UNITED STATES INTERNATIONAL TRADE COMMISSION

SILICOMANGANESE FROM INDIA, KAZAKHSTAN, AND VENEZUELA
Investigations Nos. 731-TA-929-931 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION
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DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India, Kazakhstan, and Venezuela of silicomanganese that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On April 6, 2001, a petition was filed with the Commission and Commerce by Eramet Marietta Inc., Marietta, OH, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639 alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of silicomanganese from India, Kazakhstan, and Venezuela. Accordingly, effective April 6, 2001, the Commission instituted antidumping duty investigations Nos. 731-TA-929-931 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 18, 2001 (*66 FR 19981*). The conference was held in Washington, DC, on April 30, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Dennis M. Devaney not participating.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicomanganese from India, Kazakhstan, and Venezuela that are allegedly sold in the United States at less than fair value ("LTFV").[1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[2] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[3]

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[4] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[5] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[6]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission

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[1] Commissioner Dennis M. Devaney did not participate in these determinations.

[2] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int'l Trade 1999).

[3] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(10).

[7] See, e.g., NEC Corp. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, 36 F. Supp. 2d 380 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

may consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[9] Although the Commission must accept Commerce's determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

B. Product Description

Commerce's notice of initiation defines the imported merchandise within the scope of these investigations as:

> all forms, sizes, and compositions of silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorus. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040. This petition covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the scope remains dispositive.[11]

C. Domestic Like Product

Indian respondent Indsil Electrosmelts, Ltd. ("Indsil") argued that low-carbon silicomanganese should be a separate like product.[12] Low-carbon silicomanganese, also known as ferromanganese-silicon, is not domestically produced.[13] Indsil has not suggested what domestically-produced product is most similar to low-carbon silicomanganese. In contrast, the domestic producer has argued that all other

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[8] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[9] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[10] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[11] 66 Fed. Reg. 22,209 (May 3, 2001).

[12] Conference transcript (Tr.) at 65-69 (Mr. Kohn); Indsil Postconference Brief at 3-9. Indsil argued that low-carbon silicomanganese differed from silicomanganese in its physical characteristics and end uses, customer and producer perceptions, manufacturing facilities and production processes, and price. Indsil also argued that low-carbon silicomanganese was not interchangeable with silicomanganese. Id.

[13] Confidential Report (CR) at I-6, Public Report (PR) at I-5.

silicomanganese is the domestically-produced product most like low-carbon silicomanganese.[14] Upon review of the record in these preliminary investigations, therefore, we find one like product consisting of silicomanganese.[15]

III. DOMESTIC INDUSTRY

A. In General

Section 771(4) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product."[16] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the domestic 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.[17] Based on our like product determination, we determine that there is a single domestic industry consisting of the sole domestic producer of silicomanganese, Eramet Marietta Inc. ("Eramet").

B. Related Parties

We must determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are

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[14] Tr. at 108-111 (Mr. Leiman). This point may become moot because the domestic producer asked the Department of Commerce to remove low-carbon silicomanganese from the scope of the investigation on May 17, 2001. Eramet Letter of May 17, 2001. If low-carbon silicomanganese is not removed from the scope, we intend to revisit this issue in any final phase of these investigations.

[15] See, e.g., Certain Non-Frozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Final), USITC Pub. 3303 (May 2000) at 25 (no separate domestic like product for vitamin-fortified non-frozen concentrated apple juice since no domestic production); Synthetic Indigo from China, Inv. No. 731-TA-851 (Preliminary), USITC Pub. 3222 at 7 (Aug. 1999) ("since indigo slurry is within the scope of the investigation, and there is no domestic production of indigo slurry for domestic sales, the 'domestic like product' is the product 'most similar in characteristics and uses with' the subject imports"), citing Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34 (Final), USITC Pub. 3112 at 5 (June 1998) (because, *inter alia*, "there has been no production of food-grade ERT for commercial sale," domestic production of food-grade ERT product "does not exist in any practical sense" and could not be considered a domestic like product); Nepheline Syenite From Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 7-11 (Apr. 1992) (since nepheline syenite was not produced in the United States, the Commission defined the domestic like product to include two similar products, feldspar and aplite), aff'd, Feldspar Corp. v. United States, 825 F. Supp. 1095 (Ct. Int'l. Trade 1993).

