

UNITED STATES INTERNATIONAL TRADE COMMISSION

CIRCULAR SEAMLESS STAINLESS STEEL HOLLOW PRODUCTS FROM JAPAN

Investigation No. 731-TA-859 (Second Remand)

DETERMINATION AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3537, August 2002)

## VIEWS OF THE COMMISSION ON REMAND<sup>1</sup>

Pursuant to the opinion and order dated July 12, 2002, by Judge Jane A. Restani of the U.S. Court of International Trade remanding for the second time the Commission's determination on circular seamless stainless steel hollow products from Japan in Altx, Inc. v. United States, Court No. 00-09-00477, Vice Chairman Hillman and Commissioners Bragg and Miller reaffirm their determination that the domestic industry is not materially injured, nor threatened with material injury, by reason of subject imports that are being sold at less than fair value. They hereby adopt their views as set forth in response to the Court's first remand order.

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

**DISSENTING VIEWS ON REMAND  
OF CHAIRMAN OKUN AND COMMISSIONER KOPLAN**

**BACKGROUND**

On August 17, 2000, the Commission determined that an industry in the United States was neither materially injured nor threatened with material injury by reason of imports of circular seamless stainless steel hollow products (“CSSSHP”) from Japan that the U.S. Department of Commerce (“Commerce”) determined were sold in the United States at less than fair value (“LTFV”).<sup>1 2</sup> That determination was appealed to the U.S. Court of International Trade (“Court”). On September 19, 2001, the Court remanded the determination to the Commission, ordering the Commission to provide additional explanation with respect to its findings regarding the volume, price, impact, and threat of material injury of subject imports. Altx, Inc. v. United States, Court No. 00-09-00477, Slip Op. 01-116 (Sept. 19, 2001).

On November 16, 2001, the Commission, by a 3-3 vote, determined on remand that the industry producing CSSSHP was materially injured by reason of subject imports.<sup>3</sup> On July 12, 2002, the Court again remanded the determination to the Commission, ordering the Commission to provide

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<sup>1</sup> Circular Seamless Stainless Steel Hollow Products from Japan, Inv. No. 731-TA-859 (Final), USITC Pub. 3344 (Aug. 2000). Chairman Okun and Commissioner Koplan determined that an industry in the United States was materially injured by reason of CSSSHP from Japan that was sold in the United States at LTFV.

<sup>2</sup> In its final determination, Commerce determined the weighted-average dumping margin to be 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).

<sup>3</sup> Circular Seamless Stainless Steel Hollow Products from Japan, Inv. No. 731-TA-859 (Remand), USITC Pub. 3475 (Dec. 2001). Chairman Okun and Commissioners Koplan and Devaney made an affirmative determination on remand. Vice Chairman Hillman and Commissioners Bragg and Miller reached a negative determination on remand. Under 19 U.S.C. § 1677(11), a tie vote by the Commission is considered an affirmative vote.

additional assessment and explanation of its findings regarding volume, price, and impact of subject imports. Altx, Inc. v. United States, Court No. 00-09-00477, Slip Op. 02-65 (July 12, 2002). On August 6, 2002, the Commission, by a 3-2 vote, determined on remand that the industry is neither materially injured nor threatened with material injury by reason of CSSSHP from Japan that is sold in the United States at LTFV. For the reasons discussed below, we again make an affirmative determination and dissent from the Commission's negative determination and, pursuant to the Court's order, provide additional explanation of our views.

We have considered the record as a whole and determine to adopt our prior views regarding the domestic like product and industry, as well as the conditions of competition.<sup>4</sup> We also adopt our prior views regarding our material injury findings,<sup>5</sup> as modified below.

## **I. VOLUME OF THE SUBJECT IMPORTS**

In the original Views of Chairman Koplán and Vice-Chairman Okun, which we reaffirmed in the first remand determination, we found that the quantity of subject imports increased from \*\*\* short tons in 1997 to \*\*\* short tons in 1999, after peaking at \*\*\* short tons in 1998. 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. Despite declining in 1999, the volume of subject imports remained greater than the U.S. shipments of the domestic industry. From 1997 to 1998, the domestic industry's U.S. shipments decreased by 10.2 percent, falling from 13,177 short tons to 11,827 short tons; they fell by an additional 7.3 percent, to 10,959 short tons between

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<sup>4</sup> USITC Pub. 3344 at 3-9, 19-20.

<sup>5</sup> USITC Pub. 3344 at 21-26.

1998 and 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.<sup>6</sup> Between 1997 and 1999, 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. We concluded, based on the record, that the volume and the increase in the volume of subject imports, both in absolute terms and relative to domestic consumption, was significant.<sup>7</sup>

On remand, and as instructed by the Court, we have analyzed the significance of subject import volume in light of the relative availability of certain product types produced and sold by the domestic industry.<sup>8</sup> To aid in this analysis, we have re-configured the data presented in Appendix E of the Staff Report to address the following issues.<sup>9</sup>

**A. Increased Consumption Was, in Large Part, of the Range of Products Manufactured by the Domestic Industry and Supplied by Subject Imports**

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).<sup>10</sup> As demonstrated in the tabulation below,

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<sup>6</sup> Because of the short duration of the interim period and the proximity of interim 2000 to the filing of the petition, we did not place great weight on comparisons of January-March 1999 data to January-March 2000 data.

