

UNITED STATES INTERNATIONAL TRADE COMMISSION

CIRCULAR SEAMLESS STAINLESS STEEL HOLLOW PRODUCTS FROM JAPAN

Investigation No. 731-TA-859 (Remand)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3475, December 2001)

## VIEWS OF THE COMMISSION

### I. Introduction

These Views respond to the second order of remand by the United States Court of International Trade (CIT).<sup>1</sup>

The decision of the CIT remanding these reviews to the Commission stated that the Commission had adequately explained all the issues on which the determinations were remanded.<sup>2</sup> However, because the United States Court of Appeals for the Federal Circuit ruled that floor plate is not within the scope of the 1993 antidumping and countervailing duty orders that form the basis of these reviews, contrary to the Department of Commerce's finding,<sup>3</sup> the CIT again remanded the determinations so that the Commission could review the pertinent data without consideration of floor plate. The CIT instructed the Commission on this second remand to "(1) reconsider whether Belgian

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<sup>1</sup> The Commission's initial Views in these reviews, as well as its first Remand Views, are hereby adopted as further elaborated herein. *See* Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Inv. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (Nov. 2000); Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Inv. Nos. AA1921-197 (Remand), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Remand), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Remand), USITC Pub. 3526 (July 2002).

<sup>2</sup> Usinor Industeel, S.A. v. United States, Consol. Ct. No. 01-00006, Slip Op. 02-152 at 23 (Dec. 20, 2002).

<sup>3</sup> Duferco Steel, Inc. v. United States, Court No. 01-1443 (Fed. Cir. July 12, 2002).

imports should be cumulated with other subject imports; and (2) explain the impact of Duferco [Steel, Inc. v. United States] on its cumulated analysis.”<sup>4</sup>

Following receipt of the CIT decision, the Commission reopened the administrative record, requested specific data from the Belgian producers pertaining to cut-to-length carbon steel plate exclusive of floor plate, and permitted the parties to comment on the data. Accordingly, in this second remand the Commission considers, with floor plate removed from subject imports, whether we should exercise our discretion to cumulate the likely volume and effect of subject imports from Belgium with other subject imports, whether imports from 11 subject countries should again be cumulated, and whether subject imports are likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.<sup>5</sup>

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<sup>4</sup> Slip Op. 02-152 at 24.

<sup>5</sup> The Commission initially cumulated the likely volume and effect of subject imports from all countries except Canada because of the significant differences in conditions of competition pertaining to the Canadian product. *See* USITC Pub. 3364 at 22-23; USITC Pub. 3526 at 15.

We have treated U.S. imports of floor plate as non-subject imports.<sup>6</sup> Accordingly, there were no U.S. imports of the subject merchandise from Belgium during the period of review.<sup>7</sup> However, as explained below, the exclusion of floor plate from the scope does not change the overall body of data significantly, as floor plate accounted for a very small share of overall Belgian plate production and shipments, and of subject imports of cut-to-length plate generally, during both the period examined in the original investigations and the current period of review. We therefore again cumulate subject imports from 11 countries, including Belgium, and reach an affirmative determination in these reviews.

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<sup>6</sup> We include floor plate in the domestic like product, as we did in the original determinations, even though floor plate is no longer included in the scope of the investigations. *See* USITC Pub. 3364 at 5-7. The CIT did not instruct us to revisit the definition of the like product, and nothing in the record of this remand proceeding indicates that there is a sufficiently clear dividing line between domestically produced floor plate and the continuum of other domestically produced plate to warrant not including floor plate in the domestic like product. To the contrary, floor plate is produced using the same manufacturing process as other forms of cut-to-length plate, except for the final rolling pass; it is produced in common thicknesses and without restrictive chemical or mechanical requirements; and it is used in general structural applications. *See* INV-AA-026 (Second Remand CR) at I-2 n.8 (Mar. 5, 2003), Second Remand Public Report (Second Remand PR) at I-2 n.8. It is well-established that the Commission may include articles in the domestic like product that are in addition to those described in the scope of investigation. *See, e.g., Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561 (Fed. Cir. 1996).

<sup>7</sup> *See* Second Remand CR/PR at Table II-2. We note that we did not rely solely on the level of imports from any subject country during the period of review in making our determinations in the initial reviews or on remand. While Belgium may have been one of the largest sources of cut-to-length carbon steel plate among the cumulated countries during the review period before floor plate was removed from the data, *see* Confidential Report for the review investigations (CR)/Public Report for the review investigations (PR) at Table PLATE-IV-1, its imports in 1999 represented only 1.4 percent of imports of cut-to-length carbon steel plate (including floor plate) from all sources. Indeed, in that year imports of cut-to-length carbon steel plate from each of the cumulated countries ranged from 0.0 percent of all imports (Taiwan) to 12.2 percent (Mexico). *Id.*

## II. Cumulation<sup>8</sup>

The Commission determines in this second remand that, with floor plate removed from subject imports, imports of the subject cut-to-length carbon steel plate from Belgium would not be likely to have no discernible adverse impact if the orders were revoked, and that a reasonable overlap of competition among subject imports from Belgium and other subject countries, and the domestic like product, likely would exist if the orders were revoked. The Commission further determines that, as stated in its initial Views and first Remand Views, subject imports from each of the 12 countries (including Canada) would not be likely to have no discernible adverse impact on the domestic industry if the orders were revoked, and that a reasonable overlap of competition between the subject imports and the domestic like product likely would exist if the orders were revoked.<sup>9</sup> We exercise our discretion to cumulate subject imports from 11 countries, but do not cumulate subject imports from Canada because of the significant differences in conditions of competition as explained in the Commission's initial Views and incorporated herein.

### A. Likelihood of No Discernible Adverse Impact<sup>10 11</sup>

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<sup>8</sup> Commissioner Koplan joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and Taiwan, but not with respect to the United Kingdom. *See* Dissenting Views of Chairman Stephen Koplan and Commissioner Thelma J. Askey in *Cut-to-Length Carbon Steel Plate from the United Kingdom*, USITC Pub. 3364 at 59-61.

<sup>9</sup> We note that in this remand determination we apply the term “likely” consistent with the Court’s most recent opinion in this case. *See Usinor Industeel*, Slip Op. 02-152 at 4-6 (*citing Usinor Industeel*, Slip Op. 02-75 and *Usinor Industeel*, Slip Op. 02-39).