[16] 19 U.S.C. § 1677(4)(A).

[17] See, e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); 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 and n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain ("OCTG"), Invs. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911, at I-11-I-15 (Aug. 1995) (not including threaders in the casing and tubing industry because of "limited levels of capital investment, lower levels of expertise, and lower levels of employment").

related to an exporter or importer of subject merchandise, or which are themselves importers.[18] The Commission has concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist when the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial.[19] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[20]

Elkem Metals Co. ("Elkem") sold its silicomanganese production facilities to Eramet in July, 1999.[21] ***.[22] ***.[23]

***. ***.[24] ***. Accordingly, we find that appropriate circumstances do not exist to exclude any party as a related party.

IV. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S.

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[18] 19 U.S.C. § 1677(4)(B).

[19] See, e.g., Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Inv. Nos. 701-TA-387-392 and 731-TA-815-822 (Preliminary), USITC Pub. 3181 at 12 (April 1999); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 10 n.50 (April 1997).

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

[21] CR at III-1, PR at III-1.

[22] CR at III-1 and Table III-2, PR at III-1 and Table III-2. ***. Id. at Table III-2. That same year, ***. Id. ***.

[23] CR at Table III-2, PR at Table III-2.

[24] CR at III-1, III-3, and Table III-2, PR at III-1 and Table III-2.

market.[25] In assessing whether subject imports compete with each other and with the domestic like product,[26] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject 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 subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[27]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[28] Only a "reasonable overlap" of competition is required.[29]

Because the petitions in the investigations concerning silicomanganese from India, Kazakhstan, and Venezuela were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of these determinations.[30] Therefore, we are required to determine whether there is a reasonable overlap of competition both among the subject imports from India, Kazakhstan, and Venezuela and between the subject imports and the domestic like product.

B. Analysis

Fungibility. A significant degree of fungibility exists among subject imports and between subject imports and the domestic like product. There is widespread agreement that silicomanganese is a

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[25] 19 U.S.C. § 1677(7)(G)(i).

[26] The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition," SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[27] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[28] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[29] See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int'l Trade 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required.").

[30] These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

commodity product.[31] Most silicomanganese produced or sold in the United States, including subject imports, conforms to American Society for Testing and Materials ("ASTM") specifications for grade B.[32] The domestic producer reported that domestically-produced silicomanganese and subject imports are *** used interchangeably, although the domestic producer conceded that subject imports of low-carbon silicomanganese are not used interchangeably with domestically-produced silicomanganese.[33] *** of the *** importers who compared subject imports from India with the domestic like product reported that the products were always or frequently interchangeable, although *** reported that subject imports from India were unsuitable for use by some mills.[34] Similarly, virtually all importers who compared the other subject imports with the domestic like product, or subject imports with each other, reported the various products to be always or frequently interchangeable.[35]

Subject imports from India include high phosphorous ("high phos") silicomanganese and low-carbon silicomanganese.[36] However, subject imports from India remain significantly fungible with other subject imports and with the domestic like product. High phos silicomanganese has a phosphorus content up to 0.3 percent, compared to 0.2 percent phosphorus in other silicomanganese products.[37] According to Indian producers Universal, Ispat, and Nava Bharat, the high phos material is suitable for approximately 70 percent of domestic applications,[38] and *** reported that blending the subject silicomanganese from India with silicomanganese from other sources could make the subject imports from India more acceptable to some users.[39] Low-carbon silicomanganese accounted for only *** percent of exports of subject merchandise from India to the United States in 1998, *** percent in 1999, and *** percent in 2000, for an average of *** percent during 1998-2000.[40]

Geographic Overlap. Domestically-produced silicomanganese is sold throughout the United States.[41] Subject imports from all three countries typically enter the U.S. market through the Gulf region.[42] The record contains evidence that subject imports and the domestic product are, at the least, competitive in

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[31] Petition at 1; Tr. at 70 (Mr. Reilly); Kazchrome and Aksu Ferroalloy Plant ("Kazchrome") Postconference Brief at 2; Universal Ferro & Allied Chemical Ltd. ("Universal") Postconference Submission at 11; Ispat Alloys ("Ispat") Postconference Submission at 11; Nava Bharat Ferro Alloys ("Nava Bharat") Postconference Submission at 11.