<sup>7</sup> USITC Pub. 3344 at 21-22; *see* CR/PR at Tables III-3, IV-4, IV-5, C-1.

<sup>8</sup> Slip. Op. 02-65 at 19.

<sup>9</sup> *See* Appendix A of these Remand Views.

<sup>10</sup> CR/PR at Tables IV-5, C-1.

between 1997 and 1998, combined shipments of hot- and cold-finished CSSSHP from domestic, Japanese, and nonsubject import sources *in product ranges for which there were limited sales of domestically-produced product* increased by 3,510 short tons.<sup>11 12</sup> This tabulation also shows that

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<sup>11</sup> Appendix A to these Remand Views contains a detailed presentation of the data from which the tabulations in the body of these Views were calculated. To be clear, product categories that are not included as part of the “viable domestic supply” are not limited to those products for which there was no domestic production. Instead, we excluded any product category for which the domestic industry’s shipments did not constitute one-third or more of total shipments for at least one of the periods examined (1997, 1998, 1999, or January-March 2000).

We do not view participation in the market at levels as high as one-third to be an absolute “bright line” test for whether there is viable supply of a particular form of a product. Nonetheless, the data in this investigation indicate that, over the period examined, the domestic industry demonstrated an ability to supply a substantial share of demand for certain forms of CSSSHP under the prevailing market conditions. Among product ranges for which there was “viable domestic supply,” the domestic industry demonstrated an ability to supply not less than 38.5 percent of total shipments in at least one of the periods reviewed. Among product ranges for which there was “limited domestic supply,” the domestic industry demonstrated an ability to supply not more than 18.2 percent of total shipments in at least one of the periods examined.

<sup>12</sup> For purposes of this remand, hot-finished CSSSHP for which there is viable domestic supply includes the following: Boiler tubing grades 213/316 less than or equal to 3 inches in outside diameter; Duplex pipe with outside diameter greater than 5.56 inches; Hollows with outside diameter less than or equal to 3 inches; Hollow bars with outside diameter less than or equal to 3 inches; Hollow bars with outside diameter greater than 3 inches but less than or equal to 5.56 inches; Pipe grades 312/304 less than or equal to 3 inches in outside diameter; Pipe grades 312/316 less than or equal to 3 inches in outside diameter; Pipe grades 312/Other greater than 3 inches in outside diameter; Other HF pipe with outside diameter less than or equal to 3 inches in outside diameter; Other HF pipe with outside diameter greater than 3 inches in outside diameter.

For purposes of this remand, cold-finished CSSSHP for which there is viable domestic supply includes the following: Heat exchange tubing less than or equal to 1-1/4 inches in outside diameter; Heat exchange tubing greater than 1-1/4 inches in outside diameter; Boiler tubing in grades 213/304 greater than 1-1/4 inches in outside diameter; Boiler tubing in grades 213/316 greater than 1-1/4 inches in outside diameter; Boiler tubing in grades 213/347 greater than 1-1/4 inches in outside diameter; Duplex pipe in grades 789, 790 less than or equal to 3 inches in outside diameter; Hollow bar in grade 511 less than or equal to 3 inches in outside diameter; Hollow bar grade 511 greater than 3 inches but less than or equal to 5.56 inches in outside diameter; Pipe in grades 268/405,410 less than or equal to 1 1/4 inches in outside diameter; Pipe in grades 268/405,410 greater than 1 1/4 inches but less than or equal to 3 1/2 inches in outside diameter; All other cold finished pipe.

subject imports from Japan accounted for much of this increase, although nonsubject sources remained by far the largest suppliers of products with limited domestic producer sales. Between 1998 and 1999, combined shipments of hot- and cold-finished CSSSHP in product ranges for which there were limited sales of domestically-produced product decreased by \*\*\* short tons, as a steep decline in shipments of such product from Japan was partially offset by a marked increase by nonsubject import suppliers. Finally, combined shipments of hot- and cold-finished CSSSHP in product ranges for which there were limited sales of domestically-produced product were substantially higher, by \*\*\* short tons, in the first quarter of 2000 than in the first quarter of 1999.

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For purposes of this remand, CSSSHP for which there were limited sales of domestically-produced product includes the remaining 20 product categories of hot-finished pipe and the remaining 11 product categories of cold-finished pipe.

