹ CR/PR at Table C-1. The ratio of COGS to net sales declined from *** percent to *** percent during that same period. CR/PR at Table C-1.

⁹⁰ See CR/PR at Tables V-2 through V-10.

⁹¹ CR/PR at Table C-1.

⁹² CR at II-21, PR at II-12; Tr. at 151-52 (Mr. Bootz).

Accordingly, notwithstanding evidence of consistent and extensive underselling over the period of investigation, we do not find that 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.

D. 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 industry.”^{93 94 95} For the reasons discussed below, we conclude that subject imports of circular seamless stainless steel hollow products 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. Despite the mixed overall performance of the domestic industry,⁹⁶ its financial picture actually improved from 1997 to 1998, when subject imports registered their most significant increase, and remained above the 1997 level in 1999 as subject imports fell and nonsubject imports gained a substantial share of the domestic market. Interim 2000 data show improvement for the domestic industry in most indicators when compared to interim 1999.

The quantity of domestic producers’ shipments was steady between 1997 and 1998, then decreased in 1999 when apparent U.S. consumption declined and subject imports also declined to a greater extent. It was also higher in interim 2000 than in interim 1999.⁹⁷ The value of these shipments followed a different trend, decreasing from 1997 to 1998 and declining further in 1999. However, the value was higher in interim 2000 than in interim 1999.⁹⁸

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

⁹⁴ As 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).

⁹⁵ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See* Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁹⁶ For example, we note that throughout the period of investigation, capacity utilization never exceeded 52.3 percent. *See* CR/PR at Table III-2. Nevertheless, the domestic industry demonstrated an ability to register a range of favorable operating results throughout the period.

⁹⁷ U.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.

⁹⁸ The value of U.S. producers’ total shipments declined from *** in 1997 to *** in 1998, and declined further to *** in 1999. The value of these shipments was *** in Jan.-Mar. 1999 and *** in Jan.-Mar. 2000. CR/PR at (continued...)

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. U.S. production was higher in interim 2000 than in interim 1999.⁹⁹ Total U.S. capacity decreased from 1997 to 1998, while capacity utilization increased.¹⁰⁰

The average number of production and related workers declined steadily between 1997 and 1999, but was higher in interim 2000 than in interim 1999.¹⁰¹ The hours worked by production and related workers¹⁰² and wages paid to them¹⁰³ followed the same trend.

Operating income increased from 1997 to 1998, when the volume of subject imports surged, then fell substantially (to below the 1997 level), when the volume of subject imports decreased substantially. Operating income was much higher in interim 2000 than in interim 1999.¹⁰⁴ Operating income margins followed the same trend.¹⁰⁵

Capital expenditures experienced a large increase between 1997 and 1998, then decreased between 1998 and 1999. They were higher in interim 2000 than in interim 1999.¹⁰⁶ Research and development expenses declined steadily between 1997 and 1999, but were higher in interim 2000 than in interim 1999.¹⁰⁷

⁹⁸(...continued)

Table III-3.

⁹⁹ U.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.

¹⁰⁰ U.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.

¹⁰¹ The 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.

¹⁰² Hours 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.

¹⁰³ Wages 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.

¹⁰⁴ Operating 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.

¹⁰⁵ The 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.

¹⁰⁶ Capital 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.

¹⁰⁷ Research 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.

U.S. producers' end-of-period inventories increased steadily over the period.¹⁰⁸ Nearly all the inventories were held by cold-finishers,¹⁰⁹ who purchased a significant portion of their redraw hollows from non-domestic sources throughout the period of investigation.¹¹⁰ Thus, we note that the steady and substantial increase in nonsubject import volumes over the period of investigation¹¹¹ is, to some degree, responsible in that they displaced the domestic product. In addition, the increase in inventories during interim 2000 as compared to interim 1999 reflects ***.¹¹²

The health and performance of the domestic industry over the period were somewhat mixed. However, significant indicators of the industry's condition improved as subject import volumes increased and declined as subject import volumes declined. 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.^{113 114}

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.

III. 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

¹⁰⁸ End-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.

¹⁰⁹ See CR/PR at Table III-6.

¹¹⁰ See CR/PR at Table III-4.

¹¹¹ See CR/PR at Table IV-5.

¹¹² CR/PR at Table III-6 n.1. 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 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.

¹¹³ Petitioners have urged the Commission to examine data on a semiannual basis. As an initial matter, we note that the semiannual data are not directly comparable to the annual data due to the absence of semiannual data from three domestic producers. 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 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. Consequently, the semiannual data do not lead us to a conclusion contrary to that reached upon consideration of the annual data, as described above.