[32] CR at I-4, PR at I-3. This is true for subject imports from Venezuela, in contrast to the 1994 investigation of silicomanganese, wherein a not insignificant portion of subject silicomanganese imports from Venezuela appeared to be grade C. Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela, Inv. Nos. 731-TA-671-674 (Final), USITC Pub. 2836 (Dec. 1994) at II-30.

[33] CR at II-7 and Table II-1, PR at II-4 and Table II-1.

[34] CR at II-7 and Table II-1, PR at II-4 and Table II-1.

[35] CR at Table II-1, PR at Table II-1.

[36] CR at I-7, PR at I-5.

[37] Universal Postconference Submission at 4-5; Ispat Postconference Submission at 4-5; Nava Bharat Postconference Submission at 4-5.

[38] Universal Postconference Submission at 4-5; Ispat Postconference Submission at 4-5; Nava Bharat Postconference Submission at 4-5.

[39] CR at II-7, PR at II-4.

[40] CR at Tables VII-1 and C-2, PR at Tables VII-1 and C-2.

[41] CR at IV-4, PR at IV-3.

[42] CR at IV-4 and Table IV-2, PR at IV-4 and Table IV-2.

that region.[43] The Venezuelan respondent argued that the domestic like product is not competitive in the Texas region, where *** sales of subject imports from Venezuela are made.[44] However, the domestic producer offered evidence of sales activities, ***, indicating that the domestic product was present through sales or offers to sell in that same region.[45]

Channels of Distribution. The steel industry is the primary consumer of silicomanganese.[46] The majority of domestically-produced silicomanganese is sold directly to end users.[47] ***.[48] In 1999 and 2000, ***.[49] There is no evidence in the record indicating that subject imports sold by distributors are sold to different types of end users.

Simultaneous Presence. Domestically-produced silicomanganese was present in the U.S. market throughout the period of investigation ("POI").[50] Subject imports from Kazakhstan entered the U.S. market in only one month in 1998, but entered in nine months of 2000.[51] Subject imports from each of the three countries entered the U.S. market in at least eight of 12 months in 2000.[52]

Conclusion. Despite some differences in product mix, subject imports are significantly fungible with each other and with the domestic like product. Available evidence on the record indicates that subject imports and the domestic like product are competing with each other in at least the Gulf region. Most silicomanganese is sold, directly or indirectly, to the same type of end users, namely, steel makers. Finally, subject imports were widely available in the U.S. market throughout most of the period of investigation. The widespread presence of subject imports is reflected in the extensive quarterly sales data and by existing inventories of subject imports throughout the POI.[53] Based on the foregoing, we find that a reasonable overlap of competition exists among subject imports and between subject imports and the domestic like product.[54] Therefore, we have cumulated the volume and effect of subject imports from India, Kazakhstan, and Venezuela for purposes of our material injury analysis.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

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[43] CR at IV-4, PR at IV-3; Eramet Postconference Brief at 19-20.

[44] Hornos Electricos de Venezuela, S.A. ("HEVENSA") Postconference Brief at 8. HEVENSA does not argue that other subject imports do not compete in the Texas region.

[45] Eramet Postconference Brief at 19-20; CR at Table V-4, PR at Table V-4. Eramet sold as much as *** short tons in the Gulf region in 1999. Eramet Postconference Brief at 19 n.62. Eramet also ***. Id. at 19.

[46] CR at I-4, PR at I-3.

[47] CR at I-8, PR at I-6.

[48] CR at I-8, PR at I-6.

[49] CR at I-8 and n.26, PR at I-6 and n.26. See also Kazchrome Postconference Brief at Exh. 5 ***.

[50] CR at IV-5, PR at IV-4.

[51] CR at Table IV-3, PR at Table IV-3.

