

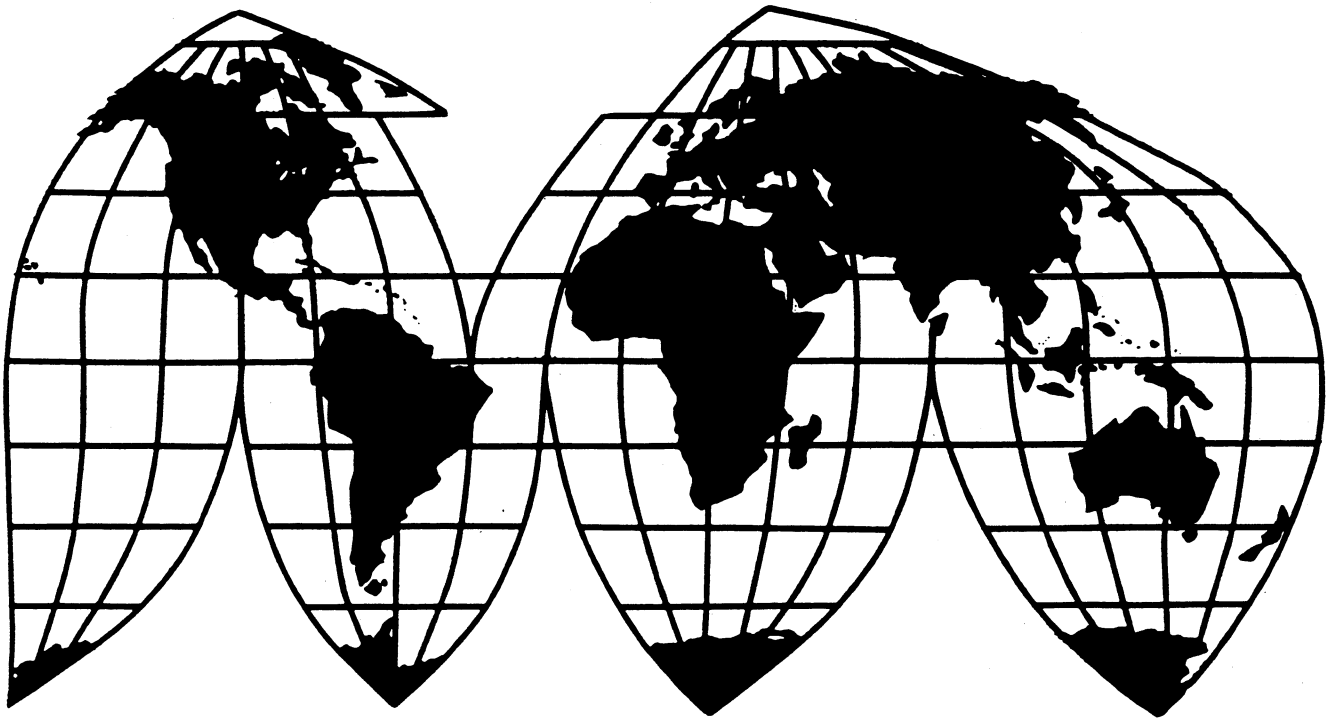
Manganese Metal from the People's Republic of China

Investigation No. 731-TA-724 (Preliminary)

Publication 2844

December 1994

U.S. International Trade Commission



U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I
DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-724 (Preliminary)

MANGANESE METAL FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of manganese metal,^{3 4} provided for in subheadings 8111.00.45 and 8111.00.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 8, 1994, a petition was filed with the Commission and the Department of Commerce by Elkem Metals Company, Marietta, OH, and Kerr-McGee Chemical Corporation, Hamilton, MS, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of manganese metal from China. Accordingly, effective November 8, 1994, the Commission instituted antidumping investigation No. 731-TA-724 (Preliminary).

Notice of the institution of the Commission's investigation 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 November 17, 1994 (59 F.R. 59419). The conference was held in Washington, DC, on November 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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 Crawford dissenting.

³ As defined by Commerce, manganese metal is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron, and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms, and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines.

⁴ Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication that an industry in the United States is materially injured by reason of the alleged LTFV imports from China.

IEWS OF THE COMMISSION

Based on the record in this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of manganese metal from the People's Republic of China ("China") that are allegedly sold in the United States at less than fair value ("LTFV").^{1 2 3}

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping duty investigations requires the Commission to determine, based upon the best information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly LTFV imports.⁴ 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 material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."⁵

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the domestic "industry." Section 771(4)(A) of the Tariff Act of 1930 (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."⁶ In turn, the Act defines "like product" as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the articles subject to an investigation."⁷

Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and we apply the statutory standard of "like" or "most similar in

¹ Whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

² Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of manganese metal from China that are allegedly sold in the United States at LTFV. See Additional Views of Commissioner Rohr and Commissioner Newquist. They join sections I, II, and III of this opinion.

³ Commissioner Crawford determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of manganese metal from China that are allegedly sold in the United States at LTFV. See Dissenting Views of Commissioner Crawford. She joins sections I, II, and III of this opinion.

⁴ 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. USITC, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

⁵ American Lamb Co. v. United States, 785 F.2d at 1001; see also Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993).

⁶ 19 U.S.C. § 1677(4)(A).

⁷ 19 U.S.C. § 1677(10).

characteristics and uses" on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. The Commission looks for "clear dividing lines among possible like products" and disregards minor variations.⁹

The imported merchandise subject to investigation is manganese metal from China. In its notice of initiation, the Department of Commerce ("Commerce") stated that the subject merchandise must contain not less than 95 percent manganese by weight, and that "[a]ll compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines."¹⁰

There are two like product issues in this investigation. The first is whether flake and powder, the two domestically-produced forms of manganese metal "like" those within the scope of investigation, should be included within the same like product.

Both flake and powder have the same chemical composition.¹¹ Although generally not interchangeable in a given application, both flake and powder impart similar product qualities, such as increasing the strength of the finished product in which they are used.¹² Flake and powder share similar channels of distribution and have identical production processes insofar as all powder is produced from flake.¹³ U.S. producers perceive their product to be "manganese metal," rather than "powder" or "flake."¹⁴ Based on the similarity of powder and flake in terms of chemical composition, channels of distribution and production processes, and producer perceptions of the two forms as being a single product, we determine that powder and flake are within the same like product.¹⁵

⁸ See 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) ("[E]very like product determination 'must be made on the particular record at issue' and the 'unique facts of each case.'"). In analyzing like product issues, the Commission generally considers six factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and (6) when appropriate, price. Calabrian Corp., 794 F. Supp. at 382 n.4.

⁹ Torrington, 747 F. Supp. at 748-49.

¹⁰ 59 Fed. Reg. 61869 (Dec. 2, 1994).

¹¹ See Petitioners' Postconference Brief, app. 4 (Harris article).

¹² Confidential Report (CR) at I-5, Public Report (PR) at II-4; Tr. at 37 (Ezell).

¹³ See CR at I-15, PR at II-10; Tr. at 38 (Ezell).

¹⁴ Petitioners' Postconference Brief, app. 2; Petition, app. 11.

¹⁵ See Phthalic Anhydride from Venezuela, Inv. No. 731-TA-668 (Final), USITC Pub. 2089 at I-7 (Sept. 1994) (flake and molten forms of product, which had same chemical composition, found to be within same like product).

This issue is also amenable to a semifinished products like product analysis, because powder is produced by further processing flake. See CR at I-7, PR at II-5. In such an analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) significance and extent of the processes used to transform the upstream into the downstream articles. Silicon Carbide from China, Inv. No. 731-TA-651 (Final), USITC Pub. 2779 (June 1994); Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain, Inv. Nos. 731-TA-678-682 (Preliminary), USITC Pub. 2734 at I-12 (Feb. 1994).

Under a semifinished products like product analysis, we would also determine that powder and flake are within the same like product. Although flake is not dedicated to the production of powder, the further processing used to transform flake into powder does not change the chemical composition of the manganese metal and both forms have similar product qualities due to their manganese content. Moreover,
(continued...)

The second like product issue concerns whether the like product should be extended downstream to encompass manganese aluminum briquettes, as advocated by respondent Cometals, Inc. These briquettes are made by blending manganese metal powder with aluminum and compacting the mixture, yielding a brick-like product containing 25 percent aluminum and 75 percent manganese by weight.¹⁶

Because manganese aluminum briquettes contain less than 95 percent manganese by weight, briquettes, unlike powder, are not within the scope of the imported articles subject to investigation. The Commission has previously stated that it generally does not include downstream articles in the like product or use a semifinished products like product analysis when the downstream imported product corresponding to the downstream domestic product is not within the scope of investigation.¹⁷

Nor does application of traditional like product analysis support including briquettes in the like product. There is a chemical difference between briquettes and manganese metal. Briquettes contain by weight 75 percent manganese and 25 percent aluminum, while manganese metal generally has manganese purity of at least 99.7 percent.¹⁸ Briquettes are used to produce aluminum can stock, while manganese metal has applications in the steel, chemical, and weld-rod industries, as well as being used as an input for the production of briquettes.¹⁹

Interchangeability between briquettes and manganese metal is minimal. Briquettes are used only by the aluminum industry. While flake was used extensively by the aluminum industry in the past, its use today is rare; briquettes are used almost exclusively.²⁰

Channels of distribution for manganese aluminum briquettes tend to be similar to those for manganese metal.²¹ Briquettes and manganese metal have some common production processes insofar as briquettes are produced from manganese metal powder. Additionally, briquettes are made in the same facility in which manganese metal powder is ground, by workers who also grind powder from flake. Briquettes, however, go through the additional steps of blending (with aluminum) and compression into a briquette.²² This process requires additional production equipment and inputs.²³

There is limited information in the record concerning producer perceptions and pricing. This information suggests that producers perceive manganese aluminum briquettes as a distinct product and sell manganese aluminum briquettes at higher prices than those that they charge for powder or flake.²⁴

¹⁵ (...continued)

the processing used to transform flake into powder is simply a mechanical grinding process that does not add substantial value to the product. See Petitioners' Postconference Brief, app. 3; CR at I-8, I-21, PR at II-5, II-12. Finally, flake that is processed into powder that is to be sold commercially is not sold in an open, competitive market. See Petitioners' Postconference Brief, app. 3.

