

UNITED STATES INTERNATIONAL TRADE COMMISSION

SILICON METAL FROM ARGENTINA, BRAZIL, AND CHINA

Investigations Nos. 731-TA-470-472 (Review)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3385, January 2001)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-470-472 (Review)

## SILICON METAL FROM ARGENTINA, BRAZIL, AND CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on silicon metal from Argentina would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup> The Commission further determines that revocation of the antidumping duty orders on silicon metal from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>3</sup>

### BACKGROUND

The Commission instituted these reviews on November 2, 1999 (64 F.R. 59209) and determined on February 3, 2000 that it would conduct full reviews (65 F.R. 7891, February 16, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on August 14, 2000 (65 F.R. 49595). The hearing was held in Washington, DC, on November 14, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 25, 2001. The views of the Commission are contained in USITC Publication 3385 (January 2001), entitled *Silicon Metal from Argentina, Brazil, and China: Investigations Nos. 731-TA-470-472 (Review)*.

By order of the Commission.

Donna R. Koehnke  
Secretary

Issued:

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

<sup>2</sup> Vice Chairman Okun, former Commissioner Askey, and Commissioner Devaney not participating. Commissioner Bragg dissenting.

<sup>3</sup> Vice Chairman Okun, former Commissioner Askey, and Commissioner Devaney not participating.

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

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on silicon metal from Argentina would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup> We also determine that revocation of the antidumping duty orders on silicon metal from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

On June 3, 1991, the Commission unanimously determined that a domestic industry was materially injured by imports of silicon metal from China.<sup>3</sup> On June 10, 1991, the Department of Commerce (“Commerce”) issued an antidumping duty order with respect to imports from China.<sup>4</sup>

On July 24, 1991, the Commission unanimously determined that a domestic industry was materially injured by imports of silicon metal from Brazil.<sup>5</sup> On July 31, Commerce issued an antidumping duty order with respect to imports from Brazil.<sup>6</sup>

On September 19, 1991, the Commission unanimously determined that a domestic industry was materially injured by imports of silicon metal from Argentina.<sup>7</sup> On September 26, Commerce issued an antidumping duty order with respect to imports from Argentina.<sup>8</sup>

On November 2, 1999, the Commission instituted these reviews pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty orders on imports of silicon metal from Argentina, Brazil, and China would likely lead to continuation or recurrence of material injury.<sup>9</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country

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<sup>1</sup> Vice Chairman Okun, Commissioner Devaney and former Commissioner Askey did not participate in these determinations.

<sup>2</sup> Commissioner Bragg dissenting.

<sup>3</sup> Silicon Metal from the People’s Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 (June 1991) (“China Determination”).

<sup>4</sup> 56 Fed. Reg. 26649 (June 10, 1991).

<sup>5</sup> Silicon Metal from Brazil, Inv. No. 731-TA-471 (Final), USITC Pub. 2404 (July 1991) (“Brazil Determination”).

<sup>6</sup> 56 Fed. Reg. 36135 (July 31, 1991).

<sup>7</sup> Silicon Metal from Argentina, Inv. No. 731-TA-470 (Final), USITC Pub. 2429 (Sept. 1991) (“Argentina Determination”).

<sup>8</sup> 56 Fed. Reg. 48779 (September 26, 1991). The order was subsequently amended as a result of a court remand. 60 Fed. Reg. 35551 (July 10, 1995).

<sup>9</sup> 64 Fed. Reg. 59209 (November 2, 1999).

governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>10</sup> If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

The Commission received a joint response to the Notice of Institution on behalf of three domestic producers of silicon metal: American Silicon Technologies, Elkem Metals Company, and Globe Metallurgical Inc., together accounting for \*\*\* percent of total U.S. production of silicon metal in 1998. In addition, the United Steelworkers of America, AFL-CIO, USWA Local 3661, USWA Local 5171, USWA Local 8538, USWA Local 9436, the Paper Allied-Industrial, Chemical and Energy Workers International Union, Local 5-89, and the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL-CIO, Local 693, which are unions representing 100 percent of the silicon metal workers in the United States, joined the joint response. The sole Argentine producer of silicon metal, Electrometalurgica Andina S.A.I.C. (“Andina”), responded to the notice as did the following Brazilian producers and exporters: Companhia Ferroligas Minas Gerais-Minasligas, Companhia Carbureta de Cálcio, Ligas de Alumínio S.A.-LIASA, Electrosilex S/A, Camargo Corrêa Metais S.A., and Rima Industrial S/A. These firms together accounted for \*\*\* percent of total production of silicon metal in Brazil in 1998 and \*\*\* percent of total subject exports to the United States in the same year. No respondent interested party, whether foreign producer, exporter, or U.S. importer, responded on behalf of China to the Commission’s notice.

On February 3, 2000, with respect to Argentina, the Commission determined that the individual interested party responses to its notice of institution were adequate and that the domestic interested party and respondent interested party group responses were adequate. The Commission made the same determination with respect to Brazil. As pertains to China, the Commission determined that the individual interested party responses were adequate and that the domestic interested party group response was also adequate. The Commission determined that the respondent group response was inadequate.<sup>11</sup> The Commission decided to conduct full reviews for all three orders in these grouped reviews to promote administrative efficiency.<sup>12</sup>

## **II. DOMESTIC LIKE PRODUCT AND INDUSTRY**

### **A. Domestic Like Product**

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”<sup>13</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>14</sup>

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<sup>10</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>11</sup> 65 Fed. Reg. 7891 (Feb. 16, 2000).

<sup>12</sup> See Explanation of Commission Determinations on Adequacy, Confidential Staff Report (“CR”) at Appendix A, Public Staff Report (“PR”) at Appendix A.

<sup>13</sup> 19 U.S.C. § 1677(4)(A).