[52] CR at Table IV-3, PR at Table IV-3.

[53] CR at Tables V-1, V-2, V-3, and VII-4; PR at Tables V-1, V-2, V-3, and VII-4.

[54] We intend to pursue additional information regarding the extent of geographic overlap, particularly in Texas, in any final phase of these investigations. We also intend to pursue additional information regarding channels of distribution in any final phase of these investigations.

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[55] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[56] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[57] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[58] 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."[59]

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from India, Kazakhstan, and Venezuela that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

Silicomanganese is used in the making of steel.[60] While it can be used by either basic oxygen furnace or electric arc furnace ("EAF") mills, EAF mills are the primary consumers.[61] EAF furnaces tend to use silicomanganese in production of long products, such as bars and structural shapes.[62] There is no single product that can substitute for silicomanganese.[63]

Demand for silicomanganese is closely tied to demand for steel.[64] Overall domestic carbon and alloy steel production fell in 1999, and then rose above 1998 levels in 2000.[65] Total apparent U.S. consumption of silicomanganese followed a similar path, falling from *** short tons in 1998 to *** short tons in 1999, then rising to *** short tons in 2000.[66] However, silicomanganese represents a relatively small share of the total cost of steelmaking, and the absolute price level of silicomanganese has little effect on the level of demand for silicomanganese.[67]

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[55] 19 U.S.C. §§ 1671b(a) and 1673b(a).

[56] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[57] 19 U.S.C. § 1677(7)(A).

[58] 19 U.S.C. § 1677(7)(C)(iii).

[59] 19 U.S.C. § 1677(7)(C)(iii).

[60] CR at I-4, PR at I-3.

[61] CR at I-5, PR at I-4.

[62] CR at I-5, PR at I-4.

[63] Petition at 5.

[64] CR at II-5, PR at II-3.

[65] Eramet Postconference Brief at App., p.1.

[66] CR at Table IV-4, PR at Table IV-4.

[67] CR at II-6, PR at II-4; Petition at 33.

Silicomanganese is a commodity product, sold largely on the basis of price.[68] Price was named as one of the top three most important factors in a purchasing decision more often than any other factor, including quality.[69] Most silicomanganese used by domestic purchasers conforms to ASTM grade B.[70] Most end users have certification requirements, but once those are met end users rarely make purchasing decisions based on the origin of the silicomanganese.[71] Many producers in fact are not aware of the source of the silicomanganese they purchase.[72]

Pricing data on silicomanganese are widely and rapidly available through published sources such as Ryan's Notes and Metals Week.[73] Given the widespread availability of pricing data and the commodity nature of the product, producers must react quickly to price changes in order to remain competitive. Contract sales may not provide much protection from market price fluctuations. Most contract sales of the domestic like product are ***.[74]

Eramet is the only domestic producer of silicomanganese.[75] This producer is able to supply *** portion of domestic demand. As a result, imports have a steady presence in the domestic market for silicomanganese. Historically, South Africa, Australia, and Mexico were the three leading sources of imports.[76] In 2000, South Africa was still the leading source for imports, but Kazakhstan and India replaced Australia and Mexico as the second and third largest foreign suppliers to the U.S. market.[77]

Eramet purchased Elkem's silicomanganese production facility in July 1999.[78] Eramet is affiliated with other silicomanganese producers in Norway, France, and Italy.[79] According to the domestic producer, it is relatively simple to shift a facility from the production of one ferroalloy to another.[80] However, Eramet's silicomanganese production facility in Marietta, OH, has been dedicated to silicomanganese production since the early 1990s.[81] Silicomanganese production is capital intensive, requiring a producer to operate at high levels of capacity utilization in order to be profitable.[82]

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[68] Petition at 1; Tr. at 70 (Mr. Reilly); Kazchrome Postconference Brief at 2; Universal Postconference Submission at 11; Ispat Postconference Submission at 11; Nava Bharat Postconference Submission at 11.