¹¹⁴ Commissioner Askey did not rely on semiannual data in her analysis.

order is issued or a suspension agreement is accepted.”¹¹⁵ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹¹⁶ In making our determination, we have considered all factors that are relevant to this investigation.^{117 118}

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.

While the volume and market penetration of subject imports increased from 1997 to 1998, they began to decline dramatically from 1998 to 1999 and further in interim 2000.¹¹⁹ Consequently, trends in subject import volume during the latter portion of the period of investigation indicate that there is not a likelihood of substantially increased imports in the imminent future.¹²⁰ Further supporting this conclusion is information in the record indicating that exports from Japan to other markets are expected to increase in 2000 and 2001, at quantities larger than those during the period of investigation,¹²¹ and home market shipments are also projected to increase.¹²² Even assuming arguendo that subject import volume does increase, the increase would likely be primarily at the expense of nonsubject imports, which accounted for well over half of apparent U.S. consumption in interim 2000.¹²³ Indeed, the range and quality of European-produced hollow products are very comparable to the Japanese products;¹²⁴ in fact, purchasers perceive

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

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

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

¹¹⁸ Commissioner 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.

¹¹⁹ The volume of subject imports increased from *** short tons in 1997 to *** short tons in 1998, then decreased to *** short tons in 1999. The volume of subject imports was *** in Jan.-Mar. 1999 and *** short tons in Jan.-Mar. 2000. CR/PR at Table IV-4. Subject imports’ 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.

¹²⁰ As previously stated, we conclude that these declines are not attributable to the filing of the petition.

¹²¹ Exports to other markets were 23,364 short tons in 1997, 19,437 short tons in 1998, and 21,647 short tons in 1999. They were 6,034 short tons in Jan.-Mar. 1999 and 4,721 short tons in Jan.-Mar. 2000. They are projected to rise to 24,527 short tons in 2000 and to 24,586 short tons in 2001. CR/PR at Table VII-2.

¹²² Home market shipments were 46,114 short tons in 1997, 43,534 short tons in 1998, and 34,852 short tons in 1999. They were 7,777 short tons in Jan.-Mar. 1999 and 10,411 short tons in Jan.-Mar. 2000. They are projected to increase to 42,158 short tons in 2000 and 43,584 short tons in 2001. CR/PR at Table VII-2.

¹²³ *See* CR/PR at Table IV-5.

¹²⁴ CR at II-32, PR at II-20.

nonsubject hollow products to be a generally more competitive alternative to Japanese products than the domestic products.¹²⁵

Production capacity in Japan decreased steadily over the period examined, but is projected to increase in 2000 and 2001.¹²⁶ Capacity utilization increased between 1997 and 1998, then decreased between 1998 and 1999. However, it was higher in interim 2000 than in interim 1999, and is projected to increase in 2000 and 2001.¹²⁷ Although there is unused production capacity in Japan, we do not believe this supports an affirmative threat determination in light of our findings regarding likely subject import volume.

As noted, we did not find the underselling to be significant with respect to our determination regarding present material injury, nor did we 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.

We note that U.S. importers' end-of-period inventories decreased between 1997 and 1998, then increased between 1998 and 1999. They were lower in interim 2000 than in interim 1999.¹²⁸ However, these inventories, both in absolute terms and relative to imports, were at a lower or comparable level in 1999 and interim 2000 than they were in 1997.¹²⁹ Japanese producers' end-of-period inventories fell from 1997 to 1999; while they were higher in interim 2000 than in interim 1999, the level was still lower than that in 1997 and 1998.¹³⁰

While there is some potential for product-shifting in view of the U.S. antidumping duty orders on carbon and alloy oil country tubular goods from Japan and certain small- and large-diameter seamless carbon and alloy steel standard, line, and pressure pipe from Japan, as well as the ongoing antidumping proceeding in Indonesia regarding certain pipe from Japan,¹³¹ we do not view such potential to be likely to result in a significant increase in subject import volumes in the imminent future, in light of the extensive shipments by producers in Japan to third country markets, as well as increased home market shipments.¹³²

¹²⁵ CR at II-33, PR at II-20.

¹²⁶ Production capacity was 89,203 short tons in 1997, then declined to 88,628 short tons in 1998, and declined further to 80,107 short tons in 1999. It was 20,275 short tons in Jan.-Mar. 1999 and 20,129 short tons in Jan.-Mar. 2000. It is projected to increase to 80,888 short tons in 2000 and to 83,108 in 2001. CR/PR at Table VII-2.