Consumption in Ranges of Product for Which There Were Limited Sales of Domestic Product<sup>13</sup>

<u>Source</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1Q99</u>	<u>1Q00</u>
USA	***	***	***	***	***
Japan	***	***	***	***	***
<u>Other</u>	***	***	***	***	***
TOTAL	***	***	***	***	***

Thus, the record demonstrates that portions of the increase in apparent U.S. consumption did correspond to product ranges for which there were limited sales of domestically-produced product.<sup>14</sup> Moreover, the record demonstrates that subject imports from Japan contributed importantly to the increase between 1997 and 1998, while nonsubject imports contributed importantly to the higher levels in the first quarter of 2000 compared to the first quarter of 1999. A comparison of these data with those explained below, however, provides support for our finding that the increase in subject import volume, not only in absolute terms but relative to consumption, was significant.

As noted above, apparent U.S. consumption increased between 1997 and 1998, decreased in 1999, and was higher in the first quarter of 2000 than in the first quarter of 1999. Between 1997 and 1998, as indicated by the tabulation below, combined shipments of hot- and cold-finished CSSSHP from domestic, Japanese, and nonsubject import sources in product ranges for which there was viable domestic supply increased by \*\*\* short tons. This tabulation further shows that subject imports from

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<sup>13</sup> From CR/PR at App. E.

<sup>14</sup> Because data for hot-finished and cold-finished CSSSHP were consolidated in such a fashion as to minimize any double-counting, CR/PR at Table IV-5 n.1, changes in apparent U.S. consumption will approximate, but not equal, changes in combined shipments of hot-finished and cold-finished CSSSHP.



Japan accounted for all of this increase. Between 1998 and 1999, total shipments of hot- and cold-finished CSSSHP in product ranges for which there was viable domestic supply decreased by \*\*\* short tons, primarily as the result of a steep decline in shipments by the domestic industry. Finally, combined shipments of hot- and cold-finished CSSSHP in product ranges for which there was viable domestic supply were substantially higher, by \*\*\* short tons, in the first quarter of 2000 than in the first quarter of 1999.

Consumption in Ranges of Product for Which There Were Viable Sales of Domestic Product<sup>15</sup>

<u>Source</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1Q99</u>	<u>1Q00</u>
USA	***	***	***	***	***
Japan	***	***	***	***	***
<u>Other</u>	***	***	***	***	***
TOTAL	***	***	***	***	***

Thus, the record demonstrates that portions of the increase in apparent U.S. consumption corresponded to product ranges for which there was viable domestic supply. Moreover, the record demonstrates that subject imports contributed importantly to the increase between 1997 and 1998.

The data set forth and analyzed above show that 88.9 percent of the increase in combined shipments between 1997 and 1998, which was for product ranges for which there was not viable domestic supply, was due to subject imports. Yet for product ranges for which there was viable domestic supply, all of the increase in combined shipments between 1997 and 1998 was due to subject imports. Overall, between 1997 and 1999, for product ranges for which there was viable domestic

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<sup>15</sup> From CR/PR at App. E.

supply, subject imports rose by 93.9 percent, nonsubject imports increased by 21.7 percent, and domestic shipments fell by 23.8 percent.<sup>16</sup>

**B. The Increase in Subject Import Volume and Market Share Displaced Shipments by the Domestic Industry**

To address this issue, we compared the growth rates and shares of combined shipments of hot- and cold-finished CSSSHP from domestic, Japanese, and nonsubject import sources in product ranges for which there was viable domestic supply. Between 1997 and 1999, domestic shipments of such products decreased by 23.8 percent, while nonsubject imports of such products increased by 21.7 percent and subject imports increased by 93.9 percent. In the first quarter of 2000, domestic shipments increased by nearly one-half, subject imports declined by almost one-half, and nonsubject imports more than doubled.<sup>17</sup>

As displayed in the chart below, in 1997, the domestic industry accounted for \*\*\* percent of combined shipments of hot- and cold-finished CSSSHP from domestic, Japanese, and nonsubject import sources in product ranges for which there was viable domestic supply. Nonsubject imports of such products accounted for \*\*\* percent and subject imports accounted for \*\*\* percent. The share of combined shipments accounted for by the domestic industry declined to \*\*\* percent in 1998 and to \*\*\* percent in 1999. In contrast, subject imports from Japan increased their share in product ranges for which there was viable domestic supply to \*\*\* percent in 1998 and \*\*\* percent in 1999. Nonsubject imports' share in product ranges for which there was viable domestic supply fluctuated,

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<sup>16</sup> Table Remand 4, App. A.

<sup>17</sup> Table Remand 4, App. A.

declining to \*\*\* percent in 1998 and increasing to \*\*\* percent in 1999. Overall, between 1997 and 1999, the domestic industry saw its share in product ranges for which there was viable domestic supply fall by 16.1 percentage points, while the shares held by subject imports and nonsubject imports rose by 12.4 percentage points and 3.7 percentage points, respectively.

Market Shares in Ranges of Product for Which There Were Viable Sales of Domestic Product<sup>18</sup>

<u>Source</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1Q99</u>	<u>1Q00</u>
USA	***	***	***	***	***
Japan	***	***	***	***	***
<u>Other</u>	<u>***</u>	<u>***</u>	<u>***</u>	<u>***</u>	<u>***</u>
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%

These data further support our finding that the increase in subject import volume was significant, while the increase in nonsubject import volume was much less significant. Considering all the above evidence with that discussed in our original views, we again find that the increase in subject import volume, both in absolute terms and relative to domestic consumption, was significant, and we find that a large portion of that increase was in the product range produced by the domestic industry.