¹⁶ Petitioners' Postconference Brief at 17-18, app. 3.

¹⁷ Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 at I-14 & n.65 (Nov. 1994); see Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 9 (March 1991).

¹⁸ See CR at I-7-8, PR at II-5.

¹⁹ CR at I-5, PR at II-4.

²⁰ CR at I-8, PR at II-5.

²¹ See Petition, app. 3.

²² CR at I-8, PR at II-5; Petitioners' Postconference Brief, app. 3.

²³ Petitioners' Postconference Brief, app. 3.

²⁴ Petitioners' Postconference Brief at 15, app. 2.

In sum, although there are some similarities in channels of distribution and production facilities and employees between manganese aluminum briquettes and manganese metal, the distinct chemical composition and uses of manganese aluminum briquettes, and the lack of interchangeability between briquettes and manganese metal powder or flake, create a "clear dividing line" between manganese metal and manganese aluminum briquettes. Moreover, as noted above, we have generally declined to expand the like product to include downstream articles.

We thus have determined not to include manganese aluminum briquettes in the like product. Accordingly, we find one like product in this investigation consisting of all forms of manganese metal containing by weight at least 95 percent manganese.

We further determine the domestic industry consists of all U.S. producers of manganese metal. These are petitioners Kerr-McGee Chemical Corp. (KMCC) and Elkem Metals Co. (Elkem). In accordance with our general practice, we include in the industry producers of all domestic production of the like product, whether captively consumed or sold in the open market.²⁵

Elkem is a "related party" pursuant to 19 U.S.C. § 1677(4)(B) because it imported manganese metal from China during 1992.²⁶ We have determined, however, that appropriate circumstances do not exist to exclude Elkem from the domestic industry, because Elkem's importation was very small, and was made solely to acquire product for testing purposes.²⁷

III. CONDITION OF THE DOMESTIC INDUSTRY²⁸

In assessing whether there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of allegedly LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United

²⁵ See Fresh Garlic from the People's Republic of China, Inv. No. 731-TA-683 (Final), USITC Pub. 2825 at I-14 & n.67 (Nov. 1994). We further consider the issue of petitioners' captive consumption below in our discussion of the condition of the industry.

²⁶ CR at I-23, PR at II-12; Petitioners' Postconference Brief at 4. Although the volume of manganese metal from China imported by Elkem is small, the Commission has determined a domestic producer to be a "related party" when it imports even small quantities of subject merchandise. See Certain Sodium Sulfur Chemical Compounds from the Federal Republic of Germany, the People's Republic of China, Turkey, and the United Kingdom, Inv. Nos. 731-TA-303, 731-TA-465-468 (Preliminary), USITC Pub. 2307 at 11 n.34 (Aug. 1990) (importation of a single shipment).

²⁷ We base this conclusion on the factors we typically consider in determining whether appropriate circumstances exist to exclude a related party. See, e.g., Torrington Co., 790 F. Supp. at 1168. Elkem's 1992 importation was a one-time event that constituted only *** percent of Elkem's shipments during that year. See Table 4, CR at I-18, PR at II-11; Petitioners' Postconference Brief at 4. In light of these circumstances, we conclude that the importation was not made for the purpose of benefitting from the effects of LTFV imports, that the importation had no material impact on Elkem's performance, and that it did not place Elkem in a materially different position from the only other domestic manganese metal producer, KMCC.

²⁸ Commissioner Rohr and Commissioner Newquist note their concern over the considerable amount of confidential information omitted from the public version of these views. In particular, they question whether the omission of so much data prevents the general public from understanding the factual bases for the Commission's decision in this investigation.

Commissioner Rohr and Commissioner Newquist further note that while analysis of company specific data may be interesting, it is not the analysis anticipated by the statute. To the contrary, the statute explicitly states that "the term 'industry' means the domestic producers as a whole of a like product" 19 U.S.C. § 1677(4)(emphasis added).

States.²⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁰

We note at the outset two pertinent conditions of competition distinctive to the domestic manganese metal industry. First, a substantial proportion of domestic manganese metal production is consumed captively in the production of manganese aluminum briquettes.³¹ Petitioner Elkem stated that it emphasizes marketing to customers of briquettes, which are in the aluminum industry, with remaining production sold to other industries.³² The record indicates, however, that the percentage of domestic shipments that was consumed captively declined significantly over the period of investigation.³³ In any final investigation, we will examine further whether this trend towards open market sales is due to increasing demand in the open market, decreasing demand in the aluminum industry, some combination of the two, or other factors. We also note that the domestic industry competes directly with the subject imports in the open market. Accordingly, we examined carefully the data with respect to the open market, as well as the total market.

Second, there were several significant sales by the domestic industry during 1994 that appear to be short-term or otherwise atypical. ***³⁴ ***³⁵ ***³⁶

The period of investigation was generally characterized by increasing U.S. consumption of manganese metal. The quantity and value of apparent U.S. consumption of manganese metal increased irregularly from 1991 to 1993.³⁷ Both the quantity and value of apparent U.S. consumption were significantly higher in the first nine months of 1994 ("interim 1994") than they were in the first nine months of 1993 ("interim 1993").³⁸ During 1994, demand for manganese metal increased in several industries that consume manganese, particularly the steel industry.³⁹

Domestic producers' U.S. shipments increased continuously from 1991 to 1993, at a higher rate than domestic consumption.⁴⁰ They were also substantially higher in interim 1994

²⁹ 19 U.S.C. § 1677(7)(C)(iii).

³⁰ 19 U.S.C. § 1677(7)(C)(iii).

³¹ See Table 4, CR at I-18, PR at II-11.

³² Tr. at 21 (Ferguson).

³³ Company transfers as a percentage of total U.S. shipments declined from *** percent in 1991 to *** percent in 1993. In the first three quarters of 1994, the percentage was *** percent, as compared with *** percent during the first three quarters of 1993. Table 4, CR at I-18, PR at II-11.

³⁴ Testimony of William A. Ferguson, ¶ 16; CR at I-20, 29, PR at II-11, 14.

³⁵ CR at I-23, PR at II-12; Testimony of David Ezell, ¶ 20.

³⁶ ***. Testimony of David Ezell, ¶¶ 18-23.

³⁷ By quantity, apparent U.S. consumption declined by *** percent from 1991 to 1992 and increased by *** percent from 1992 to 1993. By value, consumption declined by *** percent from 1991 to 1992, and increased by *** percent from 1992 to 1993. Table 1, CR at I-11, PR at II-7.

³⁸ The quantity of apparent consumption was *** percent higher and the value was *** percent higher in interim 1994 than in interim 1993. Table 1, CR at I-11, PR at II-7.

³⁹ See Tr. at 67 (Burrows); Petition at 3.

⁴⁰ The quantity of such shipments increased by *** percent and the value by *** percent from 1991 to 1993. Table 1, CR at I-11, PR at II-7. By contrast, consumption increased *** percent by quantity and *** percent by value over the same period. *Id.*

than in interim 1993.⁴¹ Domestic producers' U.S. shipments in the open market increased at a higher rate than total U.S. shipments during all periods examined.⁴²

Domestic production of manganese metal increased throughout the period of investigation, although the increase between the interim periods was not as dramatic as the increase in shipments.⁴³ Because production increased and capacity remained relatively stable throughout the period of investigation, capacity utilization increased.⁴⁴ Capacity utilization remained very high throughout the period of investigation.⁴⁵

U.S. producers' inventories increased from 1991 to 1993.⁴⁶ Inventory levels were considerably lower on September 30, 1994 than they were on that date one year earlier, however, and were also lower than those at any year-end period during the period of investigation.⁴⁷

The number of production and related workers, and the hours worked by such workers, were generally stable during the period of investigation.⁴⁸ Total compensation paid rose from 1991 to 1993 but fell slightly in the interim period comparison.⁴⁹ Productivity increased from 1991 to 1993 and also rose in the interim period comparison.⁵⁰

Although sales revenues increased throughout the period of investigation, both gross profit and operating income figures for the industry deteriorated steadily from 1991 to 1993. Industrywide operating income declined from *** in 1991 to *** in 1993.⁵¹ In interim 1994,

⁴¹ The quantity of shipments was *** percent higher and the value was *** percent higher. Table 1, CR at I-11, PR at II-7.

⁴² U.S. producers' shipments in the open market increased *** percent in quantity and *** percent in value from 1991 to 1993. The quantity of such shipments was *** percent higher and the value of such shipments *** percent higher in interim 1994 than in interim 1993. Table 2, CR at I-12, PR at II-8. A substantial portion of the interim 1994 increase appears attributable to ***. Compare id. with CR at I-29, PR at II-14.

⁴³ Production quantity increased by *** percent from 1991 to 1993 and was *** percent higher in interim 1994 than in interim 1993. Table 3, CR at I-16, PR at II-10.

⁴⁴ Table 3, CR at I-16, PR at II-10. Capacity utilization rose from *** percent in 1991 to *** percent in 1993. The interim 1994 capacity utilization figure of *** percent exceeded the interim 1993 figure of *** percent. Id.

⁴⁵ Id. KMCC indicated that it generally seeks to operate at full capacity because of the high fixed costs of its manganese metal production operations. Tr. at 58-59 (Ezell).

⁴⁶ The increase was *** percent. Table 5, CR at I-22, PR at II-12.

⁴⁷ Inventory levels were *** percent lower in interim 1994 than in interim 1993. Table 5, CR at I-22, PR at II-12. Much of this reduction appears attributable to ***. See CR at I-29, PR at II-14; Testimony of David W. Ezell, ¶ 20.

⁴⁸ Table 6, CR at I-25, PR at II-13.

⁴⁹ Total compensation increased by *** percent from 1991 to 1993, and was *** percent lower in interim 1994 than interim 1993. Table 6, CR at I-25, PR at II-13.

⁵⁰ Table 6, CR at I-25, PR at II-13.