¹²⁷ Capacity utilization was 89.7 percent in 1997, 90.2 percent in 1998, and 83.9 percent in 1999. It was 78.1 percent in Jan.-Mar. 1999 and 81.2 percent in Jan.-Mar. 2000. It is projected to increase to 86.1 percent in 2000 and 90.1 percent in 2001. CR/PR at Table VII-2.

¹²⁸ U.S. importers' end-of-period inventories declined from 1,359 short tons in 1997 to 1,332 short tons in 1998, then rose to 1,461 short tons in 1999. They were 1,743 in Jan.-Mar. 1999 and 1,313 in Jan.-Mar. 2000. CR/PR at Table VII-3.

¹²⁹ See CR/PR at Table VII-3.

¹³⁰ CR/PR at Table VII-2.

¹³¹ CR at VII-7, PR at VII-5 - VII-6.

¹³² CR/PR at Table VII-2.

With respect to the effects of the subject imports on development and production efforts, seven of 12 domestic producers informed the Commission that there have been no actual negative effects and six of 12 indicated that they anticipate no negative effects.¹³³

Based on this evidence, and in particular our conclusion regarding no likelihood of substantially increased imports and no likelihood of significant price depression or suppression by reason of subject imports, we find that the U.S. industry producing circular seamless stainless steel hollow products is not threatened with material injury by reason of subject imports of circular seamless stainless steel hollow products from Japan.

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.

¹³³ CR at H-4 - H-5, PR at H-3.

ADDITIONAL AND DISSENTING VIEWS OF CHAIRMAN STEPHEN KOPLAN AND VICE CHAIRMAN DEANNA TANNER OKUN

On the basis of the record in this investigation, we determine that an industry in the United States producing circular seamless stainless steel hollow products (“CSSSHP”) is materially injured by reason of imports of CSSSHP from Japan that are being sold in the United States at less than fair value. We concur with our colleagues’ findings with respect to the domestic like product and the domestic industry. However, for the reasons discussed below, we dissent from the Commission’s determination that the CSSSHP industry in the United States is not materially injured by reason of the subject imports.

In the final phase of antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.¹³⁴ In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹³⁵ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹³⁶ In assessing whether the domestic industry is materially injured by reason of subject imports, we considered all relevant economic factors that bear on the state of the industry in the United States.¹³⁷ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹³⁸

I. The Conditions of Competition

We consider a number of conditions of competition to be pertinent to our analysis in this investigation. As a general matter, there is no single business cycle for hollow products, as aggregate demand depends in large part on demand for CSSSHP in various consuming industries (*e.g.*, aerospace, energy, chemicals, petrochemicals, pharmaceuticals, and semiconductors).¹³⁹ During the period examined in this investigation, demand in some industries increased while demand in others decreased, leading individual market participants to view demand trends somewhat differently. In general, demand increased in 1998 as a result of the strength in the petroleum and petrochemicals fields (at least until mid-1998) and the aerospace sector, weakened somewhat in 1999, and has begun to rebound in 2000 as the oil and gas market has recovered. Apparent U.S. consumption of non-excluded, properly classified hollow products¹⁴⁰ increased by

¹³⁴19 U.S.C. § § 1671d(b) and 1673d(b).

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

¹³⁶19 U.S.C. § 1677(7)(A).

¹³⁷19 U.S.C. § 1677(7)(C)(iii).

¹³⁸19 U.S.C. § 1677(7)(C)(iii).

¹³⁹CR at II-17, PR at II-10.

¹⁴⁰Throughout our Additional and Dissenting Views, discussions of volume reflect adjustments made to official import statistics as a result of scope exclusions and apparent misclassifications by importers and by Customs. Although Petitioners argue in favor of a presumption of correctness of the official import statistics, Customs officials have upheld all of the instances of misclassifications that they have reviewed. Although Respondents

(continued...)

25 percent between 1997 and 1998, fell by 11 percent in 1999, then increased by nearly 50 percent in the first quarter of 2000.¹⁴¹ Some market participants suggest that demand for hot-finished hollow products has increased over the period examined as a result of the increasing ability to use hot-finished products in applications once reserved for cold-finished applications, as well as increasingly-favorable pricing.¹⁴²

U.S. hollow producers have considerable ability to shift supply in response to changes in U.S. market conditions. Fully one-quarter of the domestic industry's total shipments in 1999 were exports (one-third with respect to hot-finished hollow products only). In addition, U.S. producers maintained inventories (primarily of cold-finished hollow products) equivalent to nearly one-fifth of their total shipments in 1999. Moreover, many companies produce products other than hollow products on the same equipment used to produce CSSSHP. Finally, the domestic industry has substantial available capacity to produce CSSSHP, although at no time during the period examined in this investigation did it have sufficient hot-finishing or cold-finishing capacity to supply the entire domestic demand in either market segment. These overall capacity limitations, as well as product-specific constraints discussed below, moderate the domestic industry's ability to respond to changes in U.S. market conditions.