<sup>14</sup> 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int’l Trade Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

Commerce has defined the subject merchandise in these reviews as follows: silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. Also covered by [these reviews] is silicon metal . . . containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (“HTS”) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.<sup>15</sup>

In the original investigations, the Commission defined the domestic like product to be all silicon metal, regardless of grade, having a silicon content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon.<sup>16</sup>

In the current reviews, no party argues that the Commission should define the domestic like product differently than it did in the original investigations, with the like product corresponding to the scope, and nothing in the current record indicates a basis for revisiting the issue. Therefore, we define the domestic like product as all silicon metal, regardless of grade, corresponding to the current scope of the orders.<sup>17</sup>

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”<sup>18</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.<sup>19</sup> The Commission bases its analysis

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<sup>15</sup> 65 Fed. Reg. 35607, 35608 (June 5, 2000); 65 Fed. Reg. 35608, 35609 (June 5, 2000); 65 Fed. Reg. 35609, 35610 (June 5, 2000). In response to a scope determination request by domestic silicon metal producers claiming that some silicon metal producers in China were evading application of the antidumping duty order by exporting to the United States silicon metal containing less than 96 percent silicon and containing a relatively high percentage of aluminum, Commerce broadened the scope of the antidumping duty orders to include silicon metal containing between 89 percent and 96 percent silicon and more aluminum than silicon metal containing 96 percent or more silicon. CR at I-11 n.7.

<sup>16</sup> China Determination at 10; Brazil Determination at 9; Argentina Determination at 8.

<sup>17</sup> We note that the current scope of the orders is somewhat broader than the scope of the original investigations.

<sup>18</sup> 19 U.S.C. § 1677(4)(A).

<sup>19</sup> See, e.g., Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Inv. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126 at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932 at 5 & n.10 (Nov. 1995) (“the Commission has generally included toll producers that engage in sufficient production-related activity to be part of the domestic industry”); Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise and lower

on a firm's production-related activities in the United States.<sup>20</sup> Consistent with our definition of the like product, we find a single domestic industry consisting of all domestic producers of silicon metal.<sup>21</sup>

### III. CUMULATION<sup>22</sup>

#### A. Framework

Section 752(a) of the Act provides that:

the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse

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levels of employment”).

<sup>20</sup> The Commission typically considers six factors: (1) extent and source of a firm's capital investment; (2) the technical expertise involved in U.S. production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types of parts sourced in the United States and (6) any other costs and activities in the United States leading to production of the like product. *See* Certain Cut-to-Length Steel Plate from France, India, Indonesia, Italy, Japan, and Korea, Inv. Nos. 701-TA-387-391 (Final) and 731-TA-816-821 (Final), USITC Pub. 3273, at 8-9 (Jan. 2000).

<sup>21</sup> There are no related party issues in these reviews.

<sup>22</sup> Commissioner Bragg does not join this section. While she concurs with the majority's findings of reasonable overlap of competition and likely discernible adverse impact in the event the orders are revoked with respect to Brazil and China, she dissents with respect to Argentina. Commissioner Bragg's cumulation determinations are based upon a different analytical framework than that of her colleagues. *See* Separate Views of Commissioner Lynn M. Bragg regarding Cumulation in Sunset Reviews, found in Potassium Permanganate From China and Spain, Inv. Nos. 731-TA-125-126 (Review), USITC Pub. 3245 (Oct. 1999); *see also* Separate Views of Chairman Lynn M. Bragg Regarding Cumulation, found in Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden, Inv. Nos. 701-TA-269 & 270 (Review) and 731-TA-311-317 and 379-380 (Review), USITC Pub. 3290 (Apr. 2000). In particular, Commissioner Bragg notes that she examines the likelihood of no discernible adverse impact only after first determining there is likely to be a reasonable overlap of competition in the event of revocation. Commissioner Bragg finds a likely reasonable overlap of competition with regard to Brazil and China in these reviews for the same reasons as those set forth by the Commission majority. With respect to subject imports from Argentina, Commissioner Bragg notes that at the time of the original investigations the Commission found a reasonable overlap of competition among subject imports from Argentina, Brazil, and China. Upon review of the record in these grouped reviews, Commissioner Bragg determines that, on balance, this conclusion continues to be warranted. She notes that subject imports from Argentina had only a limited presence in the U.S. market during the period reviewed. Commissioner Bragg therefore finds a reasonable overlap of competition with regard to subject imports from Argentina, Brazil, and China and the domestic like product. After having found a likely reasonable overlap of competition in the event the orders are revoked, Commissioner Bragg turns to the issue of no discernible adverse impact. Based on the significant excess capacity in each of the subject countries as well as the subject producers' strong export orientation, Commissioner Bragg finds that revocation of each of the orders at issue will lead to a likely discernible adverse impact to the domestic industry. CR/PR at Table IV-3; CR/PR at Table IV-4; and CR/PR at Table IV-5. Accordingly, Commissioner Bragg cumulates subject imports from Argentina, Brazil, and China.

impact on the domestic industry.<sup>23</sup>

Thus, cumulation is discretionary in five-year reviews. However, the Commission may exercise its discretion to cumulate only if the reviews are initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.<sup>24</sup> We note that neither the statute nor the Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) provides specific guidance on what factors the Commission is to consider in determining that imports “are likely to have no discernible adverse impact” on the domestic industry.<sup>25</sup> With respect to this provision, the Commission generally considers the likely volume of the subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked.<sup>26</sup>

The Commission has generally considered four factors intended to provide a framework for determining whether the imports compete with each other and with the domestic like product.<sup>27</sup> Only a “reasonable overlap” of competition is required.<sup>28</sup> In five-year reviews, the relevant inquiry is whether there likely would be competition even if none currently exists. Moreover, because of the prospective nature of five-year reviews, we have examined not only the Commission’s traditional competition factors, but also other significant conditions of competition that are likely to prevail if the orders under review are revoked. The Commission has considered factors in addition to its traditional competition factors in other

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<sup>23</sup> 19 U.S.C. § 1675a(a)(7).

<sup>24</sup> 19 U.S.C. § 1675a(a)(7).

