Hogan Lovells

SILICOMANGANESE FROM BRAZIL, CHINA, AND UKRAINE
Inv. Nos. 731-TA-671-673 (Third Review)

AFFIRMATIVE ITC HEARING TESTIMONY OF VALE MANGANÊS

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VALE

September 5, 2012

Commission's Original Investigation

- The most recent period of time in which subject imports competed without the discipline of the orders

- 4-2 majority **rejected** Elkem's claims of **present material injury**

Commission's Original Investigation

- **Subject import volumes "not significant":**
  - No significant increase in market share
  - Absence of price effects
  - Presence of large quantities of nonsubject imports
  - Imports increased at expense of nonsubject imports, not the domestic industry

Commission's Original Investigation

- **Elkem's claims of price depression and suppression rejected**
  - Underselling data was "mixed"
  - No consistent correlation between subject import volume trends and U.S. prices
  - No clear price leader
  - Large presence of nonsubject imports limited potential price increases

Commission's Original Investigation

- **"LTFV imports from Brazil and China have had no significant impact on the domestic industry"**

➢ Relatively steady market share

➢ All domestic performance indicators, other than financial, were "strongly positive"

➢ Elkem's inability to raise prices "was not by reason of subject imports."

Commission's Original Investigation

- **Threat:**
  - **All four Commissioners** considering threat found adequate grounds **not to cumulate** based on divergent data

  - **Three of the four** Commissioners considering "threat" subsequently reached **negative** determinations with respect to Brazil
    - ➢ Favorable volume trends for Brazil
    - ➢ Very strong pricing comparison data for Brazil

Cumulation Overview

- The Commission has discretion to decumulate Brazilian imports based on differing "conditions of competition"

- Four Commissioners in the original investigation supported the decumulation of Brazilian imports for threat purposes

- Different conditions of competition support the decumulation of Brazilian imports

- Brazil's industry is 27 times smaller than China's, and 4.5 times smaller than Ukraine's

Cumulation – Ukraine

- The major Ukrainian producers have close ties with the largest U.S. producer, Felman
- Felman has not adequately clarified its relationship with the Ukrainian producers, despite the importance of this issue to the Commission's determination
- Ukrainian silicomanganese is fundamentally different from the U.S. and Brazilian product due to its high phosphorous content

Cumulation – China

- The Chinese Government actively discourages exports of silicomanganese through
  - 20% export duty, and
  - minimum export prices set so high that U.S. and other consumers are uninterested in Chinese product

- Chinese exports – despite the massive size of the Chinese industry – account for **<u>only 0.2%</u>** of global silicomanganese exports

Cumulation – Brazil

- Brazilian producers are focused on sales to their profitable domestic market and to proximate Latin American markets
- There have been no exports from Brazil to the U.S. market during the review period despite Vale's receipt of a 0% antidumping deposit rate in 2005
- Substantially higher logistics costs to the U.S. market discourage exports
- Brazil's exports are predominantly to Latin America, except for limited Vale exports to Europe

Domestic Industry Dominates the Market

- Eramet and Felman have a duopoly in the U.S. market

- Felman is the predominant player –
  "supplying more than 50 percent of the domestic market"

Metal Bulletin, Feb 10, 2012

Both Domestic Firms Are Major Importers

- Eramet acquired Tinfos, a major Norwegian producer / exporter of silicomanganese, during the review period

- Felman Trading has exclusive supply contracts with major silicomanganese producers in Ukraine, Georgia, and Romania

The Domestic Industry Controls Two of the Largest Sources of US Import Supply

	2006	2007	2008	2009	2010	2011
Australia	32,019	40,050	40,211	20,235	34,384	49,382
Georgia	**54,487**	**57,928**	**65,921**	**22,403**	**87,318**	**110,460**
Norway	**85,723**	**61,392**	**79,876**	**16,790**	**42,209**	**36,892**
South Africa	184,711	182,652	168,328	61,076	134,798	157,917
All other sources	84,036	114,573	47,841	22,615	28,353	29,161

Table IV-1, Public Staff Report

**** These imports jointly accounted for 41% of US SiMn Imports in 2011**

Felman's Murky Relationship with Ukraine

- Felman has not adequately clarified its relationship with Ukrainian producers

- *"Felman is part of the Ukraine Privat banking group, which is also one of the largest producers of ferroalloys in the world and one of the world's biggest manganese ore producers."*