⁵¹ Table 8, CR at I-31, PR at II-14. We note that the gross profit and operating income figures provided in the Commission report show considerably better operating results for the industry than those furnished in the petition. Compare id. with Petition at 36. The principal reason for this is that Commission staff recalculated petitioners' sales revenues with respect to company transfers. Petitioners valued the manganese metal that they captively consumed in their production of manganese aluminum briquettes on a lower of cost-or-market basis. Commission staff, however, calculated the value on the basis of each firm's average per-ton domestic sales value of flake for each annual period in order that captively consumed product could be valued on a fair market basis and the industry's overall profitability could accurately be assessed. See CR at I-29, PR at II-14. We note that while the Commission staff's
(continued...)

however, industry financial performance significantly improved as compared to interim 1993, and the industry again showed ***.^{52 53} ***.⁵⁴ ***.⁵⁵
***.⁵⁶

We additionally observe that there is *** in the cost structures of the two domestic producers that comprise the industry. ***.⁵⁷ *** that Elkem uses internally-produced slag as its principal input to produce manganese metal while KMCC uses imported ore.⁵⁸ In any final investigation, we will investigate further the domestic industry's cost structure and allocation of costs and will examine ***. We will also examine further how Elkem ***.

Notwithstanding petitioners' assertions that they have foregone major capital expenditures during the period examined, the domestic industry's capital expenditures declined only slightly from 1991 to 1993, and were higher in interim 1994 than in interim 1993.⁵⁹ Research and development expenditures increased irregularly from 1991 to 1993, and were also higher in interim 1994 than in interim 1993.^{60 61 62}

IV. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In preliminary 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.⁶³ In making this determination, the Commission

⁵¹ (...continued)
recalculation does affect profitability levels, it does not affect profitability trends. The data provided in the petition also show that industry financial performance deteriorated from 1991 to 1993 and improved during 1994. See Petition at 36.

⁵² In interim 1993, the domestic industry showed a gross *** and an operating *** of *** and *** respectively. In interim 1994, it showed a gross *** and operating ***. Table 8, CR at I-31, PR at II-14.

⁵³ Commissioner Rohr and Commissioner Newquist do not join in the following discussion as it pertains to individual company performance. They find that the aggregate indicators of the domestic industry's financial performance reflect a reasonable indication of material injury.

⁵⁴ Table 9, CR at I-32, PR at II-15. This and much of the discussion in the following paragraphs concerns the operations of individual domestic producers. We recognize that, in an antidumping investigation, we are to examine the condition of the industry as a whole. Nevertheless, in a domestic industry containing only two producers, analysis of the individual producers' operations can aid us in understanding industrywide trends.

⁵⁵ Testimony of William A. Ferguson, ¶ 16.

⁵⁶ Table 9, CR at I-32-33, PR at II-15.

⁵⁷ Tables 9-10, CR at I-33-34, PR at II-15.

⁵⁸ CR at I-28, PR at II-14; Tr. at 13 (Ezell).

⁵⁹ These expenditures declined by *** percent from 1991 to 1993, and were *** percent higher in interim 1994 than in interim 1993. CR at I-36, PR at II-15.

⁶⁰ Such expenditures increased by *** percent between 1991 and 1993, and were *** percent higher in interim 1994 than interim 1993. CR at I-36, PR at II-15.

⁶¹ Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication that the domestic industry is experiencing material injury. They do not join the remainder of this opinion. See their Additional Views.

⁶² Commissioner Crawford does not join the remainder of this opinion. See her Dissenting Views.

⁶³ 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.⁶⁴

Although the Commission may consider alternative causes of injury to the industry other than allegedly LTFV imports, it is not to weigh causes.^{65 66} For the reasons discussed below, we find that there is no reasonable indication that the domestic manganese metal industry is materially injured by reason of allegedly LTFV imports from China.

In assessing the volume of subject imports, we observe that both the quantity of imports of manganese metal from China and the U.S. market penetration of these imports increased substantially during the period of investigation. Imports of manganese metal from China increased from 1,121 short tons in 1991 to 1,730 short tons in 1992 and 2,999 short tons in 1993. Interim 1994 subject import volume of 4,195 short tons exceeded the interim 1993 volume of 1,919 short tons.⁶⁷

In terms of total U.S. consumption, including captive consumption, the subject imports' increase in market penetration from 1991 to 1993 was primarily at the expense of non-subject imports. While the domestic producers' market share in terms of quantity increased by *** percentage points from 1991 to 1993, it showed a slight decline of *** percentage points from 1992 to 1993. During the interim period comparison, the market penetration of subject imports continued to increase, while the shares of both non-subject imports and domestic production declined.⁶⁸ In the open market, Chinese market penetration also increased steadily throughout the period of investigation. At the same time, the domestic producers' share of consumption rose by an even larger amount.⁶⁹ In both the total market and the open market, the market share of domestic producers considerably exceeded Chinese market penetration during all periods examined.⁷⁰ These factors, particularly the

⁶⁴ 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 . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

⁶⁵ See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁶⁶ For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement and Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 at I-14, n.67-69 (May 1994).

⁶⁷ Table 13, CR at I-45, PR at II-20.

⁶⁸ Table 14, CR at I-48, PR at II-22.

⁶⁹ The share of open-market consumption attributable to imports from China increased from *** percent by quantity and *** percent by value in 1991 to *** percent by quantity and *** percent by value in 1993; the interim period increase was *** percentage points by quantity and *** percentage points by value. From 1991 to 1993, the share of open-market consumption attributable to U.S. production increased from *** percent to *** percent by quantity and from *** percent to *** percent by value. The increase in U.S. producers' market share between the interim periods was *** percentage points by quantity and *** percentage points by value. Table 15, CR at I-49, PR at II-22.

⁷⁰ Tables 14-15, CR at I-48-49, PR at II-22.

lack of correlation between subject import market penetration and the domestic industry's share of the open market, mitigate the significance of the increase in the volume and market share of the subject imports.

The data in this preliminary investigation indicate that selling prices of both the subject imports and the domestic like product generally declined over the period of investigation, and that subject imports undersold the domestic like product in the majority of pricing comparisons.⁷¹ Although the frequency and magnitude of the underselling by the subject imports appear at first glance to be significant, several factors suggest the contrary. First, although domestically-produced manganese metal and the subject imports are interchangeable in most applications in the open market, three of eight importers reported difficulties in maintaining supplies of the Chinese product, as well as problems with quality of the Chinese material vis-a-vis domestic material.⁷² Thus, the underselling data may reflect product differences. Second, the significance of the underselling data may be further offset by information indicating that prices for a substantial volume of open-market sales of domestically-produced manganese metal were not affected by prices of the subject imports. ***.⁷³ That substantial volumes of domestically-produced product were either purchased during the period of investigation for nonprice reasons - including those involved in the atypical transaction -- or were captively consumed leads us to conclude that the subject imports did not depress or suppress prices to a significant degree.⁷⁴

Even if we considered the underselling to be significant, we still do not find significant adverse price effects, or other injurious impact on the domestic industry given the industry's performance over the period of investigation. The domestic industry's increases in shipments and production, extremely high capacity utilization, and generally stable employment figures all indicate that the subject imports have not had a significant adverse impact on the domestic industry. Moreover, although the period from 1991 to 1993 was characterized by rising inventories and deteriorating financial performance, the nine months of data available indicate that these trends have reversed dramatically in interim 1994, at the same time that subject import penetration continued to increase.⁷⁵ Although, as we acknowledged above, these financial improvements are attributable in part to several atypical transactions, we conclude that it is inappropriate for us to disregard the available 1994 data in determining whether there is present material injury by reason of subject imports. We consequently determine that there is no reasonable indication of material injury by reason of the allegedly LTFV imports.

⁷¹ Tables 16, 17, CR at I-56, 58, PR at II-24, 25.

⁷² CR at I-52-53, PR at II-23-24; Tr. at 101-03 (Kofsky). Additionally, both petitioners and importers agreed that most manganese metal from China was unsuitable for use in the aluminum industry because of its high selenium content. CR at I-53, PR at II-23.

⁷³ See Testimony of William A. Ferguson, ¶ 16; Memorandum INV-R-205; Table 16, CR at I-56, PR at II-24.

⁷⁴ Additionally, we note that the unit value of imports from South Africa, the largest source of imported manganese metal, declined during the period of investigation. Table 13, CR at I-46, PR at II-24.

⁷⁵ Because the data cover nearly an entire year, we believe that they are sufficiently complete to provide an accurate basis of current industry conditions. Compare Glycine from the People's Republic of China, Inv. No. 731-TA-718 (Preliminary), USITC Pub. 2804 at I-10 n.50 (August 1994) (declining to place extensive weight on interim period data covering only three months).

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

Section 771(7)(F) of the Act directs the Commission to consider whether there is a reasonable indication that a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."⁷⁶ While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."⁷⁷ In making our determination, we have considered all of the statutory factors that are relevant to this investigation.⁷⁸

The information in the record indicates that manganese metal production capacity has increased in China in recent years and that there is substantial unused capacity in China.⁷⁹ The petition indicates that capacity increased from *** metric tons in 1992 to slightly over 60,000 metric tons in 1994, and that approximately 35 percent of available capacity -- an amount roughly equivalent to U.S. production capacity -- is unused.⁸⁰

There is a likelihood that this unused capacity in China will be used to increase exports to the United States. The information available indicates that the vast majority of Chinese production is exported.⁸¹ Furthermore, the United States has become an increasingly important market for manganese metal from China. Especially during the latter stages of the period of investigation, there has been a rapid increase in United States market penetration of the subject imports.⁸² Subject import penetration, in terms of quantity, increased from *** percent in 1991 to *** percent in 1992 and *** percent in 1993. Additionally, the interim 1994 subject import penetration of *** percent exceeded the *** percent interim 1993 figure.⁸³ In the open market, Chinese import penetration was at even higher levels.⁸⁴ Also,

⁷⁶ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

⁷⁷ 19 U.S.C. § 1677(7)(F)(ii). See, e.g., S. Rep. No. 249, at 88-89; see also Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

⁷⁸ 19 U.S.C. § 1677(7)(F)(i). Two of the ten statutory threat factors have no relevance to this investigation and need not be discussed further. Because there are no subsidy allegations, factor I is not applicable. Factor IX regarding raw and processed agricultural products also is inapplicable here. Additionally, with respect to factor X, the domestic industry does not contend that it is engaging in efforts to develop a derivative or more advanced version of the like product.