<sup>10</sup> As noted in the Commission’s initial Views in these reviews, for a discussion of the analytical framework of Vice Chairman Hillman and Commissioners Miller and Koplan regarding the application of the “no discernible adverse impact” provision, *see Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand*, Inv. Nos. 731-TA-278-280 (Review) and 731-TA-347-348

In its second opinion in this case, the CIT found, as to Germany, that the Commission’s finding of likely volume, for the purposes of determining the likelihood of no discernible adverse impact, was supported by substantial evidence, but instructed the Commission to “recalculate its findings regarding capacity, production and export orientation without consideration of floor plate data and review its conclusion as to likely Belgian volume” in assessing likelihood of no discernible adverse impact for its cumulation analysis.<sup>12</sup> Factors we consider in our analysis, as we did in our initial and first Remand Views, for assessing likelihood of no discernible adverse impact include, among others: size of the industry in each subject country relative to the U.S. market; each subject country’s capacity to produce all types of plate; actual production of subject plate; export orientation; and substitutability of U.S. product and subject country imports. The Commission also considered and, in the CIT’s view, reasonably rejected plaintiffs’ arguments that changes in the European Union (EU) would preclude

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(Review). For a further discussion of Commissioner Koplan’s analytical framework, *see* Iron Metal Construction Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China, Inv. Nos. 803-TA-13 (Review); 701-TA-249 (Review) and 731-TA-262, 263, and 265 (Review) (Views of Commissioner Stephen Koplan Regarding Cumulation).

<sup>11</sup> In both original and five-year review determinations, *see* USITC Pub. 3364 at 15, the Commission’s consideration of trends with respect to cumulation is not the equivalent of an injury analysis thereof. Neenah Foundry Co. v. United States, 155 F. Supp.2d 766, 774 (Ct. Int’l Trade 2001).

<sup>12</sup> Slip Op. 02-152 at 20.

shipments of subject imports to the United States.<sup>13</sup> Finally, the Commission took into account the weakened condition of the U.S. industry during the review period.<sup>14</sup>

The size of the cut-to-length plate industry in Belgium is significant relative to the U.S. market. Its capacity to produce subject plate was \*\*\* short tons in 1999, which was equivalent to \*\*\* percent of apparent U.S. consumption in 1999, the last full year of the period of review.<sup>15</sup> Its capacity utilization fell steadily from 1997 to 1999, reaching \*\*\* percent in 1999.<sup>16</sup> Its unused capacity to produce the subject plate was \*\*\* short tons in 1999.<sup>17</sup> We have taken into account Belgian producers' high reported capacity utilization in interim (January-March) 2000 (exceeding \*\*\*

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<sup>13</sup> Slip Op. 02-152 at 20, 22.

<sup>14</sup> Slip Op. 02-152 at 22 & n.23.

<sup>15</sup> Compare Second Remand CR/PR at Table II-4 (after Belgian capacity adjusted for removal of floor plate production) with Second Remand CR/PR at Table II-2 (apparent U.S. consumption). The ratio of Belgian capacity after the removal of floor plate to apparent U.S. consumption was \*\*\* percent in 1997, \*\*\* percent in 1998, \*\*\* percent in Jan.-Mar. 1999, and \*\*\* percent in Jan.-Mar. 2000. *Id.* Because floor plate is produced on the same equipment as other plate, we have removed floor plate production from the plate capacity figures to arrive at capacity figures for subject plate alone. Floor plate production was minor compared to overall plate capacity, representing less than \*\*\* percent of Belgian capacity in 1998 and 1999, and peaking at \*\*\* percent of Belgian capacity in interim 2000. *Id.* at Table II-4.

<sup>16</sup> See Second Remand CR/PR at Table II-4 (calculated after capacity adjusted for removal of floor plate production). For the period of review as a whole, capacity utilization was \*\*\* percent in 1997, \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in Jan.-Mar. 2000. *Id.* at Table II-4 (calculated after capacity adjusted for removal of floor plate production).

<sup>17</sup> Second Remand CR/PR at Table II-4 (calculated after capacity adjusted for removal of floor plate production).

percent),<sup>18</sup> which appears to reflect a \*\*\*.<sup>19</sup> However, we decline to place decisive weight on one quarter year of data in light of the clear downward trend in capacity utilization shown by the annual data.

In addition to the \*\*\* tons of reported capacity allocated to the production of cut-to-length carbon steel plate (including floor plate), Belgian producers allocated an additional \*\*\* tons of capacity in 1999 to the production of cut-to-length alloy steel plate.<sup>20</sup> This capacity can be used to produce subject cut-to-length plate, given the ability of producers in this industry to shift production from one type of plate to another.<sup>21</sup> The plate industry is one in which it is important to operate at a high level of capacity utilization in order to be profitable.<sup>22</sup> Thus, there is an incentive for the Belgian producers to maximize plate production, they have demonstrated the ability to operate near \*\*\* reported full capacity levels, and they maintain the capacity to shift from the production of non-subject plate to the production of subject plate.

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<sup>18</sup> Second Remand CR/PR Table II-4. Duferco's capacity utilization was \*\*\* percent in Jan.-Mar. 2000 (adjusted for removal of floor plate production), while Usinor's capacity utilization was \*\*\* percent during that period. Duferco's and Usinor's Remand Investigation Questionnaire Responses.

<sup>19</sup> In the first quarter of 2000, total Belgian exports were \*\*\* short tons compared to \*\*\* short tons in the first quarter of 1999. Second Remand CR/PR at Table II-4.

<sup>20</sup> Compare INV-X-227 at Table CTL-SUPP-1 (capacity for all cut-to-length plate) with Second Remand CR/PR at Table II-4 (capacity for subject cut-to-length plate plus floor plate).

<sup>21</sup> See CR at PLATE-I-28, PR at PLATE-I-26; Second Remand CR/PR at I-2 n.8.

<sup>22</sup> See CR at PLATE-II-38, PR at PLATE-II-32.



In addition, the Belgian plate industry has been and remains export-oriented, contrary to Duferco's assertions.<sup>23</sup> In 1992, the last year of the period for which data were collected in the original investigations, \*\*\* percent of Belgium's total shipments of cut-to-length carbon steel plate were exports to the United States – \*\*\* than shipments to its home market – and it exported \*\*\* percent of its shipments to other markets.<sup>24</sup> Belgian producers exported \*\*\* percent of their total shipments of cut-to-length carbon steel plate (excluding floor plate) in 1999.<sup>25</sup> While most of Belgium's exports are now shipped to the EU,<sup>26</sup> the Belgian producers report that approximately \*\*\* percent of Belgian plate is shipped elsewhere.<sup>27</sup> Thus, the Belgian industry is primarily focused on exports, including significant exports to non-EU markets.<sup>28</sup>

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<sup>23</sup> Duferco's Comments on New Data at 9-12.