[69] CR at Table II-3, PR at Table II-3. In the recent five-year review on silicomanganese, 21 purchasers ranked price as one of the top three factors, followed by 16 purchasers who ranked quality as one of the top three factors. Silicomanganese from Brazil, China, and Ukraine, Inv. Nos. 731-TA-671-673 (Review), USITC Pub. 3386 (Jan. 2001) at II-8-9.

[70] CR at I-4, PR at I-3

[71] Petition at 27-28.

[72] CR at V-9, PR at V-4; Petition at 39.

[73] CR at V-3, PR at V-3

[74] CR at V-3, PR at V-3.

[75] CR at III-1, PR at III-1.

[76] Official Commerce Statistics.

[77] Official Commerce Statistics.

[78] CR at III-1, PR at III-1.

[79] CR at III-1, PR at III-1.

[80] CR at I-6, PR at I-5.

[81] CR at I-7, PR at I-5.

[82] Eramet Postconference Brief at 12.

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."[83]

Total apparent U.S. consumption of silicomanganese fell by *** percent in 1999, then rose *** percent in 2000.[84] Subject imports followed a similar pattern. The volume of subject imports fell by 10.9 percent between 1998 and 1999, from 68,616 short tons in 1998 to 61,170 short tons in 1999.[85] Subject imports then increased sharply between 1999 and 2000, rising 172.1 percent to 166,439 short tons.[86] Because subject import volume growth exceeded the growth in apparent U.S. consumption by a substantial margin, subject import market share grew markedly. In 1998 and 1999, subject imports accounted for *** and *** percent, respectively, of apparent U.S. consumption.[87] In 2000, that share rose to *** percent.[88]

Shipments of domestically-produced silicomanganese followed a different pattern. U.S. shipments of domestically-produced silicomanganese rose from *** short tons in 1998 to *** short tons in 1999 before falling to *** short tons in 2000, despite the increase in overall carbon and alloy steel production and a concomitant increase in silicomanganese consumption.[89] Domestically-produced silicomanganese accounted for *** percent of apparent U.S. domestic consumption in 2000, down from *** percent in 1999.[90]

The volume of nonsubject imports dropped throughout the POI, falling from 313,270 short tons in 1998 to 270,178 short tons in 1999, and then to 250,371 short tons in 2000.[91] Nonsubject imports accounted for *** percent of domestic consumption in 1998, *** percent in 1999, and *** percent in 2000.[92]

As noted above, the increase in subject imports between 1999 and 2000 was significantly larger than the increase in apparent U.S. consumption. The additional market share of apparent U.S. consumption gained by subject imports came largely at the expense of nonsubject imports, but the share of the market accounted for by domestically-produced silicomanganese also fell, from *** percent in 1999 to *** percent in 2000.

The domestic producer is not capable of supplying all domestic demand, and imports are essential to the market. However, the rapid and substantial increase in subject imports displaced domestically-produced silicomanganese as well as nonsubject imports. We find, for purposes of these preliminary investigations, that both the absolute and relative subject import volume, and the increases in subject import volume, are significant.

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[83] 19 U.S.C. § 1677(7)(C)(i).

[84] CR at Table C-1, PR at Table C-1. Total domestic carbon steel production fell by 1.7 percent between 1998 and 1999, then rose by 5.0 percent in 2000. Eramet Postconference Brief at App., p.1. EAF steel production was essentially unchanged between 1998 and 1999, then rose by 7.1 percent in 2000. Eramet Postconference Brief at App., p.1.

[85] CR at Table IV-4, PR at Table IV-4.

[86] CR at Table IV-4, PR at Table IV-4.

[87] CR at Table C-1, PR at Table C-1.

[88] CR at Table C-1, PR at Table C-1.

[89] CR at Table IV-4, PR at Table IV-4.

[90] CR at Table C-1, PR at Table C-1.

[91] CR at Table IV-4, PR at Table IV-4.

[92] CR at Table C-1, PR at Table C-1.

C. Price Effects of the Subject Imports

Section 771(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.[93]

The quarterly pricing data gathered in the course of these investigations presents a mixed picture. No consistent pattern of underselling or overselling is apparent.[94] Evaluation of any pricing data, especially average unit values ("AUVs"), is complicated by the fact that *** subject imports from Kazakhstan are sold to distributors rather than to end users, meaning that *** available price comparisons with subject imports from Kazakhstan are not at the same level of trade.