Notwithstanding the ability of the domestic industry to modulate its supply in response to prevailing market conditions, imports supplied the majority of U.S. demand for hot-finished and cold-finished hollow products in the United States. Japan was the largest single source of imports of CSSSHP, although the volume of nonsubject imports in the aggregate was larger than the volume of subject imports.¹⁴³

There is at least a moderate level of substitutability between subject imports and the domestic like product. Purchasers include a number of factors in their sourcing decisions. In terms of importance, the first tier of factors are product quality, product consistency, and reliability of supply. The second tier of factors are availability, delivery time, product range, and (lowest) price. Thus, while market participants generally consider hollow products from Japan and the domestic like product to be interchangeable, products from different sources have different relative strengths and weaknesses. For instance, Japanese hollow products had several strengths, but were dominant in the categories of lowest price and (broadest) product range. U.S. hollow products, on the other hand, were considered to be clearly superior in delivery time.¹⁴⁴ Overall, for a range of subject imports -- approximately 80 percent in 1999 -- there is a high degree of

¹⁴⁰(...continued)

argue in favor of using questionnaire data, several importers did not respond to the Commission. *See*, CR at IV-1-6, PR at IV-1-3.

¹⁴¹Apparent U.S. consumption increased from *** short tons in 1997 to *** short tons in 1998, then fell to *** short tons in 1999. Apparent U.S. consumption was higher in Jan.-Mar. 2000 (*** short tons) than in Jan.-Mar. 1999 (*** short tons). Table IV-5, CR at IV-9, PR at IV-3. Table C-1, CR and PR at C-4.

¹⁴²*See*, CR at II-19-21, PR at II-12. The combination of higher apparent U.S. consumption and declining prices could suggest a facilitating role for supply factors.

¹⁴³Table IV-5, CR at IV-9, PR at IV-3.

¹⁴⁴*Compare*, Table II-1, CR at II-25, PR at II-15 *with* Tables II-2 and II-3, CR at II-30 and II-31, PR at II-18 and II-19.

substitutability with the domestic like product.¹⁴⁵ Nonetheless, there is a portion of the market in certain sizes and pursuant to certain chemistry requirements that the domestic producers are unable to supply.¹⁴⁶

Finally, raw materials are an important cost component in the production and sale of CSSSHP, accounting for 43- 47 percent of the total cost of goods.¹⁴⁷ Stainless steel bars or billets are the stock material for hot-finished CSSSHP, while hot-finished CSSSHP (specifically redraw hollow products) are the stock material for cold-finished CSSSHP. Raw material costs fell sharply between 1997 and 1998, and more moderately between 1998 and 1999.¹⁴⁸ These trends reflect a variety of factors. Between the first quarter of 1997 and the fourth quarter of 1998, nickel prices declined by more than one-half, but then increased substantially, exceeding the price levels in the first quarter of 1997 by the first quarter of 2000. Likewise chromium prices fell markedly from the first quarter of 1997 to the second quarter of 1999, but then increased substantially through the first quarter of 2000.¹⁴⁹ The prices for billets also declined (most noticeably in 1997), while the prices for redraw hollow products fell markedly, albeit irregularly, over the period examined.¹⁵⁰

II. The Volume of Subject Imports

Section 771(7)(C)(i) of the Tariff Act of 1930 (“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.”¹⁵¹

The quantity of subject imports increased from *** short tons in 1997 to *** short tons in 1998, an increase of 95.6 percent. By 1998, the volume of imports of the subject merchandise from Japan surpassed the total shipment volume of the domestic industry and rivaled the volume of imports from all other sources *combined*. While the quantity of subject imports decreased by 35.2 percent between 1998 and 1999, to ***

¹⁴⁵CR at II-23, PR at II-13; Table I-2, CR at I-12, PR at I-11. The record indicates that *** percent of imports of Japanese hot-finished hollow products and *** percent of imports of Japanese cold-finished hollow products may be unavailable from U.S. sources. Table I-2, CR at I-12, PR at I-11.

¹⁴⁶*See*, CR at II-26, PR at II-16. Domestic producers are unable to produce hollow products in certain size categories, although the exact size range is in dispute. It appears, however, that U.S. capability is lacking in the range from 3 inches to 8 or 10 inches in outside diameter. CR at II-26, PR at II-16. PEXCO ***. PEXCO’s Producer Questionnaire Response, Section II-15. International Extruded can produce down to 6 or 8 inch outside diameters, but apparently does not actively seek general business below 10 inches because of the inefficiency of its press in such sizes. CR at II-27 n.50, PR at II-16 n.50. In addition, American Extruded and ALTech have not always been viewed as viable suppliers. CR at II-27, PR at II-16.