In addition to the ten enumerated factors, the Commission must consider whether antidumping findings or remedies in markets of foreign countries against the same class of kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii). There is no evidence of any antidumping findings or remedies imposed in other countries upon manganese metal from China.

⁷⁹ The following discussion is pertinent to statutory threat factors II and VI.

⁸⁰ Petition at 48-50; Tr. at 9-10. Because no Chinese producers appeared as parties in this investigation and Commission staff was unable independently to obtain current information concerning the Chinese industry, the information available for purposes of this preliminary investigation is that furnished in the petition and obtained from secondary sources, including the U.S. Bureau of Mines. We will attempt to develop further information concerning the manganese metal industry in China in any final investigation. We will also attempt to develop information concerning the potential for product-shifting in Chinese production facilities, for purposes of statutory threat factor VIII.

⁸¹ Petition at 50.

⁸² The following discussion is relevant to statutory threat factor III.

⁸³ Table 14, CR at I-48, PR at II-22.

⁸⁴ The share of the quantity of open-market consumption attributable to imports from China increased from *** percent in 1991 to *** percent in 1993; the interim 1994 penetration figure of *** percent
(continued...)

U.S. importers reported substantial current orders for manganese metal from China for the period from October 1994 to February 1995.⁸⁵

We determine that there is a reasonable indication that, at increased volumes, manganese metal imports from China will be injurious.⁸⁶ As we stated in section IV, the principal effect thus far of the increased market penetration of the subject imports has been to reduce the market penetration of non-subject imports. Nevertheless, the record indicates that further import surges will likely adversely affect the domestic industry as well. The domestic industry was able during interim 1994 to increase both its shipments and its share of open market sales of manganese metal largely because of an atypical transaction: ***.⁸⁷ ***.⁸⁸ It is unclear whether the domestic industry will benefit from this type of transaction in 1995. If it does not, the industry will likely be more vulnerable to the effect of increasing import volumes in the open market than it was in 1994. As a result, we conclude that increased volumes of subject imports will likely have an injurious effect on the industry.

For similar reasons, we conclude that there is a probability that the subject imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of manganese metal. The transactions that helped ameliorate adverse volume effects of the subject imports also ameliorated any adverse price effects. ***.⁸⁹ ***.⁹⁰ The record indicates that manganese metal from China and domestically-produced product are generally interchangeable in most end-use applications for which the domestic industry sells in the open market.⁹¹ The increase in the percentage of domestic producers' shipments sold in the open market and the sharp decline in subject import prices, particularly during the last four quarters of the period of investigation,⁹² magnify the potential impact on the domestic industry of further LTFV imports into the open market. Consequently, without the benefit of atypical transactions in 1995, we believe that increasing volumes of LTFV imports from China will make it difficult for the domestic industry to maintain its current pricing levels and thereby will likely have a suppressing or depressing effect on domestic prices.⁹³

Finally, we note that U.S. importers' inventories of manganese metal from China increased substantially during the latter portions of the period of investigation.⁹⁴ The quantity of inventories increased by *** percent from 1992 to 1993, and September 30, 1994 inventories

⁸⁴ (...continued)
exceeded the interim 1993 figure of *** percent. Table 15, CR at I-49, PR at II-22.

We note that a decreasing proportion of imports are handled by ***, the largest importer of manganese metal from China, and one of *** importers that reported importing Chinese manganese metal for its own use in the production of downstream articles. See CR at I-14, PR at II-9. We will examine further in any final investigation the extent to which this trend is indicative of the subject imports reaching new customers (e.g., steel producers) in the domestic market.

⁸⁵ CR at I-47, PR at II-19, 22.

⁸⁶ The following discussion is pertinent to statutory threat factors III and VII.

⁸⁷ CR at I-29, PR at II-14; Testimony of David Ezell, ¶ 22. ***. See Table 4, CR at I-18, PR at II-11.

⁸⁸ See Memorandum INV-R-205 (Dec. 20, 1994); Commission investigator telephone notes.

⁸⁹ See Testimony of William A. Ferguson, ¶ 16; Memorandum INV-R-205.

⁹⁰ Testimony of David Ezell, ¶¶ 18-23.

⁹¹ CR at I-53, PR at II-23.

⁹² See Tables 4, 16, CR at I-18, I-56, PR at II-11, II-24.

⁹³ In section IV we did not find that there were no price effects, but rather that there were no significant price effects at current subject import volumes. We determine here that there is a reasonable indication that price effects at increased volumes would depress or suppress domestic prices.

⁹⁴ The following discussion is pertinent to statutory threat factor V.

were *** percent greater than those of one year earlier.⁹⁵ This factor further supports our determination that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports.

CONCLUSION

Subject import volumes and market penetration have increased rapidly throughout the period of investigation. Because the available information indicates massive unused capacity in China which is likely to be used to generate further exports to the United States, significant current orders for Chinese product, and substantially increased inventory levels for such product, we conclude that there is a reasonable indication that Chinese market penetration will continue to increase rapidly in the imminent future.

We conclude that such increased market penetration, in conjunction with the price effects that it will bring, will be injurious to the domestic industry. That there has not yet been material injury by reason of allegedly LTFV imports from China is to a great extent a function of certain short-term transactions which improved the industry's market share and financial performance during interim 1994, but which are about to cease. Accordingly, we determine that there is a reasonable indication that the domestic manganese metal industry is threatened with material injury by reason of allegedly LTFV imports from China.

⁹⁵ Table 12, CR at I-42, PR at II-18.

**SEPARATE VIEWS OF COMMISSIONER ROHR
AND COMMISSIONER NEWQUIST**

We find that there is a reasonable indication that the domestic industry producing manganese metal is materially injured by reason of imports of such product from the People's Republic of China which are allegedly sold in the United States at less than fair value ("LTFV").

Except as noted in the majority's opinion, we concur in the discussion of like product, domestic industry, and condition of the domestic industry.

I. LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping investigations requires the Commission to determine, based upon the best information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the allegedly dumped imports.¹ 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 material injury; and (2) no likelihood exists that any contrary evidence will arise in a final investigation."²

II. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

Imports of manganese metal from China increased significantly during the period of investigation, particularly in interim 1994 (January through September) compared with interim 1993. Imports more than doubled from 1121 short tons in 1991 to nearly 3000 short tons in 1993; interim 1994 imports were 4195 short tons compared with just 1918 short tons during the same period in 1993.³ The value of these allegedly unfair imports followed a similar trend, increasing from \$1.61 million in 1991 to \$4.24 million in 1993, and \$5.44 million in interim 1994 compared with \$2.74 million in interim 1993.⁴

Imports of allegedly dumped manganese metal from China captured an increasing share of total U.S. consumption throughout the period of investigation: growing by 155 percent between 1991 and 1993 and by 65 percent in interim 1994 compared with interim 1993.⁵ In absolute terms, obviously, the subject imports' share of open market consumption

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States Int'l Trade Comm'n, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

² American Lamb Co. v. United States, 785 F.2d at 1001; see also Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992), aff'd without opinion, 794 F. Supp. 377, 381 (Ct. Int'l Trade 1992).

³ Report at Table 13.

⁴ Id.

⁵ Report at Table 14.

was greater than their share of total consumption; this share similarly increased during the period, although by a slightly smaller percentage.⁶

We find the rapid increase in volume, value and market share of imports from China between 1991 and 1993, as well as between the interim periods, significant, particularly in light of the relatively small increase in total and open market consumption during the period.⁷ There is a reasonable indication that allegedly unfair imports from China have had a demonstrable adverse effect on domestic prices. Although the subject imports allegedly cannot be used in the aluminum market -- which is a significant consumer of U.S. product -- domestic producers, purchasers, and importers generally agree that domestic and Chinese manganese metal are otherwise interchangeable in many other end-use applications.⁸

The unit value of the subject imports decreased irregularly between 1991 and 1993, and was consistently and substantially below the domestic product unit values -- both on the basis of company transfers and domestic shipments.⁹

The Commission received usable pricing data for two manganese metal products. The selling price of both domestic products, for sales both to end users and distributors, generally declined throughout the period for which data were obtained.¹⁰ For example, the per pound selling price of domestic Product 2 to end users declined approximately 8.4 percent based on a comparison of prices in the first quarter of 1991 to the third quarter of 1994.¹¹ The selling price of domestic Product 2 to distributors declined by an even greater percentage between those same two quarters.¹² Notwithstanding the steady decline in domestic selling prices, the subject imports undersold the U.S.-produced manganese metal in the vast majority of available price comparisons for both products for which data were obtained.¹³

The Commission also received allegations that the domestic industry lost both sales and revenues to the allegedly dumped imports.¹⁴ Commission staff were able to verify that alleged lost sales and/or revenues did in fact occur and that the losses were based on price.¹⁵

Thus, in light of the falling unit value of the domestic like product, the subject import's consistent underselling, and the verified lost sales and revenues, we find a reasonable indication that the allegedly dumped imports have depressed and suppressed domestic prices to a significant degree.

III. CONCLUSION

Based on the foregoing, we determine that there is a reasonable indication that the domestic industry producing manganese metal is materially injured by reason of imports of such product from the People's Republic of China which are allegedly sold in the United States at less than fair value.

⁶ Report at Table 15.

⁷ See, Report at Tables 1 and 2.

⁸ Confidential Report ("CR") at I-53, I-60-62; Public Report ("PR") at II-23, II-25-26.

⁹ Report at Tables 4 and 13.

¹⁰ Report at Table 16.

¹¹ Id.

¹² Id.

¹³ Report at Table 17.

¹⁴ CR at I-60-62; PR at II-25-26.

¹⁵ Id.

DISSENTING VIEWS OF COMMISSIONER CRAWFORD

Manganese Metal from The People's Republic of China Inv. No. 731-TA-724 (Preliminary)

On the basis of the information obtained in this investigation, I determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of manganese metal from the People's Republic of China alleged to be sold at less-than-fair-value (LTFV).