<sup>24</sup> Original CR/PR at Table 52. The Belgian producers were not able to provide data in this second remand on Belgian capacity, production, inventories, and shipments of subject plate, excluding floor plate, for the period examined in the original investigations. The record of the original investigations does show, however, that U.S. imports of Belgian floor plate were minuscule – they totaled \*\*\* short tons between 1990-92 as compared to U.S. imports of all other subject plate from Belgium totaling \*\*\* short tons between 1990-92. *Id.* at Table F-1 (product 13); Second Remand CR/PR at Table III-1.

<sup>25</sup> Second Remand CR/PR at Table II-4. Exports account for the substantial majority of the Belgian industry's shipment volume. Over the period of review as a whole, exports accounted for \*\*\* percent of total subject plate shipments in 1997, \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in Jan.-Mar. 2000. *Id.*

<sup>26</sup> In 1999, more than \*\*\* percent of Duferco's total sales were to Europe. CR at PLATE-IV-2, PR at PLATE-IV-1.

<sup>27</sup> Duferco's Comments on New Data at 12 n.34.

<sup>28</sup> Contrary to Duferco's claims, the Commission in its Views and the CIT in its rulings on this case did not address the changes in the European market only with respect to Germany. Duferco's Comments on New Data at 8. The CIT stated that "Plaintiffs argued that the recent changes in the

The Belgian industry producing cut-to-length plate continued to demonstrate its interest in the U.S. market over the period of review. Between 1997 and 1999, the Belgian cut-to-length plate industry shipped \*\*\* short tons of microalloy cut-to-length plate to the United States (\*\*\* percent of the \*\*\* short tons shipped to all markets during that thirty-six month period).<sup>29</sup> Similarly, the Belgian cut-to-length plate industry shipped \*\*\* short tons of now-excluded floor plate to the United States between January 1998 and March 2000 (\*\*\* percent of the \*\*\* short tons of floor plate shipped to all markets (including the home market) during that twenty-seven month period).<sup>30</sup>

We have no reason to conclude that, in the absence of the antidumping and countervailing duty orders, the Belgian industry would continue to limit its participation in the U.S. market to non-subject

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European Community have made it unlikely that Belgian and German producers would shift sales to the U.S.” Slip Op. 02-39 at 17; Slip Op. 02-152 at 13. We also note that Germany, like Belgium, claimed the EU to be its home market. *See* German Producers’ Initial Brief on Appeal at 22 (July 20, 2001).

In addition, contrary to Duferco’s claims, the Commission need not quantify the volume of any likely increase in subject imports. Duferco’s Comments on New Data at 8. We note that Duferco provides no support for its assertion, as indeed no such support exists.

<sup>29</sup> INV-X-227 at Table CTL-SUPP-1. Belgium’s exports of microalloy cut-to-length plate to the United States were \*\*\* short tons in 1997, \*\*\* short tons in 1998, and \*\*\* short tons in 1999, which represented \*\*\* percent, \*\*\* percent, and \*\*\* percent of the Belgian industry’s overall shipments (domestic plus export) of microalloy cut-to-length plate in 1997, 1998, and 1999, respectively. *Id.*

While cut-to-length plate of carbon steel is not identical to cut-to-length plate of microalloy steel, the products are sufficiently similar to allow comparisons between the production, marketing, and sales of the two products. *See* USITC Pub. 3364 at 6 (review of the six-factor test typically relied upon by the Commission provides some evidence that microalloy plate could be included in the domestic like product); *see also* CR at PLATE-I-30 n.44, PR at PLATE-I-27 n.44 (domestic plate producers included microalloy products in data).

<sup>30</sup> Second Remand CR/PR at II-9. The share of Belgium’s total floor plate shipments (domestic plus export) that were exported to the United States was \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in interim 2000. *Id.*

products. The Belgian industry is highly dependent upon the production and sale of the subject plate products. Following the rescue of Duferco's plate mills in 1997, subject cut-to-length plate has accounted for approximately three-quarters of total reported cut-to-length plate production in Belgium.<sup>31</sup> Moreover, as the Court has previously noted, a significant percentage of the cut-to-length carbon steel plate products that are produced by Duferco, which is by far the larger of the two Belgian producers, consists of standard products.<sup>32</sup> Floor plate represented only \*\*\* percent of Belgium's total production of cut-to-length carbon steel plate in 1998, \*\*\* percent in 1999, and \*\*\* percent in interim 2000.<sup>33</sup> In contrast, approximately \*\*\* percent of Belgian producers' total shipments of subject plate plus floor plate consists of structural, shipbuilding, and pressure vessel quality plate, compared to a similar \*\*\* percent for the U.S. industry's commercial shipments.<sup>34</sup>

Both Duferco and Usinor Industeel have U.S. affiliates that import and sell in the United States significant quantities of imported plate from other sources.<sup>35</sup> These entities provide a ready avenue

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<sup>31</sup> INV-X-227 at Table CTL-SUPP-1, adjusted to treat floor plate as excluded, rather than subject, plate.

<sup>32</sup> Slip Op. 02-39 at 15 n.16.

<sup>33</sup> Second Remand CR/PR at Table II-4.

<sup>34</sup> Compare INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4. A substantial portion of Belgian cut-to-length plate, like that produced in the United States, is basic structural plate. \*\*\* percent of Belgian producers' plate shipments comprise carbon structural steel plate, compared to \*\*\* percent of U.S. producers' plate shipments. \*\*\* percent of Belgian producers' plate shipments comprise high-strength, low-alloy structural steel plate, compared to \*\*\* percent of U.S. producers' plate shipments. Compare INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4.

<sup>35</sup> See Duferco's, Usinor's, and Fabrique de Charleroi's Importer Questionnaire Responses. Between January 1997 and March 2000, Duferco imported \*\*\* short tons from "other" (non-subject) sources; Usinor imported \*\*\* short tons ("primarily" from \*\*\*); while Fabrique de Charleroi imported

through which Belgian producers can access the U.S. market with imported subject cut-to-length plate in the event of revocation of the subject orders.

We have considered, but remain unpersuaded by, Duferco's argument that the Belgian industry is not likely to seek to participate significantly in the U.S. market because the ownership of the two Belgian producers has changed since the original investigation.<sup>36</sup> As discussed above, both the Belgian industry and related U.S. importers have demonstrated significant interest in the U.S. plate market. Further, the record evidence detailed above concerning Belgian capacity and the nature of plate production indicate that the Belgian industry has both the ability and the incentive to increase exports of subject plate to the United States. A change in ownership does not alter these facts.