¹⁴⁷Table VI-4, CR at VI-9, PR at VI-3.

¹⁴⁸Table VI-4, CR at VI-9, PR at VI-3.

¹⁴⁹CR and PR at V-1. Because stainless steel products have a relatively high level of such expensive alloying elements as chromium and nickel, the underlying costs of these alloying elements are an important component of total raw material costs.

¹⁵⁰Table V-1, CR and PR at V-2. We note that the decline in redraw hollow prices is consistent with the significant decrease in the average unit values of U.S. shipments of redraw hollow products from Japan between 1997 and 1999, as well as the significant increase in the volume of low-priced redraw hollow products from Japan in 1998 and 1999 relative to 1997. *See*, Table E-3, CR at E-8, PR at E-3.

¹⁵¹19 U.S.C. § 1677(7)(C)(i).

short tons, the quantity of subject imports remained greater than the U.S. shipments of the domestic industry in 1999.¹⁵²

Apparent U.S. consumption of CSSSHP increased from 1997 to 1998, and then decreased from 1998 to 1999. Overall, from 1997 to 1999, apparent consumption increased by 10.9 percent.¹⁵³ During this same period, the domestic industry's U.S. shipments decreased by 10.2 percent between 1997 and 1998, falling from 13,177 short tons to 11,827 short tons, then fell by an additional 7.3 percent, to 10,959 short tons, in 1999. Overall, the quantity of imports of the subject merchandise from Japan increased by 26.8 percent, U.S. shipments by the domestic industry decreased by 16.8 percent, and imports from all other countries combined increased by 23.8 percent between 1997 and 1999.¹⁵⁴

The market share of imports of the subject merchandise from Japan increased by 13.5 percentage points between 1997 and 1998, rising from *** percent to *** percent, then retreated by 10.1 percentage points, to *** percent, in 1999. During this same period, the domestic industry's market share decreased by 9.4 percentage points between 1997 and 1998, falling from *** percent to *** percent, then increased by 1.1 percentage point, to *** percent, in 1999. Nonsubject imports held *** percent of the market in 1997, *** percent in 1998, and *** percent in 1999. Overall, the market share of imports of the subject merchandise from Japan increased by 3.4 percentage points, the domestic industry's market share decreased by 8.4 percentage points, and nonsubject imports' market share increased by 4.9 percentage points.¹⁵⁵

We find the volume and the increase in the volume of subject imports, both in absolute terms and relative to domestic consumption, to be significant.

III. The Effect of Subject Imports on Domestic Prices

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 underselling by the imported merchandise as compared with the price of the 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.¹⁵⁶

¹⁵²Table IV-4, CR at IV-7, PR at IV-3; Table III-3, CR at III-7, PR at III-4.

¹⁵³Table C-1, CR and PR at C-4.

¹⁵⁴Table IV-5, CR at IV-9, PR at IV-3. The quantity of subject imports from Japan was 38.0 percent lower in the first quarter of 2000 than in the first quarter of 1999; the quantity of U.S. shipments by the domestic industry was 62.3 percent higher; and the quantity of nonsubject imports was 120.4 percent higher. *Id.* Because of the short duration of the interim period, and the proximity of interim 2000 to the filing of the petition, we do not place great weight on comparisons of data in Jan.-Mar. 1999 to data in Jan.-Mar. 2000.

¹⁵⁵Table IV-5, CR at IV-10, PR at IV-3. The market share of subject imports from Japan was 21.1 percentage points lower in the first quarter of 2000 than in the first quarter of 1999; the market share of the domestic industry was 2.3 percentage points higher; and the market share of nonsubject imports was 18.8 percentage points higher. *Id.*

¹⁵⁶19 U.S.C. § 1677(7)(C)(ii).