<sup>25</sup> SAA, H.R. Rep. No. 103-316, vol. I (1994).

<sup>26</sup> For a discussion of the analytical framework of Chairman Koplan and Commissioners Miller and Hillman 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 (Review). For a further discussion of Chairman 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>27</sup> The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are: (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and (4) whether the imports are simultaneously present in the market. *See, e.g.,* Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>28</sup> *See* Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations in which the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. *See, e.g.,* Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155, at 15 (Feb. 1999), *aff’d sub. nom. Ranchers-Cattleman Action Legal Foundation v. United States*, 74 F. Supp.2d 1353 (Ct. Int’l Trade 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098, at 13-15 (Apr. 1998).

contexts where cumulation is discretionary.<sup>29</sup>

In these reviews, the statutory requirement for cumulation that all reviews be initiated on the same day is satisfied. The Commission instituted all three reviews on November 2, 1999.

## **B. Likelihood of No Discernible Adverse Impact**

We find that subject imports from Argentina likely would have no discernible adverse impact on the domestic industry.

Imports from Argentina were low in 1990 at the time of the original investigation – only approximately 2,000 gross short tons, representing 1.1 percent of domestic consumption, and were 0 percent in 1999.<sup>30</sup> Whereas there were two active Argentine producers in 1990, there is currently only one: Andina.<sup>31</sup> Andina produced silicon metal until 1991 and resumed production in 1998 after modernizing its facilities.<sup>32</sup> Andina's capacity is limited and it currently has \*\*\* excess capacity.<sup>33</sup> \*\*\*.<sup>34</sup> In 1998, the cost of updating the one furnace it uses to produce silicon metal was \*\*\* and, although it has other furnaces, Andina cannot easily switch from the production of non-subject product to the production of silicon metal.<sup>35</sup>

Andina's home market shipments now comprise \*\*\* of its total shipments<sup>36</sup> and it has long-term

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<sup>29</sup> See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

<sup>30</sup> CR/PR at Table I-1. In 1990, \*\*\* percent of Argentine shipments were exported and \*\*\* percent went to the United States. The 1990 data were available for only one Argentine producer, however. INV-0-084 at Table 21 & n.1 (May 17, 1991).

<sup>31</sup> Three producers in Argentina have been identified, although only Andina is known to be active in producing silicon metal during the period of review. Stein, a potentially large silicon metal producer in Argentina, according to petitioners' counsel, has not manufactured silicon metal for the past \*\*\* when it switched to the manufacture of \*\*\*. Andina's Prehearing Brief at 6. There is no evidence that it will switch production back to silicon metal in the reasonably foreseeable future, and the record indicates that it is difficult and costly to shift production back to silicon metal. CR at II-5, PR at II-3 - II-4. In addition, \*\*\*. Andina's Prehearing Brief at 5.

<sup>32</sup> See CR at II-6, PR at II-6.

<sup>33</sup> Andina's capacity was \*\*\* gross short tons in 1997 and \*\*\* gross short tons in both 1998 and 1999. It was \*\*\* gross short tons in both January-June 1999 and 2000. Its capacity utilization was \*\*\* percent in 1998 and \*\*\* percent in 1999, and was \*\*\* percent in January-June 1999 and \*\*\* percent in January-June 2000. CR/PR at Table IV-3. We note that to reach even the low level of market penetration achieved at the end of the original period of investigation, it would be necessary for Andina to shift almost \*\*\* percent of its total production to the United States, which is not likely to occur in the reasonably foreseeable future. Andina's production was \*\*\* gross short tons in 1999, \*\*\* gross short tons in January-June 1999 and \*\*\* gross short tons in January-June 2000. CR/PR at Table IV-3.

<sup>34</sup> Andina's Prehearing Brief at 7. In addition, Andina \*\*\*. Andina's Prehearing Brief at 7-8; Andina's Posthearing Brief at 4. \*\*\* would limit Andina's ability to obtain capital for any such capacity expansion.

<sup>35</sup> See CR at I-14, II-7, PR at I-12, II-4; Tr. at 204-05 (Mr. Perkins).

<sup>36</sup> Argentina's home market shipments totaled \*\*\* gross short tons in January-June 2000 and its total shipments were \*\*\* gross short tons. CR/PR at Table IV-3. Andina submitted a letter from Aluar, \*\*\*. Andina's Posthearing Brief, Exh. 1. In that letter Aluar states that it \*\*\*.

contracts to supply purchasers in Europe, its principal export market.<sup>37</sup> Whereas Andina's product is certified for sale in Europe, it is not certified for sale in the United States.<sup>38</sup> For the foregoing reasons we find that any limited exports to the United States by Andina would be likely to have no discernible adverse impact on the U.S. industry producing silicon metal.

As pertains to Brazil and China, we note that China is the world's largest producer as well as exporter of silicon metal and Brazil is the third largest producer (and the world's second largest exporter of silicon metal).<sup>39</sup> For the reasons discussed below, we find that increased volumes of subject imports from Brazil and China, given the significant excess capacity to produce silicon metal in those countries and the likelihood that the imports would undersell domestic silicon metal to a significant degree, would likely have a discernible adverse impact on the domestic industry.

### **C. Likelihood of Reasonable Overlap of Competition and Other Considerations**

The Commission cumulated the volume and price effects of the subject imports of silicon metal in the original investigations, finding a reasonable overlap of competition sufficient to satisfy the requirements of cumulation, although there were questions regarding the fungibility of the Chinese product because of quality concerns.<sup>40</sup>

In determining whether to exercise our discretion to cumulate subject imports, we examine whether, upon revocation of the orders, subject imports from Brazil and China likely would compete in the U.S. market under similar conditions of competition relative to each other and to the domestic like product. As an initial matter we consider the likelihood of a reasonable overlap of competition among the subject imports and the domestic like product. We find that there is likely to be a reasonable overlap of competition among silicon metal from Brazil and China and domestic silicon metal.