I concur in the conclusions of my colleagues with respect to like product and domestic industry, and in the discussion of the condition of the domestic industry. These dissenting views provide an explanation of my determination of no reasonable indication of material injury or threat of material injury by reason of alleged LTFV imports of manganese metal from China.

I. ANALYTICAL FRAMEWORK

The statute directs that we determine whether there is "material injury by reason of the dumped imports," or in a preliminary investigation, whether there is a reasonable indication of material injury by reason of the allegedly dumped imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they have caused material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh causes, only to determine if the dumping is causing material injury to the domestic industry. It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had imports been fairly valued.¹ I then determine whether the change in conditions constitutes material injury.

In my analysis of material injury, I evaluate the effects of the dumping on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,² I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, I find that the domestic industry is materially injured by reason of the dumped imports.

¹ 19 U.S.C. § 1677(7)(C)(iii).

² In examining the quantity sold, I take into account sales from both existing inventory and new production.

II. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS

In determining whether a domestic industry is materially injured by reason of the alleged LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States³

In assessing the effect of subject imports, I compare the current condition of the domestic industry with the condition that would have existed had imports been fairly priced.⁴ Then, taking into account the condition of the industry, I determine whether any resulting change of circumstances constitutes material injury. For the reasons discussed below, I find no reasonable indication that the domestic industry producing manganese metal is materially injured by reason of alleged LTFV imports from the People's Republic of China.

A. Volume of Alleged LTFV Imports

The volume of subject imports and the market penetration of these imports increased substantially during the period of investigation. In the total market for manganese metal, subject imports market share rose from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994 compared to *** percent in interim 1993. The increase in market share of subject imports from 1991 to 1993 came primarily at the expense of nonsubject imports. In the interim period, market shares held by domestic producers and nonsubject imports declined.⁵ In the open market, however, the market share attributable to subject imports and domestic producers rose consistently while nonsubject imports' market share declined.⁶ In both the total market and the open market, the market share of domestic producers considerably exceeded Chinese market penetration during all periods.

These factors mitigate the significance of the increase in volume and market share of the subject imports. Although the volume and market share of subject imports may be significant

³ 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵ Table 13, Confidential Report ("CR") at I-45-46; Public Report ("PR") at II-20-21.

⁶ The share of open market consumption attributable to domestic production increased from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994 compared to *** percent in interim 1993. Subject imports share of open market consumption increased from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994 compared to *** percent interim 1993. Table 15, CR at I-48-49; PR at II-22.

in absolute terms, I find that they are not significant relative to domestic production and consumption in view of the absence of any likely material adverse effects.

B. Effect of Alleged LTFV Imports on Domestic Prices

The statute requires that we determine the effect of alleged LTFV imports on the prices of the domestic like product. In most cases, if alleged LTFV imports had not been traded unfairly, their prices in the U.S. market would have increased. The statute directs, and my analysis seeks to determine, the effect that unfairly traded subject imports sold at some higher price would have had on the domestic like product prices. As will be explained below, the competitive conditions in the U.S. marketplace are such that I find that the subject imports are not having significant price effects on the domestic industry producing the like product.⁷

The ability of domestic industry producers to raise their prices depends on competitive conditions in the industry involving both demand side and supply side variables. Examining demand side variables helps us understand both the likely effect of higher subject import prices on subject import sales in the U.S. market, and also whether U.S. purchasers would be willing to pay higher prices for the domestic like product, or buy more of it, if subject imports were not available or if their prices were increased. The willingness of purchasers to pay higher prices depends on how important price is to the purchase decision, the similarity of the domestic product and subject imports, and the availability and similarity of nonsubject imports, and their prices relative to domestic like product prices.

Examining supply side variables helps us understand whether competitive conditions in the market would prevent domestic industry producers from raising their prices or sustaining a price increase. These variables include the number of producers, any unused capacity and the availability of subject imports. If a number of producers are producing similar goods and some have unused capacity or other available supply, they can be expected to beat back any producer's attempted price increase by increasing their production and shipments to the market. Similarly, the availability of nonsubject imports in the market can impede the ability of producers to raise their prices or to sustain a price increase. With even moderate substitutability between the domestic like product and nonsubject imports, any attempt by domestic producers to raise prices would be beaten back. A discussion of the demand and supply characteristics of this market follows.

Market Demand

To determine the nature and extent of any price effects on the domestic industry caused by the alleged dumping, I ask the following question. Would purchasers in the manganese metal market have been willing to pay a higher price for subject imports, or for domestic manganese metal, or would they have switched to nonsubject manganese metal, or ceased their purchases altogether, had all imports from China been fairly traded? I begin by examining what prices of subject imports would have been had they not been dumped. Although the alleged dumping margins in this preliminary investigation are little more than petitioners' estimates, the prices of these imports would have risen significantly had they been sold at fair value.

Demand for manganese metal is derived from the demand for the products that use manganese metal including steel alloy, aluminum briquettes for can stock, and chemical

⁷ Generally speaking, there can be circumstances where competitive conditions would prevent a significant increase in domestic like product prices, even if subject imports were traded fairly. Under such conditions, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports.

applications. Manganese metal accounts for a small portion of the total cost of these final end use products.⁸ This suggests that overall consumers are not overly sensitive to changes in price. The important consideration here, however, is the market demand elasticity for the domestic like product. This elasticity is determined by the variables discussed below.

Substitutability of Subject Imports vs. Domestic Like Product. The effect of an increase in the prices of unfairly traded subject imports depends on a number of variables. I begin by examining the similarity, or substitutability, of subject imports and the domestic like product. Domestic producers captively consume manganese metal in the downstream production of aluminum briquettes. The record reflects that the Chinese product cannot be used to make aluminum briquettes for the aluminum can stock market because of its high selenium content.⁹ This captive production accounted for *** percent of the U.S. produced manganese metal in 1993 and *** percent in interim 1994.¹⁰

Within the open market, which is where competition takes place between subject imports and domestic production, the parties disagree concerning the level of substitutability. Three importers noted that Chinese product was sometimes wet, had poor packaging, had higher than acceptable sulfur content, had powder in the flake product, and had contaminated drums. These same importers also indicated that many steel mills would not accept Chinese manganese metal because of its high gas content.¹¹ The two domestic producers reported that subject imports and the domestic product are interchangeable and of the same quality for sales to all end-use markets except for the aluminum can stock market. In this preliminary investigation, I give the benefit of the doubt to petitioners and assume that subject imports and the domestic product are reasonably good substitutes.

In sum, purchasers of subject imports would have sought to increase their purchases of the domestic like product if subject import prices were increased substantially. The extent to which domestic purchasers would have paid a higher price for the domestic like product depends on their options, specifically on the availability and similarity of nonsubject imports.

Nonsubject Imports. Purchasers would have shifted from higher priced subject imports to domestic manganese metal only to the extent it was more attractive than other options, such as nonsubject imports. If nonsubject imports are a good alternative source of supply for higher priced subject imports or for the domestic like product, then purchasers may have chosen them rather than the domestic like product. Nonsubject imports have played a substantial, if not dominant, role in the U.S. market over the period of investigation. The share of the open market held by nonsubject imports from South Africa, the principal supplier of nonsubject imports, was *** percent in 1991, *** percent in 1992, *** percent in 1993, and *** percent for interim 1994.¹² As the market share held by South Africa declined, the market shares held by subject imports and the domestic product increased.¹³

The replacement of South African manganese metal by subject imports and the domestic product, and the continuing large presence of such nonsubject imports, strongly suggest that the quality of manganese metal from South Africa is similar to that of domestic manganese metal and that there were no significant differences in the quality of manganese metal from subject and nonsubject countries. Therefore, a portion, but not all, of the former purchasers of the subject

⁸ See CR at I-51; PR at II-22.

⁹ See CR at I-53; PR at II-23.

¹⁰ Derived from data presented in Tables 3 and 4, CR at I-16 and I-18; PR at II-10 and II-11.

¹¹ See CR at I-53-54; PR at II-23.

¹² Table 15, CR at I-48-49; PR at II-22.

¹³ Table 15, CR at I-48-49; PR at II-22.

imports would have been willing to purchase the domestic product, but any attempted increase in the price of domestic manganese metal would have shifted demand more towards the nonsubject imports.

Market Supply

Supply Elasticity of Domestic Industry. The combined production capacity of the domestic producers increased insignificantly over the period of investigation. The capacity utilization of domestic manganese metal producers was *** percent in 1993 and *** percent for the nine-month period ended September 30, 1994.¹⁴ Also, U.S. producers exports of manganese metal abroad were not significant as a share of production during the period of investigation.¹⁵ Thus the domestic industry did not have sufficient available capacity or levels of exports that could be diverted to the domestic market to fill the demand supplied by subject imports, had they all been sold at fair value.

Level of Competition. The domestic industry consists of two large producers that are operating at practical capacity. Competitive discipline, however, would have come from fairly traded nonsubject imports, which were present in the U.S. market throughout the period of investigation and still represent the largest share of the market. As noted above, the available evidence strongly suggests that there are no significant quality differences between Chinese and nonsubject imports.

Summary of Price Effects

To summarize, had subject imports not been dumped, their prices would have been higher. In such circumstances, purchasers would have sought to increase their purchases of the domestic like product and nonsubject imports. Domestic producers should have been able to increase their prices. However, the demand and supply factors discussed above would have acted as constraints on the ability of domestic producers to win larger sales or increase their prices. On the demand side, nonsubject imports were available to purchasers and appear to be reasonable substitutes. Their presence in the market would have reduced the likelihood that purchasers would have been willing to pay higher prices for the domestic like product. On the supply side, competition between domestic producers and suppliers of nonsubject imports would also have acted to prevent the domestic industry from increasing its prices. Thus, the domestic industry's inability to raise its prices is a function of demand and supply conditions in the manganese metal market, not due to subject imports. Even if the subject imports had been priced fairly and their sales reduced substantially as a result, the domestic industry would not have been able to raise its prices significantly. Consequently, I find that subject imports did not have significant price effects.