The data on subject imports without floor plate do show that there were no subject imports from Belgium during the period of review.<sup>37</sup> The Commission, however, has never viewed the absence of subject imports during the review period as compelling a finding of no discernible adverse impact, given that the imposition of antidumping and countervailing duty orders is expected to, and often does, have a significant restraining effect on the volume of subject imports.<sup>38</sup> In these reviews, other countries

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\*\*\* short tons. *Id.* Usinor's \*\*\* import activities render less significant its \*\*\* effective July 2000. *See* Usinor's Posthearing Brief at 3.

<sup>36</sup> Duferco's Comments on New Data at 10, 15.

<sup>37</sup> Second Remand CR/PR at Table II-2. For all other countries, there were imports during at least one full year of the period. *Id.*

<sup>38</sup> *See, e.g.*, 19 U.S.C. § 1675a(5) (no one statutory factor shall necessarily give decisive guidance); Uruguay Round Trade Agreements Statement of Administrative Action (SAA) at 883-886 (noting the "counterfactual" nature of the inquiry, unlike the inquiry involved in assessing a threat of material injury, as well as noting that the order would be expected to affect the marketing of subject imports). *Compare, e.g.*, 19 U.S.C. § 1677(7)(I) (in original investigations post-petition declines in

besides Belgium as to which we reached affirmative determinations had no or minimal levels of subject imports to the United States during some portions of the review period as follows (in short tons):<sup>39</sup>

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>Jan.-Mar.</u> <u>1999</u>	<u>Jan.-Mar.</u> <u>2000</u>
Finland	34	656	28	10	0
Poland	4,171	477	71	55	0
Romania	56	620	348	0	0
Spain	0	446	356	10	0
Sweden	123	0	188	0	52
Taiwan	0	223	0	0	16

In addition, in the initial Views in these five-year reviews, we recognized that floor plate from Belgium, then assumed to be included in subject merchandise, was a high-value, specialty product, the importation of which during the review period was not necessarily probative of the level or type of plate that would be exported to the United States from Belgium if the orders were revoked:

[T]he fact that Duferco is exporting only niche products while subject to the antidumping and countervailing duty orders is not necessarily indicative of its behavior in the event of revocation of those orders. We note that a significant percentage of the plate products that Duferco manufactures are standard products that likely would compete closely with domestic plate.<sup>40</sup>

The Commission has reached affirmative determinations in other five-year reviews despite the absence of subject imports during the review period. In Furfuryl Alcohol From China and Thailand,<sup>41</sup>

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imports may be disregarded); SAA at 854 (“imposition of provisional duties [in original investigations] in particular, can cause a reduction in import volumes”).

<sup>39</sup> Second Remand CR/PR at Table III-1.

<sup>40</sup> USITC Pub. 3364 at 21 n.108.

<sup>41</sup> Inv. Nos. 731-TA-703 & 705 (Review), USITC Pub. 3412 (Apr. 2001), *aff’d*, Indorama Chemicals (Thailand) Ltd. v. United States Int’l Trade Comm’n, Slip Op. 02-105 (Ct. Int’l Trade Sept. 4, 2002).

there were no subject imports from China during the review period. Because the size of the industry was significant and capacity in China was sizeable, and because China devoted considerable resources to its export markets, the Commission found that the likely imports from China would have a discernible adverse impact on the domestic industry and elected to cumulate subject imports from China and Thailand in making its determinations.<sup>42</sup> On appeal, the CIT affirmed the determinations.<sup>43</sup>

In another five-year review, Ferrovandium and Nitrided Vanadium From Russia,<sup>44</sup> the Commission made an affirmative determination even though there had been no subject imports in the U.S. market since shortly after issuance of the antidumping duty order. The Commission found, among other facts, that there was significant excess capacity in Russia to manufacture the subject merchandise; that the Russian industry was export-oriented; and that there was substantial flexibility in shifting sales between national markets such that increased sales to the United States would be likely to occur rapidly.<sup>45</sup>

In sum, the record on remand, with floor plate excluded from the subject merchandise, supports a finding that subject imports from Belgium are not likely to have no discernible adverse impact in the event of revocation of the subject orders, notwithstanding the absence of subject imports from Belgium during the review period. The factors supporting this finding include: the Belgian industry's export orientation and ability to redirect and increase production; the size of the Belgian industry; the Belgian

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<sup>42</sup> USITC Pub. 3412 at 9-11.

<sup>43</sup> Slip Op. 02-105 at 15.

<sup>44</sup> Inv. No. 731-TA-702 (Review), USITC Pub. 3420 (May 2001).

<sup>45</sup> USITC Pub. 3420 at 12-16.

industry's substantial capacity to produce all types of plate products; its actual production of significant volumes of subject plate as well as other plate; its participation in the U.S. market for non-subject, but similar, products; and the weakened state of the U.S. industry. We also find that the incentive for steel producers to increase sales to maximize the use of available capacity, as well as the role of increasingly consolidated service centers in seeking out sources of low-cost supplies,<sup>46</sup> further support the conclusion that revocation of the subject orders on Belgium likely would not result in no discernible adverse impact on the domestic cut-to-length plate industry.

As the Commission stated in its initial Views and first Remand Views, and remains unchanged in this second remand, the size of the industry producing cut-to-length carbon steel plate in each subject country is significant;<sup>47</sup> each has substantial capacity to produce a variety of plate products; actual production of subject plate as well as other plate is significant; and most countries export a substantial share of their production.<sup>48</sup> Because the types of plate products manufactured in the subject countries do not differ dramatically from those produced in the United States, we again find that imports from each of the subject countries likely would be substitutable for, and competitive with, domestically produced plate. We also again find that competition likely would be on the basis of price, as stated in the Commission's initial Views. Thus, for the foregoing reasons, as explained in more detail in those

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<sup>46</sup> See USITC Pub. 3364 at 28.

<sup>47</sup> Consideration of floor plate as an excluded form of cut-to-length carbon steel plate does not affect this characterization. In 1999, floor plate accounted for \*\*\* percent of total shipments of cut-to-length carbon steel plate from Belgium, and \*\*\* percent or less for all of the other reporting subject countries. INV-X-230 at Tables CTL-SUPP-13-24.

<sup>48</sup> USITC Pub. 3364 at 20; USITC Pub. 3526 at 15-16.