Based on the price data collected by the Commission, prices for the domestic like product and the subject imports generally fell over the period examined. With respect to the hot-finished CSSSHP, the prices of domestically-produced ASTM A-312 pipe, hollow bars, and redraw hollows declined irregularly throughout the period examined. Prices of the subject merchandise from Japan exhibited a similar trend, although with a more distinct upturn in the first quarter of 2000, following the filing of the petition. In the majority of instances in which the domestic and Japanese prices could be compared, the Japanese product was sold in the U.S. market for a price lower than the domestic price. Notably, underselling occurred most frequently in 1998 and 1999. In 1997, the Japanese hot-finished stainless hollow products undersold the domestic like product in 7 of 13 instances. However, in 1998 (when the increase in the volume of subject imports was the greatest) and in 1999, the Japanese product undersold the domestic product in 25 of 31 instances. In the first quarter of 2000, after the petition was filed and prices for the Japanese product increased, the degree of underselling decreased.¹⁵⁷

With respect to cold-finished CSSSHP, prices for both U.S.-produced and Japanese CSSSHP declined over the period, and reached low points in 1999. In 31 of 39 instances in which the prices of cold-finished CSSSHP produced in the United States and in Japan could be compared, the Japanese product undersold the domestic like product.¹⁵⁸

Many purchasers identified price competitiveness as an important consideration in their purchase of the subject product. A number of firms noted that Japanese pricing is generally lower than domestic pricing, and several identified Sanyo and Sumitomo as price leaders. Indeed, *** indicated that Japanese producer *** was especially aggressive in its pricing in 1998. This is consistent with a large increase in the volume of shipments reported by ***.¹⁵⁹

We have carefully considered other factors that arguably contribute to the observed pricing levels and trends. Respondents contend that declining prices for hollow products reflect declining input prices, especially that of nickel. In addition, they assert that U.S. producers are able to charge a premium for quick delivery.¹⁶⁰

We agree that input costs are an important component of price. However, the decline in nickel prices in 1997 and 1998, while significant, was completely reversed in 1999 and early 2000. In contrast, domestic prices for virtually all grades and types of CSSSHP, whether hot- or cold-finished, declined over the period examined, as did prices for sales of CSSSHP produced in Japan, and did not recover.¹⁶¹ Moreover, as discussed below, price declines in the U.S. market outpaced cost savings for the majority of the domestic industry that did not benefit extensively from the purchase of Japanese inputs that were sold in the United States at less than fair value. Further, it is clear that the domestic industry's superior delivery

¹⁵⁷Tables V-2-V-3, V-7-V-10; CR at V-9, V-10, V-14 - V-17; PR at V-7, V-8.

¹⁵⁸Tables V-3-V-5, CR at V-11-V-13, PR at V-8 - V-9.

¹⁵⁹CR at II-10, PR at II-6; CR at II-28 and n.53, PR at II-17 and n.53. *See also* Table VII-1, CR at VII-3, PR at VII-2 (indicating that ***'s role as an exporter of CSSSHP to the United States is disproportionate to its status as a manufacturer of CSSSHP in Japan).

¹⁶⁰Japanese Respondents' Prehearing Brief at 71-74 and 87-89.

¹⁶¹*Compare*, CR at V-1, PR at V-1, *with* Tables V-2-V-10, CR at V-9 - V-17, PR at V-8 - V-9. We have also considered the data compiled in Table V-1, CR and PR at V-2. The most significant decline in billet and bar prices appear to have taken place in 1997, although this is based on data from only two reporting companies. While redraw hollow prices declined throughout most of the period examined, we find that this reflects in large part the increasing volume and share, and declining average unit values, of imports of the subject merchandise from Japan. *See, e.g.*, Table E-3, CR at E-8, PR at E-3.

times do not offset other advantages generally attributed by purchasers to CSSSHP from Japan (primarily price, followed by product range).¹⁶²

Respondents also note the limited nature of the data comparing the prices of the domestic like product and the subject merchandise from Japan.¹⁶³ The record indicates that the products for which the Commission gathered direct pricing information account for approximately 7 percent of sales of hot-finished hollow products produced in the United States and imported from Japan, and between 1 and 4 percent of sales of cold-finished hollow products produced in the United States and imported from Japan.¹⁶⁴ However, we find the data to be broadly representative of the overall market environment for hollow products in the United States. Based on more extensive observations, Japanese hollow products undersold U.S. hollow products over the entire range of products in which they compete: in 34 of 51 observations for hot-finished hollows and in 35 of 37 observations for cold-finished hollows.¹⁶⁵

Based on the persistent underselling and aggressive pricing of the subject imports, and the declining domestic prices during the period examined, we conclude that the substantial volumes of subject imports that entered the United States significantly depressed and suppressed domestic prices during the period examined.¹⁶⁶

IV. The Impact of Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) of the Act 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 industry.”^{167 168}

The domestic industry maintained relatively stable capacity over the period examined. The domestic industry’s production increased between 1997 and 1998, fell in 1999, then recovered in the first

¹⁶²See, e.g., Tables II-2 and II-3, CR at II-30 and II-31, PR at II-18 - II-19.

¹⁶³Japanese Respondents’ Posthearing Brief at 13.