## II. PRICE EFFECTS OF THE SUBJECT IMPORTS

In our original Views, reaffirmed in the first remand determination, we found that prices for the domestic like product and the subject imports generally fell over the period examined; that in the majority of instances in which the domestic and subject import prices could be compared, the Japanese product was sold in the U.S. market for a price lower than the domestic price; that this underselling was

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<sup>18</sup> From CR/PR at App. E.

most frequent in 1998 and 1999; that many purchasers identified price competitiveness as an important consideration in their purchase of the subject product; that several purchasers reported particular subject producers as price leaders; and that declines in raw material prices were insufficient to explain the larger declines in prices. Based on the persistent underselling and aggressive pricing of the subject imports and the declining domestic prices during the period examined, we concluded that the substantial volumes of subject imports significantly depressed and suppressed domestic prices during the period examined.<sup>19</sup>

On remand, and as instructed by the Court, we have reexamined the correlation between subject import prices and domestic prices and the correlation between underselling and the performance of the domestic industry. We again find that there has been significant underselling by the imported merchandise compared with the price of the domestic like product, and that the subject imports depress and suppress prices of the domestic like product to a significant degree.

As we stated in our original Views, the domestic industry's difficulties were most intense in the second half of 1998 and the first half of 1999, when subject imports held \*\*\* percent of the U.S. market, and for the larger portion of the period examined, the domestic industry as a whole experienced only brief periods of improvement in performance.<sup>20</sup> On remand, we have reexamined the trends in prices of the domestic like product and subject imports and analyzed them in light of various indicators of the health of the domestic industry.

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<sup>19</sup> USITC Pub. 3344 at 22-24.

<sup>20</sup> USITC Pub. 3344 at 25; CR/PR at Table C-6.

In general, prices for the products examined fell over the period, and the prices of subject imports generally fell slightly more than the prices of the U.S. produced products during this time.<sup>21</sup> For product 1, although the prices fluctuated, the prices of the domestic product and the imports from Japan were lower in each year relative to the previous year. Importantly, the product from Japan undersold the domestic product in every price comparison, and the margins of underselling were generally higher at the end of the period.<sup>22</sup> The prices of product 2 followed a similar trend, as both the domestic and imported product generally sold at lower prices each year. While the prices reported by suppliers showed the prices of the imports from Japan were higher than the domestic product, the prices reported by purchasers evidence consistent underselling by the imports from Japan.<sup>23</sup> The price data reported by purchasers of the domestically produced product 3 fluctuated within a narrow range during the last half of 1997 and 1998, and then fell significantly in 1999. The prices of the imports from Japan fell over the period examined. In 1998 and 1999, the margins of underselling were greater than \*\*\* percent in every quarter.<sup>24</sup> For product 4, purchaser prices for the domestic product fell significantly between the last half of 1998 and the first half of 1999, and supplier prices fell even more. Japanese prices were consistently lower than the domestic product during this period.<sup>25</sup>

The domestic and import prices reported by purchasers of product 5 generally fell over the period examined. Although prices were not reported for every quarter for the product from Japan, the

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<sup>21</sup> CR at V-24, PR at V-10.

<sup>22</sup> CR/PR at Table V-2.

<sup>23</sup> CR/PR at Table V-3.

<sup>24</sup> CR/PR at Table V-4.

<sup>25</sup> CR/PR at Table V-5.

imported product undersold the domestic product in every quarter for which data were available, and the margin of underselling generally increased over the period.<sup>26</sup>

The reported prices for the domestic and imported products 6, 7, 8, and 9 do not exhibit the same general downward trends as the other price products. The prices of these products, for both the domestic product and the imports from Japan, fluctuate year to year and sometimes quarter to quarter. Within these product categories, the imports from Japan largely undersold the domestic product.<sup>27 28</sup>

Moreover, even when there were price fluctuations, there was significant underselling, especially when the domestic industry was faring the worst. For product 6, the largest margins of underselling for both

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<sup>26</sup> CR/PR at Table V-6. The domestic prices reported by suppliers were lower in each subsequent year. While the prices of the imports from Japan fluctuated more than the domestic prices, they generally were lower in each subsequent year and undersold the domestic product in most quarterly price comparisons. CR/PR at Table V-6.

<sup>27</sup> CR/PR at Tables V-7 - V-10. In terms of prices reported by suppliers, the product from Japan undersold the domestic product in 8 of 11 comparisons for product 6, in 1 of 1 comparisons for product 7, in 6 of 6 comparisons for product 8, and in 3 of 5 comparisons for product 9. In terms of prices reported by purchasers, the product from Japan undersold the domestic product in 7 of 11 comparisons for product 6, 1 of 5 comparisons for product 7, 5 of 9 comparisons for product 8 and 7 of 7 comparisons for product 9.