Views, and in light of the weakened condition of the U.S. industry, as described in the first remand and our initial determinations, the likely imports of plate from each of the subject countries would have a discernible adverse impact on the domestic industry.<sup>49</sup>

### **B. Reasonable Overlap of Competition**

As the Commission explained in its initial Views in these reviews, as well as on the first remand, there is a reasonable overlap in the types of subject plate produced in each subject country and in the United States.<sup>50</sup> The CIT has sustained this finding.<sup>51</sup>

In particular, in the initial reviews we considered the fact that, although subject countries such as Belgium may have exported specialty plate products to the United States during the review period and argued that their products did not compete with the domestic like product, the record showed that they continued to produce commodity plate in significant quantities such that there would likely be a reasonable overlap of competition with the domestic like product. We noted Duferco's argument that its exports to the United States do not compete with the vast majority of domestic plate production. We found, however, that the fact that Duferco has exported only niche products (*i.e.* floor plate, which is now non-subject product) to the United States while subject to the orders is not necessarily indicative of its behavior upon revocation of those orders, as the majority of Belgian production is of standard

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<sup>49</sup> See USITC Pub. 3364 at 20; USITC Pub. 3526 at 15-16.

<sup>50</sup> USITC Pub. 3364 at 21-22; USITC Pub. 3526 at 16-17.

<sup>51</sup> Slip Op. 02-152 at 20-21; Slip Op. 02-39 at 14-16.



plate products that likely would compete closely with domestic plate.<sup>52</sup> We affirm this analysis in these Remand Views. The removal of floor plate as subject merchandise does not change our analysis. As stated previously, Belgian production of floor plate accounted, as a share of its total production of carbon steel cut-to-length plate, for only \*\*\* percent in 1998, \*\*\* percent in 1999 and \*\*\* percent in interim 2000,<sup>53</sup> while a substantial majority of Belgium's production in 1999 was of standard subject grades that compete with the vast majority of U.S. production, as well as with shipments by producers in the other subject countries.<sup>54</sup>

With respect to respondent's argument as to channels of distribution, we stated in our initial Views in these reviews that both domestic producers and importers ship plate to end users, distributors

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<sup>52</sup> USITC Pub. 3364 at 21 n.108. In fact, as noted above, the Belgian industry's mix of plate products is quite similar to the domestic industry's. *Compare* INV-X-230 at Table CTL-SUPP-13 with INV-X-229 at Table D-4.

<sup>53</sup> Second Remand CR/PR at Table II-4.

<sup>54</sup> *See* INV-X-229 at Table D-4, INV-X-230 at Tables CTL-SUPP-13-24. We do not find it likely that the Belgian cut-to-length plate industry would limit U.S. shipments to floor plate, as floor plate is a niche product with little appreciable volume. *See, e.g.*, Second Remand CR/PR at III-1 (floor plate accounted for less than \*\*\* percent of U.S. and Belgian producers' cut-to-length carbon steel plate offerings in the United States during 1990-92). Producers of cut-to-length carbon steel plate simply do not devote substantial capacity or sales efforts to producing and marketing floor plate. In 1999, floor plate accounted for \*\*\* percent of cut-to-length carbon steel plate commercial shipments by U.S. producers; \*\*\* percent of cut-to-length carbon steel plate total shipments by producers in Belgium; \*\*\* percent by producers in Brazil and the United Kingdom; \*\*\* percent by producers in Finland; \*\*\* percent by producers in Germany; and \*\*\* percent by producers in Canada (subject), Mexico, Romania, Spain, and Sweden. INV-X-229 at Table D-4; INV-X-230 at Tables CTL-SUPP-13-24.

and service centers/processors.<sup>55</sup> The CIT upheld this finding.<sup>56</sup> The fact that Belgian producers did not export subject plate to the United States during the period of review does not alter our finding of overlapping channels of distribution, as related importers shipped non-subject Belgian plate to \*\*\*.<sup>57</sup> The use of common and overlapping channels of distribution by U.S. importers, including those related to the Belgian producers, in their sales of cut-to-length carbon steel plate from subject and non-subject countries, as well as in their sales of related non-subject plate products, leads us to conclude that the channels of distribution for cut-to-length carbon steel plate likely would overlap if the subject orders were revoked.<sup>58</sup>

In light of the importance of distributors/steel service centers that are dispersed throughout the United States, it is likely that subject imports from Belgium would be simultaneously present in the U.S. market as a whole and in the same geographical markets as other subject imports and the domestic like product. The fact that in the original investigations the Commission found that subject imports competed with each other and with the domestic like product further supports our finding, as does the fact that during the review period Belgium shipped to the United States significant quantities of microalloy plate, which is similar (though not identical) to subject plate, as explained above. The

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<sup>55</sup> USITC Pub. 3364 at 21.

<sup>56</sup> Slip Op. 02-39 at 15.

<sup>57</sup> *See* Duferco's Importer Questionnaire Response at 8; Slip Op. 02-39 at 15 & nn. 17-18. The fact that Duferco uses its related importer exclusively to ship plate to the United States is irrelevant. Duferco ships to \*\*\*, as do importers of the subject imports and domestic like product. *See* Duferco's Importer Questionnaire Response; CR/PR at PLATE-II-1; Slip Op. 02-39 at 15 & nn.17-18.

<sup>58</sup> *See, e.g.*, Duferco's, Usinor's, and Fabrique de Charleroi's Importer Questionnaire Responses.

Belgian plate industry clearly has an interest in the U.S. market. Upon revocation of the orders, subject imports from Belgium are likely to be substitutable for and competitive with domestically produced plate on the basis of price,<sup>59</sup> especially in view of the fact that Belgium produces a significant amount of subject plate and exports a substantial portion of its production.<sup>60</sup>

In sum, we find that a reasonable overlap of competition upon revocation is likely. The Belgian plate industry, like the plate industries in other subject countries and the United States, continues to produce, as it did in the original investigations, a variety of plate products. These products include substantial volumes of commodity cut-to-length plate that account for a large share of the U.S. market, notwithstanding the exportation of certain specialized, including non-subject, plate to the United States as a result of the orders. Furthermore, subject plate and the domestic product generally are interchangeable and compete substantially on price. Finally, service centers, a major distribution channel for both the U.S. product and subject imports, have consolidated since the original investigations and enhanced their ability to purchase and hold in inventory sizeable quantities of imported plate.<sup>61</sup>

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<sup>59</sup> See USITC Pub. 3364 at 21-22, USITC Pub. 3526 at 16-17.

<sup>60</sup> The safeguard duties referred to by Duferco, *see* Duferco's Comments on New Data at 13, were imposed subsequent to the period of review and subsequent to the Commission's five-year review determination; they comprise new information that was raised before neither the Commission nor the CIT.

<sup>61</sup> See USITC Pub. 3364 at 21-22; USITC Pub. 3526 at 17.