Nonetheless, the conditions of competition prevailing in this market indicate that the adverse price effects of subject imports are significant. Pricing information is widely disseminated and exerts rapid influence on the market.[95] The effect of price changes is further amplified by ***. In a market such as this, underselling would likely be persistent but transitory, as producers and sellers quickly adjust to price changes.[96]

We recognize the limitations of AUV data in these investigations. Nonetheless, while direct comparisons of specific AUVs may be limited by differences in the levels of trade, relative changes in AUVs indicate that subject imports led prices downward in 2000. Moreover, the gap between subject import AUVs and AUVs for the domestic like product widened between 1998 and 2000.[97] In 1998, the

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[93] 19 U.S.C. § 1677(7)(C)(ii).

[94] CR at Tables V-1, V-2, and V-3, PR at Tables V-1, V-2, and V-3. With respect to underselling, the record indicates that silicomanganese from India was priced *** than the domestic like product in only *** of *** contract comparisons and *** of *** spot comparisons, although price levels were generally *** from the second half of 1999 on, the fourth quarter of 2000 excepted. Silicomanganese from Kazakhstan was priced *** than the domestic like product in *** of *** contract sales comparisons and in *** of *** spot comparisons. Kazakh underselling was concentrated in late 1998 and early 1999, as it was breaking into the U.S. market, and in 2000, when its contract volumes *** those of the domestic like product. Silicomanganese from Venezuela was priced *** than the domestic like product in only *** of *** contract comparisons, ***, corresponding to the *** volume of Venezuelan contract shipments. Overall, subject imports were priced *** than the domestic like product in *** of *** and *** of *** contract comparisons in 1998 and 1999, respectively, and in *** of *** contract comparisons in 2000. CR at V-6-V-8 and Tables V-1-V-3, PR at V-3-V-4 and Tables V-1-V-3. Spot price comparisons, which are sporadic and reflect far smaller volumes, resulted in *** of *** instances of underselling in 1998; *** of *** in 1999; and *** of *** in 2000. Id.

[95] CR at V-3, PR at V-3

[96] USITC Pub. 3386 at 19.

[97] CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1. Similarly, the gap between subject import AUVs and nonsubject AUVs also widened. In 1998, the gap was $1.82 per short ton; by 2000 it was $36.52. CR at Table IV-1, PR at Table IV-1. In contrast, the gap between nonsubject AUVs and domestic like product AUVs actually narrowed between 1998 and 2000. In 1998, the gap was $*** per short ton; in 2000 it was $*** per short ton. CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1.

AUV for all subject imports was $*** per short ton below the AUV for the domestic like product.[98] In 2000, that gap widened to $*** per short ton.[99]

Furthermore, as noted above, silicomanganese is a commodity product, sold largely on the basis of price. The record contains substantial evidence that subject imports and the domestic like product are fungible. In a commodity market based on price competition, we would expect the significant and rapid growth in market share to be based largely on underselling, which, as noted previously, is likely to be transitory. Indeed, while consumption of silicomanganese was higher in 2000 than in 1998, the AUVs of subject imports declined. Furthermore, *** lost sales and lost revenue allegations, indicating that direct competition between the domestic like product and subject imports occurred, and that the domestic industry lost sales on the basis of price.[100]

Finally, we note that the ratio of cost of goods sold to net sales rose *** during the POI.[101] Thus, both the financial data and the pricing data on the record suggest that the domestic industry has not been fully able to recoup costs through sales revenue, despite an increase in apparent U.S. consumption and generally flat costs during the POI. Accordingly, we find that the increasing volume of subject imports, sold at low and declining prices, played a significant role in preventing price increases.

Based on the foregoing, we find, for purposes of these preliminary investigations, that subject imports have suppressed and depressed prices to a significant degree and have had an adverse effect on U.S. prices.

D. Impact of the Subject Imports

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."[102] 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 industry."[103] [104] [105]

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[98] CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1.

[99] CR at Tables III-1 and IV-1, PR at Tables III-1 and IV-1.