The fungibility of the product has remained relatively unchanged since the time of the original investigations, except that petitioners report that the purity level of the Chinese product has improved, making it eligible for more uses than in 1991.<sup>41</sup> In addition, higher grade silicon metal is sometimes shipped to a purchaser with a lower specification requirement due to factors such as excess product availability and low shipping costs.<sup>42</sup>

According to questionnaire responses, all four purchasers comparing the U.S. product to the Brazilian product stated that they may be used interchangeably in the same applications,<sup>43</sup> and four of the five purchasers comparing the U.S. and Chinese product reported the same.<sup>44</sup> All domestic producers

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<sup>37</sup> Andina's Prehearing Brief at 8-9; Andina's Posthearing Brief at 4. These contracts call for minimum yearly supplies of \*\*\* of silicon metal, depending on market conditions. Sales to its \*\*\* clients accounted for \*\*\* percent of its silicon metal production in 1998, the equivalent of \*\*\* percent in 1999 and \*\*\* percent during the first two quarters of 2000. Andina's Prehearing Brief at 9. Moreover, there are no barriers to importation of Andina's product in other countries. Andina's Prehearing Brief at 10.

<sup>38</sup> See Andina's Prehearing Brief at 11.

<sup>39</sup> AST/Elkem/Unions' Prehearing Brief at 30; see Tr. at 191-92 (Dr. Button).

<sup>40</sup> China Determination at 23; Brazil Determination at 14; Argentina Determination at 14.

<sup>41</sup> CR at II-3, PR at II-2; see Tr. at 227 (Mr. Perkins).

<sup>42</sup> CR at I-13, PR at I-11.

<sup>43</sup> CR at II-16 - II-17, PR at II-10, CR/PR at Table II-9.

<sup>44</sup> CR at II-21 - II-22, PR at II-15 - II-16, CR/PR at Table II-9.

reported that the U.S. and Brazilian products are interchangeable,<sup>45</sup> as did all the importers.<sup>46</sup> Similarly, all domestic producers reported that the U.S. and Chinese product are interchangeable,<sup>47</sup> and five of eight importers made the same assertion.<sup>48</sup>

Domestic producers stated that the Chinese product is interchangeable with the Brazilian product.<sup>49</sup> Three importers stated that the Chinese product was not interchangeable with the Brazilian product and three agreed that the Chinese and Brazilian products are interchangeable.<sup>50</sup> The only purchaser comparing subject products reported that Chinese and Brazilian products were interchangeable.<sup>51</sup>

Two of the four responding U.S. producers reported selling silicon metal nationwide, while \*\*\*.<sup>52</sup> Of the three reporting importers, one reported selling its Chinese product \*\*\* and its Brazilian product \*\*\*; one reported selling its imports \*\*\*; and the other reported sending its imports to \*\*\*.<sup>53</sup>

Most domestically-produced silicon metal is sold directly to end users or used internally, although some is also exchanged among producers or sold through distributors.<sup>54</sup> At least some subject imports were also sold to or imported by end users.<sup>55</sup> Subject imports from Brazil and China were present throughout the period of review.<sup>56</sup>

Given the fungibility between the U.S. product and subject imports, the general interchangeability between the subject imports and the evidence in the record that the quality of the Chinese product has improved, as well as the overlap of sales in the same geographical markets, the common channels of distribution, and the simultaneous presence in the market, there is sufficient evidence to find that there likely would be a reasonable overlap of competition both between the subject imports from Brazil and China, and between the subject imports and the domestic product, if these orders are revoked. Nothing in the record indicates that the subject imports from Brazil and China would likely compete under different conditions of competition in the U.S. market. Accordingly, we exercise our discretion to cumulate the subject imports from Brazil and China in these reviews.

#### **IV. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ORDERS ARE REVOKED**<sup>57</sup>

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<sup>45</sup> CR/PR at Table II-3.

<sup>46</sup> CR/PR at Table II-4.

<sup>47</sup> CR/PR at Table II-3.

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

<sup>49</sup> CR/PR at Table II-3.

<sup>50</sup> CR/PR at Table II-4.

<sup>51</sup> CR at II-22, PR at II-16.

<sup>52</sup> CR at II-2, PR at II-1.

<sup>53</sup> CR at II-2, PR at II-1.

<sup>54</sup> Sales through distributors were three percent of sales in 1999 and were only for secondary aluminum. Exchanges between producers were \*\*\* percent of sales in that year. CR at II-1 n.5, PR at II- 1 n.5.

<sup>55</sup> CR at II-1, PR at II-1.

<sup>56</sup> CR/PR at Table IV-1. In the original investigations, imports from all three subject countries were present in substantial amounts throughout the period of investigation. See China Determination at A-14, Table 2.

<sup>57</sup> Commissioner Bragg joins the remainder of these views with the exception of the Commission's discussion regarding Argentina, to which she dissents.

## A. Legal Standard in a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>58</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>59</sup> Thus, the likelihood standard is prospective in nature.<sup>60</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>61</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>62 63</sup>

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>64</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked or the

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<sup>58</sup> 19 U.S.C. § 1675a(a).

<sup>59</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” Likewise, the standard applies to suspended investigations that were never completed. SAA at 883.

<sup>60</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>61</sup> 19 U.S.C. § 1675a(a)(5).

<sup>62</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>63</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplán examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>64</sup> 19 U.S.C. § 1675a(a)(1).

suspension agreement is terminated.<sup>65 66</sup>

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination.<sup>67</sup> We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive."<sup>68</sup> In this case, a number of respondent interested parties did not provide questionnaire responses and/or participate in these reviews. Accordingly, we have relied on the facts available in these reviews, which consist primarily of the evidence in the record from the Commission's original investigations, the information collected by the Commission since the institution of these reviews, and information submitted by interested parties in these reviews.<sup>69</sup>

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>70</sup> In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>71</sup>

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<sup>65</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>66</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption findings with respect to these reviews.