The CIT has approved the Commission's findings regarding a reasonable overlap in competition and has rejected Duferco's challenges to them.<sup>62</sup> The record, as supplemented pursuant to these remand proceedings, provides no need or basis to change these findings. The basic facts and reasoning contained in our findings remain supported by the record and any changes in the data resulting from the removal of floor plate are quite small in absolute terms and with respect to observed trends in the data.<sup>63</sup>

Accordingly, as we did in the initial reviews and the first remand, we exercise our discretion to cumulate subject imports from Belgium with those from all countries subject to these reviews with the exception of Canada.<sup>64</sup>

### **C. Other Considerations/Conditions of Competition**

In our initial review and first remand determinations, we found no significant differences in conditions of competition among subject imports from all subject countries other than Canada.<sup>65</sup> We reaffirm that finding here, and do not cumulate subject imports from Canada with those from the 11 other subject countries, including Belgium, for our analysis of likelihood of continuation or recurrence of material injury.

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<sup>62</sup> See Slip Op. 02-39 at 14-16.

<sup>63</sup> Compare, e.g., Second Remand CR/PR at Table II-4 with CR/PR at Table PLATE-IV-3. For example, Belgian production of subject plate increased significantly between 1997 and 1998, and fell \*\*\* between 1998 and 1999; total exports followed the same trend; and capacity utilization fell steadily between 1997 and 1999.

<sup>64</sup> See USITC Pub. 3364 at 22-23, 33-34 for an explanation of our findings with respect to Canada.

<sup>65</sup> USITC Pub. 3364 at 22-23; USITC Pub. 3526 at 17-18.

**III. Revocation of the Orders on Subject Plate Imports from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**<sup>66 67</sup>

**A. Likely Volume of Subject Imports**

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, the volume of cumulated subject imports likely would be significant within a reasonably foreseeable time if the orders are revoked.<sup>68</sup> The CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.<sup>69</sup>

We note that the record indicates that the amount of floor plate shipped to the United States in the original investigations, as in these reviews, was limited.<sup>70</sup> Of the 11 cumulated countries, there were only three for which there were reported U.S. imports of floor plate during the original investigations: Belgium, Finland, and Mexico. In 1992, the last full year of the period examined in the original

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<sup>66</sup> Commissioner Koplán joins in this discussion with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and Taiwan, but not with respect to the United Kingdom. *See* Dissenting Views of Chairman Steve Koplán and Commissioner Thelma J. Askey in Cut-to-Length Carbon Steel Plate from the United Kingdom, USITC Pub. 3364 at 59-61.

<sup>67</sup> Because the interim data for 1999 and 2000 cover only limited three-month periods, we have placed less emphasis on interim period comparisons.

<sup>68</sup> USITC Pub. 3364 at 26-28; USITC Pub. 3526 at 23-24.

<sup>69</sup> Slip Op. 02-152 at 22. The CIT also found our explanation of our rejection of plaintiffs' arguments pertaining to the EU to be reasonable. *Id.* at 22.

<sup>70</sup> Imports of floor plate from all subject countries during the period examined in the original investigations were as follows: \*\*\* short tons in 1990, \*\*\* short tons in 1991 and \*\*\* short tons in 1992. During the period of review, they were as follows (excluding Canada): 623 short tons in 1997, 25,268 short tons in 1998 and 9,153 short tons in 1999. *Compare, e.g.,* Second Remand CR/PR at Table III-1 *with* CR/PR at Table PLATE-I-1.

investigations, imports of floor plate from these three countries totaled only \*\*\* short tons<sup>71</sup> when total subject plate imports from the 11 cumulated countries were \*\*\* short tons in that year.<sup>72</sup> Further, none of the subject countries' import market shares for any of the years of the period examined in the original investigations changed as a result of the exclusion of these imports of floor plate.<sup>73</sup> Thus, to the extent we considered the volume of subject imports in the original investigations in analyzing likely volume in the five-year reviews, the removal of floor plate as subject merchandise does not materially change our analysis.

## **B. Likely Price Effects of Subject Imports**

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, the significant increased volumes of cumulated subject imports likely would undersell domestic plate products to a significant degree and have significant price suppressing and depressing effects within a reasonably foreseeable time if the orders are revoked.<sup>74</sup> We note that the CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.<sup>75</sup>

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<sup>71</sup> The record indicates that Mexico was the only subject country for which U.S. imports of floor plate were reported in 1992. *See* Second Remand CR/PR at III-1 n.1, Table III-1; *see also* Original CR/PR at Table F-1.

<sup>72</sup> Second Remand CR/PR at Table III-1. We note that plate from one of the 11 cumulated countries, Taiwan, was not subject product during the 1993 investigations inasmuch as it was already covered by an existing antidumping duty order. However, there were no imports of floor plate from Taiwan in 1992. *See* INV-X-225 at Table S-1.

<sup>73</sup> *Compare* CR/PR at Table PLATE-I-1 *with* Second Remand CR/PR at Table III-1; *see also* Second Remand CR/PR at III-1 n.1.

<sup>74</sup> USITC Pub. 3364 at 29; USITC Pub. 3526 at 24-25.

<sup>75</sup> Slip Op. 02-152 at 22 n.23.

### **C. Likely Impact of Subject Imports**

We adopt our findings in our initial review and first remand determinations and find that, in these reviews, if the orders are revoked, cumulated subject imports likely would enter the U.S. market in sufficient quantities and at prices below those of the domestic product so as to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>76</sup> We find in particular that while the domestic industry's indicators of economic health improved toward the end of the review period, it remains in a weakened state.<sup>77</sup> We note that the CIT has found no error in our reasoning or in our reliance upon the material in the record that supports this reasoning.<sup>78</sup>

### **CONCLUSION**

Accordingly, based on the record in these reviews and pursuant to the Court's instructions upon remanding the first remand determinations to the Commission, we conclude that revocation of the antidumping and countervailing duty orders on cut-to-length plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom,<sup>79</sup> would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>76</sup> USITC Pub. 3364 at 30-33; USITC Pub. 3526 at 25-29.

<sup>77</sup> USITC Pub. 3364 at 30-32.

<sup>78</sup> Slip Op. 02-152 at 22 n.23.

<sup>79</sup> Commissioner Koplán dissenting with respect to the United Kingdom.

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

**BACKGROUND**

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

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

**I. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS**

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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 Koplan and Vice Chairman Okun determined that an industry in the United States was materially injured by reason of imports of hollow products from Japan.

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

<sup>3</sup>USITC Pub. 3344 at 3-11.



**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.”<sup>4</sup> <sup>5</sup>

Although the quantity of subject imports<sup>6</sup> almost doubled between 1997 and 1998, it decreased significantly between 1998 and 1999, and was lower in interim 2000 than in interim 1999.<sup>7</sup> Subject import market share, as measured by quantity, rose between 1997 and 1998, then decreased between 1998 and 1999, and was much lower in interim 2000 than in interim 1999.<sup>8</sup> During the period that subject import volumes increased, several important indicators of the domestic industry’s condition, including production, capacity utilization, net sales, operating income, and operating income ratio all rose to their peak annual levels for the period. These indicators subsequently fell from 1998 to 1999, at the same time that subject

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<sup>4</sup>19 U.S.C. § 1677(7)(C)(i).