C. Impact of Subject Imports on the Domestic Industry

In assessing the impact of subject imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.¹⁶ These factors either encompass or reflect the volume and price effects of

¹⁴ Table 3, CR at I-16; PR at II-10.

¹⁵ CR at I-21, PR at II-12.

¹⁶ 19 U.S.C. § 1677(C)(iii).

the dumped imports, and so I gauge the impact of the dumping through those effects. In this case, I find that the domestic industry's output was not adversely affected by the dumping of Chinese imports.

As discussed above, I find that fewer, if any, subject imports would have been sold if they all had been sold at fairly traded prices. The impact of these lost Chinese sales on the domestic industry's output and sales depends on three variables: (1) the attractiveness, or substitutability of domestic like product relative to subject imports and nonsubject imports; (2) the availability of competing nonsubject imports;¹⁷ and (3) the capacity utilization rate of the domestic industry and whether it would have been able to increase production to satisfy additional demand.

Substitutability

Whether purchasers of subject imports would have been likely to switch to domestic manganese metal had the price of all subject imports been increased to fairly traded prices depends on the substitutability of the products.¹⁸ If subject imports and the domestic like product are not similar, *i.e.*, not good substitutes, purchasers are unlikely to switch to the domestic like product even if the price of subject imports increases. Purchasers would continue to buy subject imports at the higher price or would switch to nonsubject imports, to the extent that they are substitutable and available, rather than to the domestic like product, to satisfy their needs. As discussed above, in this preliminary investigation I must assume that subject imports and the domestic like product are reasonably good substitutes in the open market.

The availability and substitutability of nonsubject imports, however, would have affected the ability of the domestic industry to win market share had subject import prices been at fair value. As discussed above, there is evidence that nonsubject imports compete with subject imports.

Nonsubject Import Supply

The second factor that affects the ability of the domestic industry to increase sales when subject import prices increase is the availability and attractiveness of nonsubject imports. Had all subject imports been traded at fair prices, purchasers may have sought to increase their purchases of nonsubject imports as well as the domestic like product. As discussed above, nonsubject imports were a substantial presence in the U.S. market throughout the period of investigation. The share of the open market held by nonsubject imports from South Africa was *** percent in 1991, *** percent in 1992, *** percent in 1993, and *** percent for interim 1994.¹⁹

Domestic Industry Supply

As discussed above, the domestic industry consists of two large producers that compete with each other. The capacity utilization rate of domestic manganese metal producers was *** percent in 1993 and *** percent for the nine-month period ended September 30, 1994.²⁰ Also, U.S. producers' exports of manganese metal abroad were not significant as a share of

¹⁷ Elasticity of nonsubject import supply.

¹⁸ See discussion below regarding the availability of nonsubject imports and substitute products.

¹⁹ Table 15, CR at I-48-49; PR at II-22.

²⁰ Table 3, CR at I-16; PR at II-10.

production during the period of investigation.²¹ Therefore, if demand for the domestic like product had increased as a result of all subject imports being priced at fair value, the domestic industry would not have been able to increase its production to satisfy that demand.

Summary of Impact

In weighing the effect of these and other factors on domestic output and sales, I conclude that, had all subject imports been sold at fair value, purchasers would have switched away from subject imports. However, domestic producers would not have been able to meaningfully increase their production to satisfy the increased demand. Given the overall inelastic demand for manganese metal and the readily availability of nonsubject imports, purchasers likely would have purchased a significant additional amount of nonsubject imports. I conclude that of the reduction in sales of subject imports, the domestic industry would not have captured a significant share of the sales lost by subject imports. This insignificant increase in demand for the domestic like product would not have increased output and sales significantly. Nor would the domestic industry have been able to increase its prices significantly. With only a minimal price effect, and an insignificant increase in domestic like product sales, domestic revenues would not have increased significantly, even if all subject imports been fairly priced.²²

Therefore, I find that the domestic industry would not have been materially better off if all subject imports had been priced fairly, and determine that the domestic industry is not materially injured by reason of subject imports from China.

III. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS

I have considered the enumerated statutory factors that I am required to consider in my determination.²³ A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."²⁴

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence²⁵ that I am required by law to evaluate in making my determination.

²¹ CR at I-21, PR at II-12.

²² Petitioners have asserted that certain extraordinary, nonrecurring transactions occurred in interim 1994 which in part explain the significant increase in shipments of the domestic product. I find that even if the domestic industry had been operating at the capacity utilization level for the industry in 1993 (***) percent), the substantial presence of reasonably substitutable, nonsubject imports would have prevented the domestic industry from capturing a sufficient amount of the former sales of Chinese manganese metal to have resulted in a significant increase in output, sales and revenues of the domestic industry.

²³ 19 U.S.C. § 1677(7)(F)(i).

²⁴ 19 U.S.C. § 1677(7)(F)(ii).

²⁵ See American Spring Wire Corporation v. United States, 590 F. Supp. 1273 (Ct. Int'l Trade 1984).

The volume and market penetration of subject imports has increased rapidly over the period of investigation.²⁶ Petitioners assert that production capacity in China has doubled since 1992 and that there is significant unused capacity which could be utilized to produce additional product to be exported to the U.S.²⁷ They claim that any increase in production in China is likely to be exported in substantial part to the U.S. because of the size of the U.S. market and because China appears to have saturated the other principal markets for manganese metal in Europe and Japan.²⁸ Petitioners, however, have not placed on the record any positive evidence indicating it is likely that production capacity or capacity utilization in China will increase, or that Chinese producers of subject imports will divert shipments to the U.S. from other markets.

In my determination that there is no material injury by reason of subject imports, I demonstrated that subject imports had no significant effect on domestic prices or sales. I find that there is no positive evidence that this will change in the immediate future. The mere fact that subject imports have increased over the period of investigation is not positive evidence that imports will continue to increase at the same rate in the future.

While there has been a significant increase in the absolute quantity of importers' U.S. inventories of subject imports over the period of investigation, the ratio of inventories to imports fell consistently from *** percent in 1991 to 22.9 percent for interim 1994. Also, the ratio of importers' inventories to shipments of subject imports has declined steadily since 1992, falling from *** percent in 1992 to 26.4 percent for interim 1994.²⁹ I find that U.S. inventories of subject imports do not constitute sufficient evidence that any threat of material injury is real or that actual injury is imminent.

I find no evidence of any other demonstrable adverse impending or actual changes in market conditions that indicate the probability that alleged LTFV imports will be the cause of actual injury. In addition, I find no positive evidence to support a conclusion that the potential for product-shifting represents a threat that material injury is real or that actual injury is imminent.³⁰

For the reasons stated above, I find no reasonable indication that the domestic industry is threatened with material injury by reason of alleged LTFV imports of manganese metal from China.

²⁶ See Table 14, CR at I-48; PR at II-22 and Table 15, CR at I-49; PR at II-22.

²⁷ Petition at 48-50.

²⁸ Testimony of James C. Burrows, paragraph 41.

²⁹ Table 12, CR at I-42; PR at II-18.

³⁰ I note that statutory threat factors I (regarding subsidies) and IX (regarding agricultural products) are not applicable to this investigation. In addition, I did not find any significant evidence of actual and potential negative effects on the existing development and production efforts of domestic industry. Finally, there are no known antidumping findings or remedies in markets of foreign countries against the same class or kind of merchandise to suggest a threat of material injury to the domestic industry.

PART II
INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On November 8, 1994, a petition was filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by Elkem Metals Company (Elkem), Pittsburgh, PA, and Kerr-McGee Chemical Corporation (KMCC), Oklahoma City, OK. The petition alleges that an industry in the United States is materially injured or threatened with material injury by reason of imports of manganese metal¹ from the People's Republic of China (China) that are alleged to be sold in the United States at less than fair value (LTFV). Accordingly, effective November 8, 1994, the Commission instituted preliminary antidumping investigation No. 731-TA-724 (Preliminary) under section 733(a) of the Tariff Act of 1930 (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of manganese metal from China alleged to be sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public conference held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on November 17, 1994 (F.R. 59419).² The public conference was held in Washington, DC, on November 29, 1994.³

There have been no previous Commission investigations concerning manganese metal. A summary of the data collected in this investigation is presented in appendix C.

THE PRODUCT

Description and Uses

Manganese (Mn) is a chemical element with atomic number 25, an atomic weight of 54.94, and a silvery-gray appearance. It falls between chromium and iron on the periodic table and has certain properties in common with both metals. The major ores of manganese are oxides (in both hydrated and dehydrated forms), silicates, and carbonates. Manganese ore may be considered as metallurgical, chemical, or battery grade. Metallurgical-grade ore has a range of manganese content of 38 to 55 percent and is used in the manufacture of manganese metal. Manganese is rarely used in its pure state but is widely used as an alloy in the manufacture of steel and nonferrous metals. Many of the commercial applications of manganese are related to its melting point; manganese melts at 1,246° C. and boils at 2,065° C. Principal producing countries of manganese ore include Gabon, Brazil, and Australia.

Virtually all commercial-grade manganese metal manufactured worldwide is referred to as electrolytic manganese metal (minimum 99.7 percent Mn) because it is produced using an electrolytic manufacturing process.

¹ As defined by Commerce, manganese metal is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron, and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms, and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. Manganese metal is provided for in subheadings 8111.00.45 and 8111.00.60 of the *Harmonized Tariff Schedule of the United States (HTS)*.

² Copies of cited *Federal Register* notices are presented in app. A.

³ A list of participants at the conference is presented in app. B.