<sup>28</sup> The Court noted that the Japanese Producers contend that there was more prevalent overselling for products 2, 7, and 8, and insignificant underselling for product 5. Slip Op. 02-65 at 28. For product 2, while the price data reported by suppliers shows overselling in 9 of 13 price comparisons, the price data reported by purchasers shows underselling in 10 of 11 price comparisons. CR/PR at Table V-3. While the price data reported by purchasers of product 7 does show overselling in the majority of comparisons, there are only 5 quarters with possible comparisons. CR/PR at Table V-8. The price data for product 8 exhibits more quarters with underselling than overselling by the imports from Japan. In the data reported by purchasers, imports undersold the domestic product in 5 of 9 quarters. The price data reported by suppliers exhibits underselling in 6 of 6 quarters. CR/PR at Table V-9. We find the underselling to be significant for product 5. The imports from Japan undersold the domestic product in 10 of 13 quarters in the data reported by suppliers, and in 8 of 8 quarters in the data reported by purchasers. The margins of underselling ranged from \*\*\* percent. CR/PR at Table V-6.

supplier and purchaser prices occurred between the last half of 1998 and the first half of 1999.<sup>29 30</sup>

Price comparisons reported by suppliers for product 8 were unavailable until the last half of 1998, and between then and through the first half of 1999 showed underselling margins ranging from \*\*\* percent to \*\*\* percent.<sup>31</sup>

Although the price trends for products 6, 7, 8, and 9 are less clear than for the other pricing products, it appears that the domestic producers may have lost sales to the less expensive imports from Japan. Comparing the quantity of sales reported during January 1997 to June 1998 with the period July 1998 to December 1999, we note that the volume of sales of domestic product decreased for products 6, 8, and 9, while the volume of sales of the imports of these products from Japan increased between these periods.<sup>32</sup>

Such increased pressure on sales of the domestic product from the lower priced imports is consistent with our finding in our original views that the underselling was most frequent in 1998 and 1999. As noted above, the domestic industry experienced its worse financial performance in the second half of 1998 and the first half of 1999.<sup>33</sup>

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<sup>29</sup> In late 1998 and early 1999, margins of underselling ranged from \*\*\* percent to \*\*\* percent for prices reported by suppliers. Margins of underselling ranged from \*\*\* percent to \*\*\* percent for prices reported by purchasers during that period, with one quarter in which there was \*\*\* percent. CR/PR at Table V-7.

<sup>30</sup> For product 7, there was limited comparability during that period. In late 1998 and early 1999, with respect to prices reported by suppliers, there a margin of underselling of \*\*\* percent for the one quarter for which comparisons were available; there were margins of overselling of \*\*\* percent and \*\*\* percent for the two quarters in which pricing comparisons were available. CR/PR at Table V-8.

<sup>31</sup> Only one price comparison was available as reported by purchasers for product 8 during that period, showing a margin of overselling of \*\*\* percent. CR/PR at Table V-9.

<sup>32</sup> CR/PR at Tables V-7, V-9, and V-10.

<sup>33</sup> CR/PR at Table C-6.

Thus, we find that the prices of the domestic products and the imports from Japan exhibit at least a moderate degree of correlation, the imports largely undersold the domestic products by significant margins, and this underselling was most pronounced during the period when the domestic industry's financial performance was at its weakest. We also affirm our finding that the substantial volumes of subject imports significantly depressed and suppressed domestic prices during the period examined.

### **III. IMPACT OF THE SUBJECT IMPORTS ON THE DOMESTIC INDUSTRY**

In our original Views, reaffirmed in the first remand determination, we found that the declines in the domestic industry's performance during the period examined were attributable to the significant volume of subject imports that entered the United States at prices that significantly suppressed and depressed domestic prices. We based this finding on an examination of a number of factors, including diminished U.S. production and decreased capacity utilization between 1997 and 1999; a decline in domestic shipments during that period; a substantial increase in the domestic industry's inventories; and a decrease in the number of production and related workers and the number of hours worked. We also examined a number of financial indicators and found that although the domestic industry benefited from declining costs, prices declined significantly over the period examined. Gross profits and operating income were lower in 1999 than in 1997. Following the filing of the petition, the domestic industry's operating income levels improved. There was only one brief period of improvement in operating performance during the period examined and little sustained improvement in its bottom line. We analyzed these factors and others in conjunction with the increased volume of subject imports.<sup>34</sup>

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<sup>34</sup> USITC Pub. 3344 at 24-26.



Pursuant to the Court's remand order, we have assessed in detail the effect of the bankruptcy of ALTech on the performance of the domestic industry. We took this factor into account when we initially found that the domestic industry was materially injured by reason of subject imports. Our closer examination has not caused us to change that finding.

Respondents claim that the bankruptcy of ALTech skewed the factors that indicate the financial performance of the domestic industry.<sup>35</sup> ALTech ceased production of CSSSHP in 1999. While the performance of the domestic industry is improved when the data for ALTech are removed from the industry financial data, the trends in the data do not change<sup>36</sup>, suggesting that ALTech's bankruptcy was not the driving force behind the domestic industry's performance over the period examined.