<sup>67</sup> 19 U.S.C. § 1675(e).

<sup>68</sup> SAA at 869.

<sup>69</sup> The Brazilian Respondents urged the Commission to give little weight to pre-order conditions as an indicator of what might happen should the orders be revoked on the basis of alleged price-fixing activities by the domestic producers that may have tainted the record of the original investigation with the same type of misrepresentations and omissions found in the ferrosilicon case (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, and 731-TA-641 (Reconsideration), USITC Pub. 3218 (Aug. 1999)). Brazilian Respondents' Prehearing Brief at 40-44. We disagree. The circumstances of these reviews are very different from those in the reconsideration proceedings on ferrosilicon. In the absence of evidence that the domestic producers provided false or misleading information to the Commission in the original silicon metal investigations, we decline to find information from the original investigation to be unreliable.

<sup>70</sup> 19 U.S.C. § 1675a(a)(2).

<sup>71</sup> 19 U.S.C. § 1675(a)(2)(A)-(D).

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.<sup>72</sup>

In evaluating the likely impact of imports of subject merchandise if the orders are revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>73</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>74</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.<sup>75</sup>

For the reasons stated below, we determine that revocation of the antidumping duty order on silicon metal from Argentina would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>76</sup> We also determine, for the reasons stated below, that revocation of the antidumping duty orders on subject imports from Brazil and China would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

## **B. Conditions of Competition**

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<sup>72</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>73</sup> 19 U.S.C. § 1675a(a)(4).

<sup>74</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping” in making its determination in a five-year review investigation. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. In the final results of its expedited reviews regarding the subject imports, Commerce found that revocation of the orders would be likely to lead to continuation or recurrence of dumping at the margin of 17.87 percent with respect to Argentine producers. 65 Fed. Reg. at 35609. With respect to producers in Brazil, Commerce found the likely margins of dumping to be 87.79 percent for CBCC, 93.20 percent for CCM and 91.06 percent for all others. 65 Fed. Reg. at 35608. As pertains to Chinese producers, Commerce found a sunset margin of 139.49 percent. 65 Fed. Reg. at 35610.

<sup>75</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>76</sup> Commissioner Bragg dissenting.

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>77</sup>

Since the time of the original investigations, demand has expanded significantly.<sup>78</sup> Demand is derived from the demand for other products, such as chemical products and aluminum.<sup>79</sup> The world demand for these end products is projected to grow at a strong rate in the foreseeable future.<sup>80</sup>

In the decade since the orders were imposed, the domestic industry’s capacity, capacity utilization and shipments have improved.<sup>81</sup> However, a number of U.S. producers have filed for bankruptcy protection since the orders were imposed. During the original investigations, there were eight firms producing silicon metal, while there are currently three. Reynolds closed its plant in 1990. Silicon Metaltech declared itself bankrupt and AST acquired its assets in 1993, but by September 1999 the facilities were closed down. Globe acquired Dow’s production facility in 1993 and SKW’s production plant in 1994. SiMETCO also filed for bankruptcy protection and SIMCALA acquired its assets in 1995.<sup>82</sup> American Alloys closed its facility in 1998, and is currently in Chapter 11 bankruptcy proceedings.<sup>83</sup>

Non-subject imports supply a portion of demand and at levels greater than those in the original investigations.<sup>84</sup>

There are three grades of silicon metal subject to these reviews, chemical, primary aluminum, and secondary aluminum, just as there were during the time of the original investigations. Price is an important factor affecting purchases of all grades of silicon metal.<sup>85</sup> Within each grade, there is moderate substitutability, assuming certification standards are met.<sup>86</sup> Chemical and primary aluminum grade silicon metal require certification;<sup>87</sup> however, once a producer is certified, price becomes more important as a factor in purchasing decisions.<sup>88</sup>

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<sup>77</sup> 19 U.S.C. § 1675(a)(4).

<sup>78</sup> Apparent U.S. consumption was 217,078 gross short tons in 1990, INV-O-084 at Table 2, while it was 329,786 gross short tons in 1999. CR/PR at Table I-7.

<sup>79</sup> See CR at II-11, PR at II-7.

<sup>80</sup> See CR at II-13, PR at II-8.

<sup>81</sup> In 1990, U.S. average capacity totaled 183,174 gross short tons, INV-O-084 at Table 7, while it totaled 236,857 gross short tons in 1999. CR/PR at Table C-1. In 1990, capacity utilization was 85.8 percent, INV-O-084 at Table 7, as compared to 88.3 percent in 1999. CR/PR at Table C-1. Total shipments were 150,415 gross short tons in 1990, INV-O-084 at Table 8, and \*\*\* gross short tons in 1999. CR/PR at Table III-1.

<sup>82</sup> CR at I-15, PR at I-12.

<sup>83</sup> CR at III-1, III-3, PR at III-1, III-3.

<sup>84</sup> In 1990, non-subject imports totaled 11,525 gross short tons, INV-O-084 at Table 2, accounting for 5.3 percent of apparent U.S. consumption by quantity. Non-subject imports totaled 108,852 gross short tons in 1999, 54,463 gross short tons in January-June 1999, and 65,130 gross short tons in January-June 2000. CR/PR at Table I-6. In terms of quantity, non-subject imports accounted for 33.0 percent of apparent consumption in 1999, 32.9 percent in January-June 1999, and 36.3 percent in January-June 2000. CR/PR at Table I-7.

<sup>85</sup> Five purchasers who responded to the Commission’s questionnaires ranked it as the most important factor in making purchasing decisions, six ranked it as the second, and seven ranked it as the third. CR/PR at Table II-1.

<sup>86</sup> See CR at I-12, PR at I-10.

<sup>87</sup> See CR at I-13, II-16, PR at I-11, II-9.

<sup>88</sup> See CR/PR at Table II-2.