[100] CR at V-9 and Tables V-4 and V-5, PR at V-4 and Tables V-4 and V-5. *** confirmed lost sales or lost revenue allegations. Id.

[101] CR at Table VI-1, PR at Table VI-1.

[102] 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, 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 also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885).

[103] 19 U.S.C. § 1677(7)(C)(iii).

[104] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce estimated dumping margins as follows: India, 5.89 to 86.98 percent; Kazakhstan, 164.29 percent; and Venezuela, 20.38 to 47.14 percent. 66 Fed. Reg. 22,209, 22,210 (May 3, 2001).

[105] Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary),

We find that subject imports have had a significant adverse impact on the domestic industry. The combination of declining shipments and adverse price effects of subject imports resulted in declines in several key financial performance indicators.

Total apparent U.S. consumption of silicomanganese declined by *** percent in 1999.[106] While shipments of the domestic like product rose by *** percent in 1999, the AUV of those shipments dropped by *** percent.[107] In 2000, demand for silicomanganese recovered, with apparent U.S. consumption rising by *** percent in 2000 relative to 1999.[108] Despite this increase, domestic production declined by *** percent and shipments of the domestic like product declined by *** percent.[109] By the end of the year 2000, the price of the domestic like product also declined *** from its second-quarter peak.[110] The domestic industry's market share peaked at *** percent in 1999 before declining to *** percent in 2000.[111] The domestic industry's capacity utilization rates, which must remain high given the capital-intensive nature of production, were well below 1998 levels in 2000.[112] Notwithstanding the drop in production, inventories of the domestic like product increased towards the end of the POI. Inventories dropped from *** short tons in 1998 to *** short tons in 1999, but rose to *** short tons in 2000.[113]

The overall reduction in both prices and sales has had significant negative effects on the state of the domestic industry. Despite increased production in 1999, declining prices resulted in an operating *** percent and a net *** percent.[114] Improved prices in the first half of 2000 were followed by price declines in the second half, and the result was another ***.[115] Variance analysis confirms that changes in operating income between 1998 and 2000 were attributable primarily to price variations rather than production or cost variations.[116] Data available for the first quarter of 2001 indicate that, although prices made a modest recovery, they remained well below the levels seen in the first half of 2000, and the domestic industry ***.[117]

Capital expenditures by the domestic industry *** percent in 1999.[118] Capital expenditures recovered somewhat in 2000, but remained below 1998 levels.[119] Research and development expenditures in 2000 were *** percent below 1998 levels.[120] Employment levels were ***.[121]

USITC Pub. 3345 (Sept. 2000) at 11 n.63.

[106] CR at Table C-1, PR at Table C-1.

[107] CR at Table C-1, PR at Table C-1.

[108] CR at Table C-1, PR at Table C-1.

[109] CR at Table C-1, PR at Table C-1.

[110] CR at Table V-1, PR at Table V-1.

[111] CR at Table C-1, PR at Table C-1.

[112] CR at Table C-1, PR at Table C-1.

[113] CR at Table III-1, PR at Table III-1.

[114] CR at Table VI-1, PR at Table VI-1.

[115] CR at Table VI-1, PR at Table VI-1.

[116] CR at VI-4-VI-5 and Table VI-3, PR at VI-2 and Table VI-3. We are aware that respondents have raised questions regarding the domestic producer's allocation of costs. We will seek more information on this issue, as well as other cost-related questions such as energy costs, in any final phase of these investigations.

[117] Petition at Exhibit 27; Eramet Postconference Brief at 15.

[118] CR at Table VI-4, PR at Table VI-4.

[119] CR at Table VI-4, PR at Table VI-4.

[120] CR at Table VI-4, PR at Table VI-4.

[121] CR at Table III-1, PR at Table III-1.

The record indicates that the significant increase in the volume of subject imports suppressed or depressed prices to a significant degree, while the domestic industry suffered declines in all indicators. We thus find that the cumulated subject imports have had a significant adverse impact on the domestic silicomanganese industry.

CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicomanganese from India, Kazakhstan, and Venezuela that are allegedly sold in the United States at less than fair value.