While the record indicates that ALTech has not always been viewed as a viable supplier,<sup>37</sup> there is record evidence that the influx of subject imports contributed to the decision by ALTech to cease production.<sup>38</sup> Nonetheless, we emphasize that we do not make our impact finding based on the data showing the financial performance of individual producers in a single year. Rather, we have

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<sup>35</sup> *See, e.g.*, Respondents' Posthearing Brief at 12.

<sup>36</sup> If ALTech is excluded from the financial data, the remaining domestic producers' operating income was \*\*\* in 1997, \*\*\* in 1998 and \*\*\* in 1999. This corresponds to operating income as a percent of net sales ratios of \*\*\* percent in 1997, \*\*\* percent in 1998 and \*\*\* percent in 1999. Calculated from CR/PR at Table VI-3.

<sup>37</sup> CR at II-27, PR at II-16.

<sup>38</sup> Tr. at 25-26 (Mr. Peak). We note that other evidence in the record alleges that the inefficiencies of ALTech's production process, the financial problems of its parent company, and labor issues were the cause of its downfall. *See, e.g.*, Respondents' Prehearing Brief at 55-57. Therefore, we view the impact of the subject imports as one contributing factor to ALTech's cessation of production.

examined the trends over the entire period in order to ascertain the impact the subject imports had on the domestic industry.<sup>39</sup>

It is clear that the financial performance of the domestic industry in 1999 was heavily influenced by the very positive performance of the three companies that rely on Japanese redraw hollow products to produce cold-finished hollow products.<sup>40</sup> Excluding these and other related parties' data shows an industry that barely broke even in 1999.<sup>41</sup> Also, as we indicated in our original views, the differences are even more dramatic when viewing the cold-finishing segment of the industry in isolation.<sup>42</sup>

In addition, the performance of the largest producer in the industry also influenced the performance of the entire domestic industry. PEXCO's production fell \*\*\* – from \*\*\* short tons in 1997 to \*\*\* short tons in 1999, a difference of \*\*\* short tons, or \*\*\* percent – which accounted for \*\*\* percent of the industry's decline in domestic production from 1997-99.<sup>43</sup> The value of PEXCO's

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<sup>39</sup> In our initial views, we assessed the changes in domestic production over the entire period, as well as, for example, changes in capacity utilization, inventories, the number of production workers, the number of hours they worked, and shipments. *See* USITC Pub. 3344 at 24-25 & nn.36-40.

<sup>40</sup> In 1999, these three companies, \*\*\* purchased a very substantial amount of subject imports. The ratio of these purchases to production in that year was \*\*\* percent for \*\*\*, \*\*\* percent for \*\*\*, and \*\*\* percent for \*\*\*. CR/PR at Table III-5.

<sup>41</sup> *Compare* CR/PR at Table C-5 with CR/PR at Table C-1. For example, operating income for the entire industry was \*\*\* in 1999, CR/PR at Table C-1, but was \*\*\* when related parties were excluded. CR/PR at Table C-5. Operating income for \*\*\* was \*\*\* in 1999, for \*\*\* it was \*\*\*, and for \*\*\* it was \*\*\*. CR/PR at Table VI-3. Yet half of the industry experienced \*\*\* during that year. CR/PR at Table VI-3.

<sup>42</sup> For instance, operating income for the entire cold-finished segment of the industry was \*\*\* in 1999. CR/PR at Table C-3.

<sup>43</sup> *See* CR/PR at Table III-2. PEXCO, a petitioner, was responsible for \*\*\* percent of the production of hot-finished product in 1999 and \*\*\* percent of the production of all CSSSHP in that year. CR/PR at Table III-1.

total sales fell from \*\*\* in 1997 to \*\*\* in 1999, accounting for \*\*\* percent of the decrease experienced by the domestic industry between 1997-99.<sup>44</sup>

In view of the above discussion, especially as pertains to the performance of specific domestic producers, we do not view ALTech's bankruptcy as requiring us to adjust domestic industry data in order to render our finding as to the impact of subject imports on the domestic industry. This is especially true in light of the changes occurring in the domestic industry between 1997 and 1998, when ALTech was still producing CSSSHP.<sup>45</sup>

#### **IV. THE ROLE OF NONSUBJECT IMPORTS**

In our original Views as reaffirmed in the first remand, we found that Japan was the largest single source of imports of CSSSHP, although the volume of nonsubject imports in the aggregate was

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<sup>44</sup> CR/PR at Table VI-3. In terms of operating income, between 1997 and 1999 PEXCO experienced a decline from \*\*\* to \*\*\*, which translated into a much larger decline than that experienced by the domestic industry during that period. Operating income for the entire domestic industry fell from \*\*\* in 1997 to \*\*\* in 1999. CR/PR at Table VI-3. In terms of employment, between 1997 and 1999 the domestic industry lost \*\*\* production and related workers, or \*\*\* percent of the production and related workers. CR/PR at Table III-7. Not all of this decline was due to the bankruptcy of ALTech. For instance, PEXCO lost \*\*\* employees during this period. PEXCO's domestic producer questionnaire responses. Plymouth Tube lost \*\*\* employees. Plymouth Tube's domestic producer questionnaire responses. Salem lost \*\*\* workers. Salem's domestic producer questionnaire responses. DMV lost \*\*\* workers. DMV's domestic producer questionnaire responses. Sandvik lost \*\*\* workers. Sandvik's domestic producer questionnaire responses. Thus, even without the bankruptcy of ALTech, the decline in production and related workers between 1997 and 1999 would still have been significant. The domestic industry, excluding ALTech, lost \*\*\* production and related workers during 1997-99, a decline of \*\*\* percent.