There are four principal consuming markets for manganese metal:

- The steel⁴ industry uses manganese metal as a desulfurizing and deoxidizing agent and as a strengthening and hardening agent. Because of its affinity for sulfur, which is considered an impurity causing brittleness and cracking, manganese is used in stainless steels to prevent the formation of iron sulfide, thereby markedly improving the hot working properties of these steels and preventing corrosion. The higher manganese content found in manganese metal is required to produce stainless and other corrosion-resistant specialty steels. The existence of high levels of trace elements such as phosphorus, which tends to degrade the weldability of steels, in ferromanganese (containing nearly 80 percent manganese) make ferromanganese inadequate for use in the production of such steel. Manganese is also used in stainless steels to improve hardness.
- Manganese metal is also widely used in the manufacture of aluminum alloys and other nonferrous alloys. Manganese increases the strength and controls the grain structure of these alloys. In this application, manganese is typically added in the form of manganese/aluminum briquettes, which normally contain 75 percent manganese and 25 percent aluminum. Principal end products include aluminum can stock and general utility sheet for the food and beverage industries. Minor amounts of manganese metal are also used to manufacture superalloys.
- A minor end use for manganese metal is as feedstock in the production of manganese nitrates and manganese acetates.
- Another minor end use for manganese metal powder is in arc welding rods, where the manganese powder is combined with other powders in varying proportions, depending on the type of material to be welded.

Manufacturing Process

Virtually all high-purity manganese metal currently manufactured in the world is produced using an electrolytic process. The production of manganese metal involves the electrolysis of a manganese sulfate solution *** in a *** electrolytic cell employing *** anodes and *** cathodes. The entire procedure is composed of four separate stages, as described below.

Beneficiation

In this stage, a number of techniques, including crushing, screening, washing, jigging, tabling, flotation, and magnetic separation, may be used to refine raw manganese ore into commercial concentrate. The ore is then sent to a calcining facility to be chemically reduced.

Calcining

In this stage, wet ore containing manganese dioxide (MnO_2) is reduced *** to create manganese oxide. ***. The calcine is then transported to a *** for sizing and is pumped, as slurry, to a holding tank to prepare for leaching.

⁴ The various steels using manganese metal include carbon, stainless and heat-resisting, full alloy, and high-strength, low-alloy.

Leaching and Purification

The ore slurry is pumped to an agitated tank where it is mixed with sulfuric acid from the electrolytic cells to produce unpurified manganese sulfate ($MnSO_4$) and iron sulfate, which is later removed. ***. The unpurified manganese sulfate is transferred to a storage tank where ammonium sulfate is added to purify the manganese sulfate by separating certain metal impurities, which are removed as sludge. Once purity is established, the manganese sulfate solution is pumped to storage tanks to prepare for cell room operation.

Cell Room Operation

The manganese sulfate cell feed solution is fed to the electrolytic cells ***. In the cells, direct current is applied and the manganese metal collects at the cathode. The cathodes containing the manganese are pulled from the cells, ***. The manganese metal is then removed, and the cathodes, cleaned of the residual manganese, are *** and returned to the cells.

Production of Flake, Powder, and Briquettes

Once the metal collects along the cathode plate, it must be prepared for end use. For both domestic U.S. manganese metal manufacturers, the cathodes holding the plated manganese metal are pulled from the cells, ***. The metal is separated from the cathode plate ***. The material falling from the plate is termed nondegassed⁵ "chip," or "flake."⁶ Nondegassed flake may then be packaged and sold, typically to steel producers, or may be sent to *** to rid the material of hydrogen gas impurities. Once out of the ***, the "degassed flake"⁷ is cooled to make it easier to transport and may be packaged and sold as degassed flake, further processed into powder, or further processed into briquettes.⁸ A briquetting facility usually contains both a grinding and a briquetting stand. ***. This powder may then be packaged and sold directly for use in the manufacture of welding rods, or it may be transferred within the same facility to the briquetting stand to be blended with aluminum powders, in a ratio of 75 percent manganese and 25 percent aluminum, and compressed into a briquette. Such briquettes are commonly used by the aluminum alloy industry for the manufacture of aluminum can stock.⁹

⁵ Nondegassed manganese has a manganese purity of 99.7 percent.

⁶ For KMCC, this flaking operation is performed at a facility adjacent to its electrolytic cell facility; Elkem performs the same operation within its electrolytic cell facility.

⁷ Degassed manganese has a manganese purity of 99.9 percent.

⁸ Nearly *** percent of Elkem's production consists of nondegassed flake, and the remainder consists of degassed flake. Nearly 100 percent of Elkem's open-market or commercial sales of manganese metal consists of manganese metal flake. KMCC, on the other hand, sells both flake and powder. Although Elkem produces manganese metal powder, that production is used as feed for manganese/aluminum briquette production. KMCC sells manganese metal powder to welding rod manufacturers or further processes it into manganese/aluminum briquettes for sale to aluminum alloyers.

⁹ Aluminum alloyers generally produced aluminum can stock using manganese flake until the 1960s, when technical problems with flake favored the use of manganese/aluminum briquettes. Manganese/aluminum briquettes are, overwhelmingly, the primary form in which manganese metal is used by aluminum alloyers today.

U.S. Tariff Treatment

Imports of manganese metal waste and scrap, unwrought manganese,¹⁰ and other manganese are classified in *HTS* subheadings 8111.00.30, 8111.00.45, and 8111.00.60, respectively.¹¹ Rates of duty for these *HTS* subheadings in 1994 are presented in the tabulation below (in percent ad valorem). Where eligibility for special tariff treatment is not claimed or established, goods are dutiable at general or most-favored-nation (MFN) rates. Imports from China have been dutiable at MFN rates since 1980.

Subheading	MFN duties	Special duties ¹	Column 2 duties
8111.00.30	Free	-	Free
8111.00.45	14%	Free (E,IL,J,MX), 5.6% (CA)	20%
8111.00.60	5.5%	Free (A,E,IL,J, MX) 2.2% (CA)	45%

¹ Programs under which special tariff treatment may be provided and the corresponding symbols for such programs as they are indicated in the "Special duties" subcolumn are as follows: Generalized System of Preferences (A); Caribbean Basin Economic Recovery Act (E); United States-Israel Free- Trade Area (IL); the Andean Trade Preference Act (J); and the North American Free-Trade Agreement, goods of Canada (CA) and Mexico (MX).

NATURE AND EXTENT OF ALLEGED SALES AT LTFV

Petitioners calculated a weighted-average dumping margin of 197.0 percent, based on a comparison of the United States price and the foreign market value. On December 2, 1994, Commerce published in the *Federal Register* its notice of initiation of an antidumping investigation concerning the subject merchandise from China. Because of errors in petitioners' methodology, Commerce revised petitioners' alleged dumping margin downward to a range of 104.77 percent to 143.32 percent.

THE DOMESTIC MARKET

Apparent U.S. Consumption

Demand for manganese metal is derived from demand for steel, primarily stainless steel, and aluminum. According to preliminary 1994 data published by the U.S. Department of Interior, Bureau of Mines, 30.9 percent of U.S. consumption of manganese metal was consumed in steel products, and 68.3 percent was consumed in the production of alloys of all types.¹² Data on apparent U.S. consumption of manganese metal are shown in tables 1 and 2.

The quantity and value of apparent U.S. consumption of all manganese metal (unwrought and other) rose unevenly by 4.2 percent and 0.4 percent, respectively, from 1991 to 1993 and increased by 33.8 percent and 30.2 percent, respectively, from interim (January-September) 1993 to interim (January-September) 1994 (table 1). Notwithstanding the drop in both the quantity and value of apparent consumption between 1991 and 1992, the quantity and value of U.S. producers' shipments *** over the

¹⁰ For purposes of this investigation, unwrought manganese metal includes manganese metal in the form of powder, flake, briquettes, ingots, lumps, billets, grains, fines, pellets, or other similar manufactured forms, but does not include manganese metal that has been purposefully combined with other elements or formed into a manganese alloy.

¹¹ No one present at the Commission's conference was able to identify the products classified under *HTS* subheading 8111.00.60. Petitioners believe that some of the unwrought manganese metal that is being imported from China enters the United States under the 8111.00.60 subheading to take advantage of the lower tariff rate (conference transcript (TR), p. 43).

¹² U.S. Department of Interior, Bureau of Mines, *Manganese in July 1994, Mineral Industry Surveys*, Sept. 13, 1994.

Table 1

Manganese metal: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.-- 1993	1994
	<i>Quantity (short tons)</i>				
Unwrought manganese metal:					
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	1,099	1,632	2,757	1,735	2,612
South Africa	9,457	7,308	8,386	6,301	10,048
Other sources	150	289	271	240	1,158
Total	10,706	9,228	11,414	8,277	13,818
Apparent consumption	***	***	***	***	***
Manganese metal:					
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	1,121	1,730	2,999	1,919	4,195
South Africa	15,970	12,987	12,764	10,142	12,166
Other sources	288	579	738	666	1,950
Total	17,380	15,297	16,502	12,726	18,311
Apparent consumption	***	***	***	***	***
	<i>Value (1,000 dollars)</i>				
Unwrought manganese metal:					
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	1,585	2,431	3,931	2,506	3,499
South Africa	16,453	12,351	13,540	10,227	16,286
Other sources	220	440	538	475	1,704
Total	18,258	15,222	18,010	13,209	21,490
Apparent consumption	***	***	***	***	***
Manganese metal:					
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	1,611	2,544	4,236	2,737	5,437
South Africa	26,727	21,122	20,467	16,297	19,580
Other sources	794	2,012	1,864	1,714	3,115
Total	29,133	25,679	26,567	20,749	28,132
Apparent consumption	***	***	***	***	***

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table 2

Manganese metal: U.S. open-market shipments of domestic product, U.S. imports, by sources, and apparent U.S. open-market consumption, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.-- 1993	1994
<i>Quantity (short tons)</i>					
Unwrought manganese metal:					
Producers' domestic open-market shipments	***	***	***	***	***
U.S. imports from--					
China	1,099	1,632	2,757	1,735	2,612
South Africa	9,457	7,308	8,386	6,301	10,048
Other sources	150	289	271	240	1,158
Total	10,706	9,228	11,414	8,277	13,818
Apparent consumption	***	***	***	***	***
Manganese metal:					
Producers' domestic open-market shipments	***	***	***	***	***
U.S. imports from--					
China	1,121	1,730	2,999	1,919	4,195
South Africa	15,970	12,987	12,764	10,142	12,166
Other sources	288	579	738	666	1,950
Total	17,380	15,297	16,502	12,726	18,311
Apparent consumption	***	***	***	***	***
<i>Value (1,000 dollars)</i>					
Unwrought manganese metal:					
Producers' domestic open-market shipments	***	***	***	***	***
U.S. imports from--					
China	1,585	2,431	3,931	2,506	3,499
South Africa	16,453	12,351	13,540	10,227	16,286
Other sources	220	440	538	475	1,704
Total	18,258	15,222	18,010	13,209	21,490
Apparent consumption	***	***	***	***	***
Manganese metal:					
Producers' domestic open-market shipments	***	***	***	***	***
U.S. imports from--					
China	1,611	2,544	4,236	2,737	5,437
South Africa	26,727	21,122	20,467	16,297	19,580
Other sources	794	2,012	1,864	1,714	3,115
Total	29,133	25,679	26,567	20,749	28,132
Apparent consumption	***	***	***	***	***

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

1991-93 period. In absolute terms, apparent U.S. consumption increased from *** short tons, valued at \$***, in 1991 to *** short tons, valued at \$***, in 1993. Between the interim periods, apparent U.S. consumption increased from *** short tons, valued at \$***, in interim 1993 to *** short tons, valued at \$***, in interim 1994.