We find that the foregoing conditions of competition are likely to remain unchanged for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

**C. Revocation of the Order on Subject Silicon Metal Imports From Argentina Is Not Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**<sup>89</sup>

In the original investigations, the Commission found material injury by reason of cumulated imports from Argentina, Brazil and China and that imports increased sharply and substantially during the period of investigation and gained substantial market share while the domestic share of U.S. consumption by quantity declined overall. The Commission also found that there was significant underselling by the subject imports throughout the period of investigation and that the domestic producers were not able to modernize their facilities, had curtailed expansion and were experiencing difficulty in raising capital because of the subject imports.<sup>90</sup>

As stated above, we find that subject imports from Argentina likely would have no discernible adverse impact on the domestic industry if the order is revoked. The level of imports from Argentina was quite small at the time of the original investigation and is virtually nonexistent now. The number of Argentine producers has been reduced to one \*\*\*. Argentina's major export market is Europe and its product is not certified for sale in the United States, nor is there any evidence in the record that it would abandon its long-term European contracts to qualify and ship its product to the United States.

In view of the foregoing, we find that likely future levels of subject imports from Argentina will not be significant. The probable volumes, if any, will likely be too small to affect domestic prices significantly. In the absence of significant volume or price effects, we find that the likely impact on the domestic silicon metal industry of subject imports from Argentina, in the event of revocation, will not be significant. We therefore find that subject imports from Argentina would likely not lead to continuation or recurrence of material injury within a reasonably foreseeable time if the order were revoked.

**D. Revocation of the Orders on Subject Silicon Metal Imports From Brazil and China Is Likely to Lead to Continuation or Recurrence of Material Injury Within a Reasonably Foreseeable Time**<sup>91</sup>

**1. Likely Volume of Subject Imports**

For all three countries in the original investigations, the Commission found that the cumulated volume of subject imports increased 8.0 percent from 1988 to 1989 and 74.6 percent from 1989 to 1990.

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<sup>89</sup> Commissioner Bragg dissenting.

<sup>90</sup> Argentina Determination at 15.

<sup>91</sup> Commissioner Bragg notes that the addition of Argentina to the analysis strengthens the determination that the volume of subject imports is likely to be significant in the event of revocation.

The value of the imports decreased 1.7 percent from 1988 to 1989, but increased 48.2 percent from 1989 to 1990. The domestic share of U.S. consumption, as measured by quantity and by value, increased from 1988 to 1989, but declined in 1990. However, the market share of the subject imports as measured both by quantity and by value increased throughout the period.<sup>92</sup>

Foreign subject capacity in China and Brazil has increased since the original investigations. While the original record contained no data regarding the capacity in China to produce silicon metal in 1990<sup>93</sup> and the record data in these reviews are not precise,<sup>94</sup> China has significant unused capacity, approximating 37 percent of capacity.<sup>95</sup> This excess capacity in 1999 combined with current inventories would represent at least 46 percent of U.S. consumption if the capacity were utilized to produce silicon metal and the resulting production and inventories were shipped to the United States.<sup>96</sup> The industry in China is export-oriented,<sup>97</sup> and almost all of China's imports into the United States during the period of review have been as Temporary Imports under Bond ("TIB").<sup>98</sup> Utilizing the production numbers for the five reporting Chinese producers in conjunction with the lower end of the capacity range leads us to the conclusion that their reported production represents only 10 percent of total exports.<sup>99</sup> In addition, China faces trade barriers in the European Union, which imposed an antidumping duty order on silicon metal from China and determined in December 1997 to continue the order at a duty rate of 49 percent *ad valorem*.<sup>100</sup>

Silicon metal production capacity in Brazil increased from 170,305 gross short tons in 1990<sup>101</sup> to 190,310 gross short tons in 1999.<sup>102</sup> The data collected in response to the Commission's questionnaires

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<sup>92</sup> China Determination at 26-27; Brazil Determination at 15. Subject imports from Brazil and China rose from 22,593 gross short tons in 1988 to 27,345 gross short tons in 1989, and then to 58,443 gross short tons in 1990. INV-O-084 at Table 23.

<sup>93</sup> See INV-O-084 at Table 21.

<sup>94</sup> Because only five Chinese producers of the 42 that were identified provided responses to the Commission's questionnaires, CR at IV-8, PR at IV-6, precise data pertaining to the capacity of the Chinese silicon metal industry are lacking. The evidence in the record suggests Chinese capacity ranges from 250,000 tons to 400,000 tons. For purposes of our analysis, we have relied on the figure of 272,000 tons that was reported as 1998 exports by USGS Mineral Industry Surveys, Silicon, 1999 Annual Review, August 2000. CR at II-9 n.23, PR at II-6 n.23.

<sup>95</sup> If one considers China's production of silicon metal to be 250,000 tons and its production capacity to be 400,000 tons, the resulting capacity utilization rate is less than 63 percent. See AST/Elkem/Unions' Prehearing Brief at 29.

<sup>96</sup> The inventories used are those provided by the five Chinese producers responding to the Commission's questionnaires. The ratio of inventories to production was 7.1 percent in 1999, 3.8 percent in January-June 1999, and 2.4 percent in January-June 2000. CR/PR at Table IV-5.

<sup>97</sup> For the five responding Chinese producers, silicon metal exports totaled 77.7 percent of Chinese production in 1997, 85.7 percent in 1998, and 83.6 percent in 1999. The corresponding figures were 84.3 percent in January-June 1999 and 96.6 percent in January-June 2000. CR/PR at Table IV-5.

<sup>98</sup> TIB imports accounted for 100 percent of Chinese imports in 1999, 98 percent in 1998, and 80 percent in 1997. CR/PR at Table IV-1 n.1.

<sup>99</sup> The five responding Chinese producers manufactured 25,600 gross short tons in 1999, 15,600 in January-June 1999, and 24,800 gross short tons in January-June 2000. Chinese exports totaled 21,060 gross short tons in 1999, 12,020 gross short tons in January-June 1999, and 24,140 gross short tons in January-June 2000. CR/PR at Table IV-5.