<sup>45</sup> For example, total shipments declined between 1997 and 1998, CR/PR at Table III-3, the number of production and related workers declined, CR/PR at Table III-7, as did their hours worked and their wages, CR/PR at Table III-7, and inventories increased, CR/PR at Table III-6. The value of net sales declined during this period, CR/PR at Table VI-1, and the value of ALTech's net sales followed this trend, as did that of six other of the 12 domestic producers. CR/PR at Table VI-3. ALTech experienced \*\*\* in 1997 and 1998, and seven other firms experienced \*\*\* in at least one of those years, with one firm experiencing \*\*\* in both years. CR/PR at Table VI-3.

larger than the volume of subject imports.<sup>46</sup> We carefully examined the role of nonsubject imports in the U.S. market. 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 found 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. We also noted that a large volume of the nonsubject imports do not appear to compete directly with U.S. production.

On remand, and as instructed by the Court, we have analyzed further the role of nonsubject imports in the market, including the trends in volume and the product ranges of subject and nonsubject imports of CSSSHP. To aid in this analysis, we again rely on re-configured data originally presented in Appendix E of the Staff Report to address the following issues. Pursuant to our closer examination of nonsubject imports, we have found nothing that would cause us to alter our impact finding.

**A. Subject Imports, Rather than Nonsubject Imports, Displaced the Domestic Like Product**

In terms of quantity, subject imports increased from 9,442 short tons in 1997 to 18,468 short tons in 1998, then decreased to 11,976 short tons in 1999.<sup>47</sup> Nonsubject imports increased from 16,860 short tons in 1997 to 19,058 short tons in 1998, and to 20,865 short tons in 1999.<sup>48</sup> Thus, the quantity of subject imports increased by 26.8 percent (2,534 short tons) between 1997 and 1999,

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<sup>46</sup> Table IV-5, CR at IV-9, PR at IV-3.

<sup>47</sup> CR/PR at Table IV-4.

<sup>48</sup> CR/PR at Table IV-4.

while the quantity of nonsubject imports increased by 23.8 percent (4,005 short tons) between 1997 and 1999.

Although the increase in nonsubject imports, in terms of tonnage, was greater than the increase in subject imports, we find that displacement of the domestic like product by nonsubject imports was not especially pronounced. As demonstrated in the tabulation below, throughout the period examined, subject imports were primarily in product ranges for which there was viable domestic supply. Nonsubject imports, however, were closely divided between product ranges for which there was viable domestic supply and product ranges for which there was not.

Consumption in Ranges of Product for Which There Were Viable and Limited Sales of Domestic Product<sup>49</sup>

<u>Source</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>1Q99</u>	<u>1Q00</u>
Japan/viable	***	***	***	***	***
Japan/other	***	***	***	***	***
Viable share	***%	***%	***%	***%	***%
Nonsubject/viable	***	***	***	***	***
Nonsubject/other	***	***	***	***	***
Viable share	***%	***%	***%	***%	***%

Moreover, as the tabulation presented above demonstrates, the larger portion of nonsubject import growth occurred in product ranges for which there was not viable domestic supply. This stands in contrast to the trend in subject imports, for which growth was concentrated in product ranges for which there was viable domestic supply.

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<sup>49</sup> From CR/PR at App. E.

Finally, we incorporate by reference our discussion in the Volume section of these views, in which we demonstrated that between 1997 and 1999, the domestic industry saw its share in product ranges for which there was viable domestic supply fall by 16.1 percentage points, while the shares held by subject imports and nonsubject imports rose by 12.4 percentage points and 3.7 percentage points, respectively. Thus, any displacement of the domestic like product by nonsubject imports was minor in comparison to the displacement by subject imports.

**B. Nonsubject Imports Compete Less Directly with the Domestic Like Product than Do Subject Imports**

As discussed above, subject imports are far more concentrated in product ranges for which there was viable domestic supply. Moreover, in contrast with nonsubject imports, subject imports became relatively more concentrated in product ranges for which there was viable domestic supply.