¹⁶⁴CR at V-7-V-8, PR at V-6.

¹⁶⁵Table E-3, CR at E-8-12, PR at E-3. These data also reflect the steep declines in average unit values across a broad spectrum of products. *Id.*

¹⁶⁶We note that the limited information on lost sales presented in the Staff Report do not contradict this finding. However, we have not placed great weight on these data because of the paucity of verifiable lost sales and lost revenue allegations provided to the Commission by the Petitioners. See, CR at V-28 - V-32, PR at V-12 - V-14.

¹⁶⁷19 U.S.C. § 1677(7)(C)(iii). See also, Uruguay Round Agreements Act Statement of Administrative Action (SAA), H.R. Rep. 103-316 at 851, 885 (1994); 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).

¹⁶⁸As 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). In its final determination, Commerce determined that the weighted-average dumping margin was 156.81 percent for both Sanyo Special Tube and Sumitomo Metal Industries, and 62.14 percent for all other manufacturers. 65 Fed. Reg. 42985, 42986 (July 12, 2000).

quarter of 2000.¹⁶⁹ The increase in production levels in 1998 did not reflect an increase in U.S. shipments, however, even though apparent U.S. consumption increased by 25 percent between 1997 and 1998; rather, it reflected the combined effects of increased exports and inventory levels. Overall, between 1997 and 1999, U.S. production fell by 11.4 percent and capacity utilization decreased by 3.9 percentage points.¹⁷⁰

From 1997 to 1999, U.S. producers' domestic shipments decreased by 16.8 percent by quantity and by 19.6 percent by value. These declines in domestic shipments occurred while U.S. apparent consumption of CSSSHP increased by 10.9 percent and subject imports increased by 26.8 percent.¹⁷² This decline in shipments corresponded to a 35.5-percent increase in the domestic industry's inventories of CSSSHP and the sharp reduction in U.S. production noted above, contributing to an 11.2-percent decrease in the number of production related workers, and a 13.0-percent decrease in the number of hours worked.¹⁷³

The domestic industry benefitted from declining costs (raw material, direct labor, and factory overhead) and expenses over the period examined. However, as noted in the price section, prices declined significantly. As a result, full fiscal year gross profits and operating income crested in 1998, but were lower in the aggregate in 1999 than in 1997.¹⁷⁴ By all measures -- aggregate on an annualized basis, per unit, and as a share of net sales -- the domestic industry's operating income levels improved in the first quarter of 2000, following the filing of the petition.

Because of declining prices and flagging market share, and despite declining production costs for the larger portion of the period examined, the domestic industry as a whole experienced only brief periods of improvement in its operating performance and little sustained improvement in its bottom line. Moreover, a more detailed performance evaluation indicates that the domestic industry's difficulties were most intense in the second half of 1998 and the first half of 1999, when the subject imports held *** percent of the U.S.

¹⁶⁹Overall capacity utilization remained below 50 percent until the first quarter of 2000, with cold-finishing capacity utilization rates slightly higher than hot-finishing capacity utilization rates. Table III-2, CR at III-4-5, PR at III-3. We note the anomalous capacity reported by one of the smallest U.S. producers, ***.

¹⁷⁰Table III-2, CR at III-4-5, PR at III-3. While U.S. production levels were significantly lower in 1999 than in 1997, production declined less markedly than did U.S. shipments, as the domestic industry's exports and inventory levels increased by about one-third each.

¹⁷¹Following the filing of the petition, U.S. production in Jan.-Mar. 2000 was 73.8 percent higher, and capacity utilization was 20.9 percentage points higher, than the levels in Jan.-Mar. 1999. Table III-2, CR at III-4-5, PR at III-3.

¹⁷²Table IV-5, CR at IV-9, PR at IV-3.

¹⁷³Table C-1, CR and PR at C-4. End of period inventories increased from 2,111 short tons in 1997, to 2,626 short tons in 1998, and to 2,854 short tons in 1999. The number of production workers declined from 1,064 workers in 1997, to 1,000 in 1998, and to 945 in 1999. The number of hours worked also declined from 1.559 million in 1997, to 1.474 million in 1998, and to 1.355 million in 1999. Consistent with the increase in production and shipments evaluated previously, these factors generally improved in the first quarter of 2000, following the filing of the petition.