  Platts, July 24, 2012

Felman's Murky Relationship with Ukraine

- Judge Robert Chambers (S.D. West Virginia) (September 29, 2011):

  - *"Felman also actively concealed its relationship with Privat."*

  - *"Privat controlled Felman's pricing and other features of the business, including balancing Felman's sales with other Privat related holdings."*

Public Views on SiMn Price

- *"With the lack of supply, {Felman} now {has} total dominance over the market, so they have the power to raise prices"*

  Metal Bulletin, Feb 3, 2012

- *"If Felman sets the price at 80, it's going to go there."*

  Metal Bulletin, March 10, 2012

Importance of Imports

"overseas manufacturers already control 80% of the market"

The Manganese Mission, July 11, 2012

"Imports + Production" Business Model

- Complicates the Commission's analysis
- How should imports be interpreted?
  - Impact on domestic production or on nonsubject imports
- What are Eramet and Felman maximizing?
  - Domestic profits? Profits from importing?
- Causation

BHP Closes South African SiMn Facility

"BHP Billiton announced it had permanently stopped all silicomanganese production at Meyerton in South Africa.

BHP said it would concentrate on producing high-carbon ferromanganese and refined grades in South Africa. Those grades require less power and have higher profit margins.

As a result, the company's only silicomanganese output now comes from its Australian plant."

Ryan's Notes, Feb 6, 2012

South Africa Has Been The Largest US Supplier

	2006	2007	2008	2009	2010	2011
Australia	32,019	40,050	40,211	20,235	34,384	49,382
Georgia	54,487	57,928	65,921	22,403	87,318	110,460
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Table IV-1, Public Staff Report

**** South Africa accounted for 44% of US SiMn Imports in 2011**

Impact of BHP's shutdown on prices

- South Africa accounts for 7% of all exports
- Staff Report elasticities suggest BHP shutdown will cause 10 to 17.5% **increase** in worldwide prices

Brazilian Capacity and Incentives to Export (Short Tons)

	2004	2005	2006	2007	2008	2009	2010	2011
Canada	33,819	45,885	16,487	8,208				
Mexico	1,190	3,367	2,886				238	331
Japan	1,385				66		337	
World	111,906	127,010	75,519	74,115	66,543	24,944	56,885	73,789
Percent shipped to								
Mercosur	27.2%	26.9%	46.3%	46.2%	58.2%	57.8%	58.3%	52.4%
South America	38.0%	37.5%	65.9%	59.8%	66.9%	81.3%	75.6%	66.8%
South America or EU affiliate	40.1%	40.1%	65.9%	82.1%	95.2%	84.3%	96.5%	94.7%

* Mercosur members: Brazil, Argentina, Venezuela, Paraguay, Uruguay
** South America: Brazil, Argentina, Peru, Colombia, Ecuador, Venezuela, Paraguay, Chile, Uruguay

Source: UN Comtrade

Brazilian Capacity and Incentives to Export

- Vale is only Brazilian producer with track record of significant exports – other companies are established local / regional suppliers

- Vale corporate policy of re-focusing on core mining operations – not manufacturing

- July 2012 divestment of European ferroalloy facilities (Norway and France)

Brazilian Capacity and Incentives to Export

- Corporate policy is to focus on Brazil and Latin American markets

  - Brazilian prices tend to be higher than other export markets

  - Logistics costs:
    - US – $194 per ton
    - Brazil – $48 per ton
    - Latin America – $64 per ton
    - Europe – far below US per ton

Brazilian Capacity and Incentives to Export

- Vale has implemented this policy by exiting other export markets:
  - ➢ Japan in 2005
  - ➢ Canada in 2007-08
  - ➢ Vale is selling its European assets, and rebalancing ferro-manganese and silicomanganese shipments

Brazilian Capacity and Incentives to Export

- Brazilian capacity reported in staff report is overstated due to closed production facilities
- Product shifting technically feasible at certain furnaces, but not economically attractive, given higher profitability of ferromanganese
- Lack of any silicomanganese shipments to Canada despite purported “excess capacity”

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