<sup>100</sup> CR at IV-8, PR at IV-6.

<sup>101</sup> INV-O-084 at Table 21.

<sup>102</sup> CR/PR at Table IV-4.

show that, like China, the Brazilian industry is heavily export-oriented. It exported 84.8 percent of its total shipments in 1999, 86.6 percent in January-June 1999 and 86.5 percent in January-June 2000.<sup>103</sup> The export volumes are large relative to U.S. production: 60.6 percent in 1999, 61.1 percent in January-June 1999, and 68.2 percent in January-June 2000.<sup>104</sup> The Brazilian silicon metal industry also has significant excess capacity. Its capacity utilization was 74.3 percent in 1999, 70.7 percent in January-June 1999, and 82.0 percent in January-June 2000. Further, its inventories would represent 8.9 percent of U.S. consumption in 1999, 15.8 percent in January-June 1999, and 16.1 percent in January-June 2000.<sup>105</sup> Brazil's aggregate inventories and excess capacity together would represent 23.7 percent of U.S. consumption in 1999, 32.6 percent in January-June 1999, and 25.8 percent in January-June 2000,<sup>106</sup> if the capacity were used to produce silicon metal and that production plus inventories were shipped to the United States. We note that Brazil's primary aluminum product is already certified for sale in the United States and that it has an existing customer base that could serve as the basis for expansion.<sup>107</sup> Lastly, Dow Corning Corporation, a large purchaser, has purchased CBCC, one of the largest Brazilian producers, and \*\*\*.<sup>108</sup>

In view of the demonstrated ability of Brazil and China to increase imports rapidly to the United States in the original investigation,<sup>109</sup> it is likely that Brazil and China will shift more of their production to the United States in the event the orders are revoked. Accordingly, we find that the likely volume of cumulated subject imports from Brazil and China would be significant within a reasonably foreseeable time if the orders are revoked.

## **2. Likely Price Effects of Subject Imports**<sup>110</sup>

In the original investigations, the Commission determined that there was significant underselling by the subject imports throughout the period of investigation, and that this was particularly significant in light of the generally declining prices for the domestic product.<sup>111</sup>

As noted above, both domestic and imported silicon metal is generally substitutable within grades

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<sup>103</sup> CR/PR at Table IV-4.

<sup>104</sup> Compare CR/PR at Table IV-4 with CR/PR at Table I-6.

<sup>105</sup> Compare CR/PR at Table IV-4 with CR/PR at Table I-7.

<sup>106</sup> Compare CR/PR at Table IV-4 with CR/PR at Table I-7.

<sup>107</sup> See CR at II-8, PR at II-5.

<sup>108</sup> CR at IV-6, PR at IV-4; Brazilian Respondents' Posthearing Brief, Exh.6; Globe's Posthearing Brief, Att. A, Exh. 1; Globe's Final Comments at 1-7.

<sup>109</sup> Imports from Brazil into the United States increased from 12,911 gross short tons in 1988 to 32,083 gross short tons in 1990. INV-O-084 at Table 22. Further, imports from Brazil into the United States increased from 10,795 tons in 1997 to 14,268 tons in 1999, and were 5,324 tons in January-June 1999 as compared to 10,411 tons in January-June 2000. CR/PR at Table I-6. Imports from China into the United States increased from 9,682 gross short tons in 1988 to 26,360 gross short tons in 1990. INV-O-084 at Table 22. More recently, imports from China into the United States increased from 3,214 gross short tons in 1997 to 3,324 gross short tons in 1999, and were 1,673 gross short tons in January-June 1999 as compared to 1,812 gross short tons in January-June 2000.

<sup>110</sup> Commissioner Bragg notes that the addition of Argentina to the analysis strengthens the determination that subject imports are likely to have significant negative price effects on the domestic industry in the event of revocation.

<sup>111</sup> China Determination at 27-28; Brazil Determination at 15.

and price is an important consideration for purchasers. The chemical grade product is typically purchased through long-term contracts, while primary aluminum producers sell the product through one-year contracts and secondary aluminum producers generally sell using quarterly contracts and spot sales.<sup>112</sup> Notwithstanding the existence of the three grades of silicon metal, only one price is published and this single price influences the prices of silicon metal of all grades by varying degrees.<sup>113</sup>

During the period of review, prices generally trended downward, although some grades showed increases toward the end of the period.<sup>114</sup> Current market prices are declining, and the domestic producers have had to renegotiate long-term contracts with major customers to adjust prices downward.<sup>115</sup>

Pricing data for the period of these reviews are limited, but even with the discipline of the order in place, the Brazilian product undersells the domestic like product, particularly with respect to pricing products \*\*\* from Brazil during the period of review.<sup>116</sup>

The prices for Chinese silicon metal are primarily for secondary aluminum product, brought into the United States under TIB and thus not subject to antidumping duties.<sup>117</sup> In the original investigation the margins of underselling for the Chinese product ranged from 3.6 percent to 13.6 percent.<sup>118</sup>

Given the record evidence in these reviews, and in view of the findings in the original investigations, we find that the likely significant increased volumes of subject silicon metal would likely undersell domestic silicon metal products to a significant degree and have significant price suppressing and depressing effects within a reasonably foreseeable time if the orders are revoked.<sup>119</sup>

### **3. Likely Impact of Subject Imports**<sup>120</sup>

In the original investigations, the Commission found that the volume and price effects of the subject imports had a negative impact on the domestic industry, as shown by the steady increase in the ratio of the cost of goods sold to net sales over the period of investigation, indicating that prices had been suppressed relative to costs. It also determined that the domestic producers had been unable to modernize their facilities, had curtailed expansion, and were experiencing difficulty in raising capital due to the effects of the subject imports.<sup>121</sup>

We find in these reviews that the domestic industry is vulnerable to material injury should the antidumping orders be revoked. As explained above, two firms declared bankruptcy in 1993 and 1995. Most of the remaining firms have experienced \*\*\*, and the average ratio of operating income to net sales

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<sup>112</sup> CR at II-1, PR at II-1.