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

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

<sup>7</sup>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.

<sup>8</sup>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. The ratio of subject imports relative to domestic production was \*\*\* percent in 1997, \*\*\* percent in 1998 and \*\*\* percent in 1999. It was \*\*\* percent in Jan.-Mar. 1999 and \*\*\* percent in Jan.-Mar. 2000. Compare CR/PR at Table III-2 with CR/PR at Table IV-4.

import levels and subject import market share were falling.<sup>9</sup>

The Court asks us to consider petitioners' argument during their appeal that the improvement in the domestic industry's performance in 1998 was directly attributable to its \*\*\*, and that the domestic industry was in fact weakening between 1997 and 1998. We recognize that domestic shipments declined from 1997 to 1999.<sup>10</sup> An examination of the domestic industry's total shipments minus \*\*\* does not lead us to find that the domestic industry's condition worsened in 1998. The indicators of the U.S. industry's condition, in particular operating income, predominantly reflects sales in the domestic market, given their much higher share of the value of \*\*\*, compared to \*\*\*, in every year of the investigation period. The value of \*\*\* was only \*\*\* percent of \*\*\* in 1997, \*\*\* percent in 1998 and \*\*\* percent in 1999. The interim 2000 share was less than \*\*\* percent.<sup>11 12</sup>

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

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

<sup>11</sup>See CR/PR at Table C-1.

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

We find the trends between 1998 and 1999 to be most relevant to our analysis in view of the fact that the domestic industry's condition was better overall in 1997 and 1998 than in 1999, and therefore any injury that occurred would be in 1999.<sup>13</sup> As discussed above, subject import volume and market share fell between 1998 and 1999. At the same time, nonsubject import volume rose and nonsubject market share rose sharply.<sup>14</sup> In fact, nonsubject market share was greater than subject market share for all of the period.<sup>15</sup>

As the Court directed, we have considered whether the filing of the petition on October 26, 1999, affected the volume of imports starting in the second half of 1999 and first half of 2000 such that we

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

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

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

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

should give less weight to import volumes in these periods.<sup>16</sup> The sharpest decline in subject imports occurred between the second half of 1998 and the first half of 1999<sup>17</sup> -- well before the filing of the petition. Consequently, we do not consider the decline to be a function of the filing of the petition, or to reflect the impact of unspecified “rumors” that the petition was about to be filed, particularly given the lack of substantial support in the record as to such rumors.<sup>18</sup>

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

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<sup>16</sup>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). We note that the decision to accord less weight to the post-petition data is within our discretion and that it does not mention pre-petition information.

<sup>17</sup>See CR/PR at Table C-6.

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

<sup>19</sup>See CR/PR at Table C-1. The record does not support petitioners’ contention that subject imports in 1997 and 1998 had a material impact on the domestic industry in 1999. Importers’ inventories decreased from 1997 to 1998, which is contrary to the trend one would expect if merchandise present in

which were substantially lower in both volume and market share in 1999 than they were in 1998.<sup>20</sup> In light of the factors discussed above, we do not conclude that the subject import volume is significant, notwithstanding the increases in subject import volume and market penetration from 1997 to 1998, and between the first and last years of the period of investigation.

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

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1997 were to have an adverse effect on the domestic industry in 1998. Moreover, in 1998, there was a large increase in consumption, from \*\*\* short tons to \*\*\* short tons, CR/PR at Table C-1, making it likely that 1997 and 1998 imports were consumed by 1998 and had cleared the market.

<sup>20</sup>See CR/PR at Table IV-4.

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

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

data.”<sup>23</sup> In this investigation in particular, we find this to be the case.<sup>24</sup>

### **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.

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

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<sup>23</sup>Maine Potato Council v. United States, 613 F. Supp. 1237, 1244 n.8 (Ct. Int’l Trade 1985).

<sup>24</sup>The COMPAS model relies, among other factors, on the antidumping margins estimated by Commerce. In this case, the margin estimated by Commerce was based on best information available. 65 Fed. Reg. 42985, 42985-86 (July 12, 2000). The model assumes that this margin will be passed through in full to the domestic market, *i.e.*, that the weighted average margin of 121.3 percent has resulted in a substantial decrease in the price of the subject imports in the U.S. market (by more than 50 percent). This suggests a pricing level for subject imports that is so high that they would not have been in the U.S. market at a Commerce-determined fair price. Given the historic and established role that these subject imports have played in the U.S. market, including product niches unfilled by domestic producers, we do not find this to be a reasonable conclusion, thus further limiting the usefulness of the COMPAS model in this investigation. Finally, the COMPAS model estimates the possible effect on revenue, but not profitability or other financial data such as cost of goods sold -- both important factors in our determination in this case.

<sup>25</sup>CR at V-22, PR at V-9.

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

product.<sup>27</sup>

The Court directed us to reconsider our finding on underselling in light of our reconsideration of the condition of the domestic industry. Domestic prices for many of the products declined for portions of the period examined. The pricing data collected indicate extensive underselling by subject imports throughout the period of investigation,<sup>28</sup> and substantial margins of underselling. This underselling, viewed in isolation, could be considered significant. However, as noted above (and discussed in more detail below in our analysis of impact), we find the industry's condition to be strong in 1997-98, despite reported declines in domestic shipments.<sup>29</sup> The condition of the domestic industry improved markedly in 1998, when subject imports were at their peak, and while showing declines in 1999 in certain indicators such as operating income, remained favorable through interim 2000, despite persistent underselling by subject imports and declining domestic prices. For example, the quantity of net sales increased in 1998, as did gross profit. Operating income nearly doubled, as did net income.<sup>30</sup> We also note that the underselling was prevalent during periods when the domestic prices were stable or rising, as well as during periods of declining prices<sup>31</sup> and at a time when the volumes of imports associated with the underselling were decreasing.<sup>32</sup> The record does not support a conclusion that underselling by subject imports was reflected in operating declines by the industry; instead, the opposite occurred. Therefore, based on the lack of correlation between underselling and the condition of the domestic industry, we do not find the underselling to be significant.

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<sup>27</sup>CR at II-24, PR at II-14.

<sup>28</sup>CR/PR at Tables V-2 - V-10.

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

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

<sup>31</sup>CR/PR at Tables V-2 - V-10.

<sup>32</sup>CR/PR at Table C-1.