¹⁷⁴*Compare*, CR Table VI-1 (all stainless steel hollow products) to Tables VI-1A (hot-finished) and VI-1B (cold-finished). On both a unit basis and as a ratio to sales, operating income levels were higher in 1999 than in 1997. These data, however, reflect the increasing proportion of total sales accounted for by the higher-value cold-finished stainless steel hollow products.

market.¹⁷⁵ ¹⁷⁶ It is clear that the financial performance of the domestic industry in 1999 is heavily influenced by the very positive performance of the three companies that rely on Japanese redraw hollow products to produce cold-finished hollow products; the rest of the industry barely broke even in 1999.¹⁷⁷ The differences are even more dramatic when viewing the cold-finishing segment of the industry in isolation.¹⁷⁸

The significant increase in subject imports began in the first six months of 1998. In January through June of 1998, subject imports were *** short tons,¹⁷⁹ equal to 83.8 percent of the quantity of subject imports in 1997. Though the volume of subject imports was high, the domestic industry reported a strong operating performance in the first half of 1998.¹⁸⁰ This was largely the result of a steep decline in unit cost of goods sold in the first half of 1998, which did not recur until the first quarter of 2000.¹⁸¹ In the second half of 1998, subject imports surged 33.3 percent, increasing to *** short tons.¹⁸² During this period, U.S. producers' domestic shipments declined by 30.5 percent, and their profitability fell dramatically; operating income as a percent of sales fell from *** percent in January-June 1998 to *** percent in July-December 1998.¹⁸³ While the volume of subject imports declined from the second half of 1998 to the first half of 1999, they remained at high levels. In the first half of 1999, subject imports accounted for *** percent of domestic apparent consumption.¹⁸⁴ This large volume of dumped imports led to a further decline in U.S. producers' domestic shipments, revenue and profitability. From the second half of 1998 to the first half of 1999, the quantity of U.S. producers' domestic shipments fell by 6.2 percent. These sales were at lower prices, as the value of these shipments declined by 15.7 percent. Operating income as a percent of sales decreased from *** percent in the second half of 1998, to *** percent in the first half of 1999.¹⁸⁵ In the second half of 1999, with the filing of the petition in this

¹⁷⁵Table C-6, CR and PR at C-18.

¹⁷⁶One domestic producer, ALTech, ceased production of CSSSHP in 1999. At the hearing, a former ALTech employee testified: "ALTech began losing significant accounts to subject imports and was eventually forced to cease production. Japanese imports drove my last employer out of business, and are threatening to do the same to my current employer." Tr. at 26 (Mr. Peak).

¹⁷⁷Table C-5, CR and PR at C-15.

¹⁷⁸Table C-4, CR and PR at C-13.

¹⁷⁹Table C-6, CR and PR at C-18.

¹⁸⁰In the January-June 1998 period, the domestic industry's operating income as a percent of sales was *** percent. Table C-6, CR and PR at C-18.

¹⁸¹Table C-6, CR and PR at C-18.

¹⁸²Table C-6, CR and PR at C-18.

¹⁸³Table C-6, CR and PR at C-18.

¹⁸⁴Table C-6, CR and PR at C-18.

¹⁸⁵Table C-6, CR and PR at C-18.

investigation, subject imports declined, and U.S. producers' domestic shipments, revenue, and profitability improved.^{186 187}

We conclude that the declines in the domestic industry's performance during the period examined are attributable to the significant volume of subject imports which entered the United States at prices which significantly suppressed and depressed prices of the domestic like product.

V. Conclusion

For the foregoing reasons, we determine that the domestic industry producing CSSSHP is materially injured by reason of imports of CSSSHP from Japan that are being sold in the United States at less than fair value.

¹⁸⁶Table C-6, CR and PR at C-18. From the first half of 1999 to the second half of 1999, subject imports decreased by 12.5 percent. U.S. producers' domestic shipments increased by 6.9 percent and the value of those shipments increased by 23.3 percent. The domestic industry's operating income as a percent of sales increased to *** percent. The decline in the volume of subject imports and the improvement in the domestic industry's operating performance continued into the first quarter of 2000. Comparing the first quarter of 1999 to the first quarter of 2000, subject imports decreased by 38.0 percent, U.S. producers' U.S. shipments increased by 62.3 percent, and the domestic industry's operating income as a percent of sales increased from *** percent to *** percent.

¹⁸⁷We have carefully examined the role of nonsubject imports in the U.S. market. As discussed above, while the volume of such imports increased significantly over the period examined, the increase in the volume of imports of the subject merchandise from Japan was even more rapid. Moreover, we note that average unit values per short ton of nonsubject CSSSHP remained substantially higher than those of the hot-finished and cold-finished CSSSHP from Japan. Table IV-4, CR at IV-7-IV-8, PR at IV-3. We also note that a large volume of the nonsubject imports do not appear to compete directly with U.S. production. See, Table III-5, CR at III-10-III-11, PR at III-6 and Table E-4, CR at E-13, PR at E-3.