<sup>113</sup> See AST/Elkem/Unions' Prehearing Brief at 42 & Exh.20; Brazilian Respondents' Posthearing Brief, Exh. 5; CR/PR at Table V-5; Tr. at 262-63 (Mr. McHale), 299 (Ms. Slater).

<sup>114</sup> See CR/PR at Tables V-1 - V-5.

<sup>115</sup> See, e.g., Tr. at 182-83 (Mr. Kvernmo).

<sup>116</sup> See CR/PR at Tables V-2 - V-3.

<sup>117</sup> CR at IV-1, PR at IV-1.

<sup>118</sup> INV-O-084 at Table 31.

<sup>119</sup> Commissioner Bragg infers that, in the event of revocation, Chinese subject producers will revert to aggressive pricing practices in connection with exports of subject merchandise to the United States, as evidenced in the Commission's original determination.

<sup>120</sup> Commissioner Bragg notes that the addition of Argentina to the analysis strengthens the determination that subject imports are likely to have a significant adverse impact on the domestic industry in the event of revocation.

<sup>121</sup> China Determination at 28, Brazil Determination at 15.

value declined from \*\*\* percent to \*\*\* percent over the period.<sup>122</sup> Two other domestic producers closed in 1998 and 1999, resulting in a loss of market share for the domestic industry, and one of them declared bankruptcy during the review period.<sup>123</sup> \*\*\*. Although the domestic industry's condition had improved somewhat since the orders were imposed,<sup>124</sup> such gains were eroded over the period of review.

Capacity utilization has decreased over the period of review,<sup>125</sup> as has production.<sup>126</sup> Domestic producers' shipments have declined as well.<sup>127</sup> Net sales have decreased steadily over the period.<sup>128</sup> The number of production and related workers has declined, as have their hours worked.<sup>129</sup> Similarly, capital expenditures have decreased.<sup>130</sup> However, inventories are lower.<sup>131</sup>

As discussed above, revocation of the antidumping duty orders on Brazil and China likely would lead to significant increases in the volume of cumulated subject imports at prices that would likely undersell the domestic like product and significantly suppress or depress U.S. prices. In addition, the volume and price effects of the cumulated subject imports likely would have a significant adverse impact on the domestic industry and likely would cause the domestic industry to lose additional market share.

The price and volume declines likely would have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. These reductions would have a direct adverse impact on the industry's profitability as well as its ability to raise capital and maintain necessary capital

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<sup>122</sup> CR/PR at Table III-4. Total operating income declined from \*\*\* in 1997 to \*\*\* in 1999, although it was \*\*\* in January-June 1999 as compared to \*\*\* in January-June 2000. The weighted average ratio of operating income to net sales value was \*\*\* percent in January-June 1999 as compared to \*\*\* percent in January-June 2000. CR/PR at Table III-4.

<sup>123</sup> American Alloys closed in 1998 and is in Chapter 11 bankruptcy proceedings, and AST ceased production in 1999. CR at III-1, III-3, PR at III-1, III-3. The domestic producers' market share decreased from 64.5 percent in 1998 to 61.7 percent in 1999. CR/PR at Table I-7.

<sup>124</sup> For example, capacity, production and capacity utilization have increased, as have the quantity and value of U.S. shipments. See CR/PR at Table I-1.

<sup>125</sup> Capacity utilization fell from 94.4 percent in 1997 to 91.1 percent in 1998, then further to 88.2 percent in 1999. It was 89.2 percent in January-June 1999 as compared to 96.4 percent in January-June 2000. CR/PR at Table III-1.

<sup>126</sup> Production was 213,010 gross short tons in 1997 and 213,274 gross short tons in 1998, then declined to 209,117 gross short tons in 1999. It was 107,009 gross short tons in January-June 1999 and 106,744 gross short tons in January-June 2000. CR/PR at Table III-1.

<sup>127</sup> U.S. producers' U.S. shipments were 206,692 gross short tons in 1997 and 206,788 gross short tons in 1998, before falling to 203,342 gross short tons in 1999. They were 104,198 gross short tons in January-June 1999 and 101,870 gross short tons in January-June 2000. CR/PR at Table I-6.

<sup>128</sup> Net sales fell from \*\*\* in 1997 to \*\*\* in 1998, then further to \*\*\* in 1999. They totaled \*\*\* in January-June 1999 and \*\*\* in January-June 2000. CR/PR at Table III-3.

<sup>129</sup> Production and related workers numbered 816 in 1997, 816 in 1998 and 770 in 1999. They numbered 771 in January-June 1999 and 719 in January-June 2000. Their hours worked fell from 1.9 million hours in 1997 to 1.8 million hours in 1998, and were 1.8 million hours in 1999. Their hours worked were 911,000 in January-June 1999 and 835,000 in January-June 2000. CR/PR at Table III-1.

<sup>130</sup> Capital expenditures increased from \*\*\* in 1997 to \*\*\* in 1998, then decreased to \*\*\* in 1999. They were \*\*\* in January-June 1999 and \*\*\* in January-June 2000. CR/PR at Table III-6.

<sup>131</sup> Inventories decreased from 11,174 gross short tons in 1997 to 10,982 gross short tons in 1998, then to 9,151 gross short tons in 1999. They were 8,056 gross short tons in January-June 1999 and 9,679 gross short tons in January-June 2000. CR/PR at Table III-1.

investments. In addition, we find it likely that revocation of the orders will result in commensurate employment declines for domestic firms.

### **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty order on subject imports from Argentina would not be likely to lead to continuation or recurrence of material injury to the domestic industry producing silicon metal within a reasonably foreseeable time.<sup>132</sup> We also determine that revocation of the antidumping duty orders on subject imports from Brazil and China would be likely to lead to continuation or recurrence of material injury to the domestic industry producing silicon metal within a reasonably foreseeable time.

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<sup>132</sup> Commissioner Bragg dissenting.