The Court directed us to clarify our analysis of price depression or suppression. As noted above, underselling was prevalent during periods when domestic prices were stable, rising and falling. At least some of the price declines that did occur can be explained by the decline in input costs during the period examined. For example, while most of the collected pricing data indicate declines of about 10 percent or less between the first quarter of 1997 and the fourth quarter of 1998 (with some price levels increasing),<sup>33</sup> unit raw material costs fell 11 percent between 1997 and 1998, and the total unit cost of goods sold declined 11 percent between 1997 and 1998.<sup>34</sup> Even when the costs for certain raw material components (nickel and chromium) increased in 1999, overall input costs continued to fall.<sup>35</sup> Thus, the trend in input costs in 1999 is consistent with the trend in prices for that year. We note that demand, as measured by apparent consumption, fell in 1999 as well. While demand rose in 1998, input costs fell at the same time and the industry's condition improved.<sup>36</sup> As discussed earlier, we find the 1998-99 trends to be most relevant to our analysis. Thus, notwithstanding the increase in demand in 1998, we find that the weight of the evidence supports our finding of no significant price depression or suppression by reason of subject imports.

The Court directed us to reconsider, and to provide additional explanation of, the price effect of nonsubject imports. As discussed earlier, nonsubject imports were greater than subject imports in terms of both absolute volume and market share throughout the period. In 1999, nonsubject imports surged to

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

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

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

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



their highest volume and market share for the full-year period, at the same time that subject import volume and market share fell and declining market prices coincided with falling indicators of the domestic industry's condition. Several purchasers indicated that for certain products, prices for imports from Europe were lower than those from Japan<sup>37</sup> and one large purchaser stated that European producers were the price leaders from June 1998 to November 1999.<sup>38</sup> Any such price leadership would have coincided with the surge in nonsubject import volumes and the decline in the domestic industry's condition.<sup>39</sup>

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

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

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<sup>37</sup>CR at II-34, PR at II-21.

<sup>38</sup>Tr. at 151-52 (Mr. Bootz).

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

<sup>40</sup>19 C.F.R. § 207.11(b)(2)(v).

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

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

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

The quantity of domestic producers’ total shipments was steady between 1997 and 1998, then decreased in 1999, when apparent U.S. consumption and subject imports declined by a greater amount.<sup>44</sup> U.S. production increased from 1997 to 1998, then decreased between 1998 and 1999, when apparent

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<sup>42</sup>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).

<sup>43</sup>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).

<sup>44</sup>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. As discussed earlier, an examination of the available information regarding the domestic industry’s performance minus \*\*\* does not lead us to find that subject imports are having an adverse impact.

U.S. consumption declined and subject imports also decreased to a greater extent.<sup>45</sup> Total U.S. capacity was essentially steady from 1997 to 1998, then fell in 1999. Capacity utilization increased from 1997 to 1998, then fell in 1999.<sup>46</sup>

The average number of production and related workers declined steadily between 1997 and 1999<sup>47</sup> and the hours worked by production and related workers<sup>48</sup> and wages paid to them<sup>49</sup> followed the same trend. However, productivity rose substantially over the entire period.<sup>50</sup>

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

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<sup>45</sup>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.

<sup>46</sup>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. While capacity utilization never exceeded 52.3 percent, the domestic industry registered a range of favorable operating results that remained favorable throughout the period.

<sup>47</sup>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.

<sup>48</sup>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.

<sup>49</sup>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.

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

<sup>51</sup>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.

<sup>52</sup>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.

Capital expenditures experienced a large increase between 1997 and 1998, then decreased between 1998 and 1999 (but remained above the 1997 level).<sup>53</sup> Research and development expenses declined steadily between 1997 and 1999.<sup>54</sup>

U.S. producers' end-of-period inventories increased steadily over the period.<sup>55</sup> Nearly all the inventories were held by cold-finishers,<sup>56</sup> who purchased a significant portion of their redraw hollows from non-domestic and nonsubject sources throughout the period of investigation.<sup>57</sup> Nonsubject import volumes showed a steady and substantial increase over the period of investigation<sup>58</sup> and were, to some degree, displacing the domestic product.<sup>59</sup>

Thus, although the volume of subject imports increased between 1997 and 1998, important indicators of the domestic industry's condition, including shipments, U.S. production, operating income, and capital expenditures, improved, indicating that material injury to the domestic industry did not occur in 1998 by reason of subject imports.<sup>60</sup> These indicators then declined in 1999 (although the operating income ratio remained above the 1997 level, and operating income was only slightly below the 1997 level),

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<sup>53</sup>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.

<sup>54</sup>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.

<sup>55</sup>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.

<sup>56</sup>See CR/PR at Table III-6.

<sup>57</sup>See CR/PR at Table III-4.

<sup>58</sup>See CR/PR at Table IV-5.

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

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

but this coincided with both a sharp decline in subject imports and a sharp increase in nonsubject import market share. In view of the lack of significant volume and price effects, the favorable profitability and overall improvement in the financial condition of the domestic industry, and the lack of correlation between the presence of subject imports and trends in several important indicia of the domestic industry's condition, we do not find that the subject imports are having a significant adverse impact on the domestic industry.<sup>61</sup>

### **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

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<sup>61</sup> The Court directed us to reconsider petitioners' arguments regarding the semiannual data. As an initial matter, we do not discount the available semiannual data nor do we deem them unreliable. However, we note that they are not directly comparable to the annual data due to the absence of semiannual data from three domestic producers. We have weighed the evidence in the record and determine that the annual data is most probative. In this instance, we have closely examined the entire record and assessed the relative probative value of the evidence within it. We determine to utilize the most complete data available in making our injury determination. Nonetheless, the semiannual data (contained in CR/PR at Table C-6) show that the quantity of subject imports increased from Jan.-June 1998 to July-Dec. 1998, but then decreased substantially in both Jan.-June 1999 and July-Dec. 1999, both in absolute terms and in market share. Although the increase in subject import volume in the second half of 1998 coincided with declines in several indicia of the condition of the domestic industry, when subject imports declined substantially in the first half of 1999 (to a level below that in the first half of 1998), these same indicia continued to decline. As explained earlier, we have focused on the end of the period of investigation in making our injury determination. Consideration of the semiannual data for this period do not lead us to a conclusion contrary to that reached upon consideration of the annual data, as described above.

order is issued or a suspension agreement is accepted.”<sup>62</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”<sup>63</sup> In making our determination, we have considered all factors that are relevant to this investigation.<sup>64 65</sup>

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

## CONCLUSION

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<sup>62</sup>19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

<sup>63</sup>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.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), *citing* American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). *See also* Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), *citing* H.R. Rep. No. 98-1156 at 174 (1984).

<sup>64</sup>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).

<sup>65</sup>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.

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

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.