We do not find these conclusions to be at odds with data compiled in the underlying investigation. In addition to the data from Appendix E of the Staff Report, we have considered information from Table I-1 of the Staff Report, which compared U.S. shipments of domestically produced and imported products by sizes and types. These data demonstrate differences in size ranges for both hot-finished and cold-finished products (nonsubject imports are markedly less prevalent in the smaller size ranges for both hot-finished and cold-finished products).<sup>50</sup> Similarly, by type, nonsubject imports are concentrated in hot-finished A312 pipe and cold-finished redraw hollows and largely absent from cold-finished boiler and heat exchange pipe.<sup>51</sup>

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<sup>50</sup> CR/PR at Table I-1.

<sup>51</sup> CR/PR at Table I-1.

Finally, we have also considered the importers' own characterizations of whether and to what extent their imports of CSSSHP are available from domestic sources.<sup>52</sup> Importers estimated that 1,051 short tons (11.0 percent) of their CSSSHP imports from Japan were unavailable from domestic sources in 1997; 3,665 short tons (19.7 percent) in 1998, and 2,268 short tons (18.7 percent) in 1999. This is roughly consistent with our own calculations of 1,327 short tons; 4,448 short tons; and 1,934 short tons in 1997, 1998, and 1999, respectively.<sup>53</sup> In contrast, importers estimated 2,725 short tons (16.2 percent) of their nonsubject CSSSHP imports were unavailable from domestic sources in 1997; 1,714 short tons (9.0 percent) in 1998; and 2,879 short tons (13.8 percent) in 1999.<sup>54</sup> As demonstrated above, however, using the same criteria, a substantially larger volume and share of nonsubject imports were in product ranges for which there was not viable domestic supply.<sup>55</sup> Thus, based on common criteria, we conclude that competition is more limited between nonsubject imports and the domestic like product than between subject imports and the domestic like product.

In compliance with the remand order, we have also evaluated more closely the volumes of subject and nonsubject imports in connection with the performance of the domestic industry. Again, we find no cause to change our impact finding on the basis of this assessment.

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<sup>52</sup> CR/PR at Table I-2.

<sup>53</sup> See Table, *supra* captioned: Consumption in Ranges of Product for Which There Were Viable and Limited Sales of Domestic Product.

<sup>54</sup> CR/PR at Table I-2.

<sup>55</sup> This suggests that U.S. importers of CSSSHP from Japan and from other sources used different criteria when evaluating whether and to what extent imported CSSSHP was available from domestic sources.

As we indicated in our original Views, the volume of nonsubject imports increased significantly over the period examined, but the increase in the volume of subject imports was even more rapid.<sup>56</sup> Over the period examined, subject import market share increased \*\*\* percentage points, while nonsubject import market share increased \*\*\* percentage points.<sup>57</sup> As explained above and in our original Views, the domestic industry exhibited signs of material injury during the period examined, and fared especially poorly when subject imports surged 33.3 percent in the second half of 1998.<sup>58</sup> During that period, the domestic producers' production declined, as did capacity utilization, domestic shipments (by quantity and value), gross profits, and operating income.<sup>59</sup> Even when nonsubject imports rose most markedly between the first and second halves of 1999, these factors all improved.<sup>60</sup> Thus, we do not agree with the characterization that nonsubject import volume corresponds more closely with the performance of the domestic industry than subject import volume.

Looking at the entire period examined, which showed an overall increase in nonsubject market share, in view of increase in the volume of subject imports as compared to the increase in the volume of nonsubject imports,<sup>61</sup> and the fact that the increase in subject imports was more rapid, we again find that the domestic industry was materially injured by subject imports. During that time, domestic producers' U.S. shipments declined, their inventories increased, net sales fell, gross profit and operating income declined, and the number of production and related workers fell, as did the hours they worked

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<sup>56</sup> USITC Pub. 3344 at 26 n.44.

<sup>57</sup> CR/PR at Table C-1.

<sup>58</sup> USITC Pub. 3344 at 26.

<sup>59</sup> CR/PR at Table C-6; *see* USITC Pub. 3344 at 25-26.

<sup>60</sup> CR/PR at Table C-6.

<sup>61</sup> CR/PR at Table C-1.



and wages they were paid.<sup>62</sup> These trends correspond to the increase in subject imports. Net sales, gross profit and operating income declined irregularly over the period and the declines occurred when nonsubject imports were increasing. Yet the declines in the other enumerated indicators of the domestic industry's performance occurred as subject imports were increasing. In sum, given the significant increase in subject import volume, particularly during the period when domestic industry performance declined most dramatically, the fact that nonsubject imports gained significant market share between 1997 and 1999 during a period when domestic performance was improving;<sup>63</sup> the demonstrated lower degree of competitive overlap between nonsubject imports and the domestic like product; and the higher average unit values of nonsubject imports, we continue to find that the declines in the domestic industry's performance during the period examined are attributable to the significant volume of subject imports that entered the United States at prices that significantly suppressed and depressed prices of the domestic like product.

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<sup>62</sup> CR/PR at Table C-1.

<sup>63</sup> Compare CR/PR at Table C-1 with CR/PR at Table C-6.

## **Conclusion**

For the foregoing reasons, we again find that the industry in the United States producing circular seamless stainless steel hollow products is 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.