Apparent U.S. consumption of unwrought manganese metal, the only manganese metal that is produced in the United States, rose similarly over the same period, increasing overall by 10.9 percent by quantity and 5.5 percent by value from 1991 to 1993. Between the interim periods, apparent consumption rose 40.3 percent by quantity and 39.1 percent by value.

Table 2 presents apparent U.S. consumption based on U.S. producers' open-market shipments (U.S. shipments minus company transfers). Based on such shipments, the quantity and value of apparent U.S. consumption of all manganese metal fluctuated upward by 13.0 percent and 8.4 percent, respectively, from 1991 to 1993 and increased by 64.3 and 58.8 percent, respectively, from interim 1993 to interim 1994. Apparent U.S. consumption of unwrought manganese metal increased similarly, rising in quantity by 31.0 percent from 1991 to 1993 and increasing in value by 22.2 percent over the same period. From interim 1993 to interim 1994, the quantity and value of such apparent consumption increased by 86.4 percent and 84.5 percent, respectively.

U.S. Producers

Petitioners Elkem and KMCC comprise the total of firms producing manganese metal in the United States.¹³ No firms are known to have commenced or stopped production of manganese metal in the United States during the period January 1, 1991, through September 30, 1994.

Elkem Metals Company

Elkem was formed in 1981 after Elkem A/S of Norway, its parent company, had acquired the U.S. manganese operations of Union Carbide. Elkem's principal line of business is special metals, which includes hardeners for the aluminum industry, chromium metal for the superalloy industry, simplex ultra-low-carbon ferrochrome and nitrated medium-carbon ferromanganese for the steel industry, and manganese metal for the steel and chemical industries. All of these products are produced at the firm's Marietta, OH, plant. Elkem maintains its corporate headquarters at Pittsburgh, PA. ***.¹⁴ According to a company official, ***.

Kerr-McGee Chemical Corporation

KMCC is a subsidiary of Kerr-McGee Corporation, a diversified energy and chemical company. KMCC's core businesses consist of producing and marketing industrial and specialty chemicals, forest products, and heavy minerals. The firm produces manganese metal at its plant in Hamilton, MS, and maintains its corporate offices in Oklahoma City, OK.

U.S. Importers

Commission questionnaires were sent to 22 firms believed to import manganese metal from all sources. Responses were received from 16 firms, including one U.S. producer. Thirteen of the 16 firms that responded to the questionnaire supplied usable information on their imports of manganese metal. The remaining three firms indicated that they did not import manganese metal from any source during the period for which information was requested. Two of the responding firms (*** and ***) consume manganese metal in their production of manganese/aluminum briquettes. A third firm, ***,

¹³ Respondent Cometals, Inc. argues that the like product in this investigation should include manganese/aluminum briquettes. Two firms were identified by petitioners as the only known independent producers of manganese/aluminum briquettes. These two firms are identified in the section of the report entitled "U.S. importers."

¹⁴ Elkem's producers' questionnaire response, p. 7.

consumes manganese metal in its production of various copper-based alloys. None of the firms that supplied usable information on their imports of manganese metal from China imported manganese metal other than unwrought manganese metal. U.S. imports of unwrought manganese metal from China as reported in questionnaire responses represented 63 percent of U.S. imports of unwrought manganese metal from China as compiled by the U.S. Department of Commerce during 1991-September 1994.

Channels of Distribution

Imported and domestically produced manganese metal are sold to end users either directly or through distributors. The bulk of U.S. producers' and U.S. importers' sales (whether manganese metal flake or powder) are direct to end-user customers.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

U.S. Capacity, Production, and Capacity Utilization

Data showing manganese metal production capacity, production, and capacity utilization for Elkem and KMCC are presented in table 3. Elkem's theoretical capacity to produce manganese metal totals *** short tons annually.¹⁵ Moreover, as Elkem noted in its questionnaire response, ***.¹⁶ ***.¹⁷ Elkem noted that its effective capacity, based on ***, totals *** short tons annually.¹⁸ Using this tonnage as a basis for determining Elkem's practical capacity, the combined capacity of the two U.S. producers totaled *** short tons in 1993, up from *** short tons in 1991 (table 3). Capacity increased *** between the interim periods. The two U.S. producers' combined production of manganese metal increased in all periods, rising by *** percent from 1991 to 1992, by *** percent from 1992 to 1993, and by *** percent from interim 1993 to interim 1994.¹⁹ The capacity utilization rate for both firms was *** percent or higher in all periods. This was especially so for ***, which operated at *** percent of capacity throughout the period for which information was requested.²⁰

Table 3

Unwrought manganese metal: U.S. capacity, production, and capacity utilization, by firms, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

¹⁵ Elkem's producer questionnaire response, p. 9.

¹⁶ Gardner, Carton & Douglas, petitioners' counsel, submission on behalf of petitioner Elkem, responding to staff questions, Dec. 6, 1994, p. 2.

¹⁷ William A. Ferguson, global marketing manager, confidential written testimony, pp. 6 and 7.

¹⁸ Elkem's producer questionnaire response, p. 9. According to the confidential testimony of Mr. Ferguson, Elkem *** (Ferguson, confidential written testimony, p. 6).

¹⁹ Elkem did not produce manganese metal powder for open-market sales during the period for which information was requested. KMCC, on the other hand, produces both manganese metal flake and powder for sales in the open market. It wasn't until 1992 that KMCC began selling manganese metal powder. In deciding to sell powder, ***. (David W. Ezell, confidential written testimony, Nov. 25, 1994, p. 7.)

²⁰ Petitioner KMCC argues that, because of high fixed costs and its inability to easily reduce labor costs, its operating policy is to keep capacity utilization high (conference TR, p. 17).

U.S. Producers' Shipments

Both Elkem and KMCC produce manganese metal for captive use and for sales in the open market. Internally, manganese metal in flake form is ground into powder and then mixed with aluminum powder to form manganese/aluminum briquettes, a product that is sold to the aluminum industry.²¹ Intracompany transfers of manganese metal for this purpose account for a significant share of both firms' total shipments. In the case of Elkem, such intracompany transfers accounted for *** percent of that firm's total U.S. shipments in 1993. For KMCC, the percentage was *** percent for the same period. Consequently, open-market shipments of manganese metal represented only *** and *** percent, respectively, of Elkem's and KMCC's total U.S. shipments in 1993. Data on Elkem's and KMCC's shipments of manganese metal are shown in table 4.

Table 4

Unwrought manganese metal: U.S. producers' shipments, by firms, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Producers' Company Transfers

The quantity of company transfers of manganese metal for Elkem and KMCC combined fell unevenly by *** percent from 1991 to 1993 and declined *** percent from interim 1993 to interim 1994. The average per-short-ton unit value of such company transfers fell throughout the period for which information was requested, falling by *** percent from 1991 to 1993 and by *** percent between the interim periods.

U.S. Producers' Domestic Shipments

The combined quantity and value of Elkem's and KMCC's domestic shipments of manganese metal *** from 1991 to 1993 and again from interim 1993 to interim 1994. Such domestic shipments rose from *** short tons, valued at \$***, in 1991 to *** short tons, valued at \$***, in 1993 and increased from *** short tons, valued at \$***, in interim 1993 to *** short tons, valued at \$***, in interim 1994. The average per-short-ton unit value of Elkem's and KMCC's domestic shipments fell *** between 1991 and 1993, falling by *** percent from 1991 to 1992 and dropping by *** percent from 1992 to 1993. The average unit value rose *** from interim 1993 to interim 1994, increasing by *** percent.

Individually, the quantity and value of Elkem's domestic shipments of manganese metal *** by *** percent and *** percent, respectively, from 1991 to 1993 and *** from interim 1993 to interim 1994. Elkem attributes the interim 1994 *** to ***. Because of ***,²² The average unit value of Elkem's domestic shipments *** from \$*** per short ton in 1991 to \$*** per short ton in 1993 and *** from \$*** per short ton in interim 1993 to \$*** per short ton in interim 1994. KMCC's domestic shipment trends were similar, *** in quantity and value by *** percent and *** percent, respectively, from 1991 to 1993 and *** by *** percent and *** percent, respectively, from interim 1993 to interim 1994. KMCC attributes its ***,²³ The average per-short-ton unit value of KMCC's domestic shipments

²¹ Conference TR, p. 15.

²² ***. (William A. Ferguson, confidential written testimony, Nov. 25, 1994, pp. 8 and 9.)

²³ ***. (Gardner, Carton & Douglas, letter, Dec. 6, 1994, responding to questions raised by Commission staff.)

*** by *** percent from 1991 to 1993 and *** by *** percent between the interim periods. The tabulation that follows shows KMCC's domestic shipments of manganese metal by forms:

* * * * *

U.S. Producers' Export Shipments

KMCC exports its manganese metal primarily to ***, whereas Elkem exports its product primarily to ***. Relative to total shipments, the combined exports of the two firms accounted for an insignificant share of total shipments during the period for which information was requested. Combined export shipments for Elkem and KMCC fell *** from *** short tons, valued at \$***, in 1991 to *** short tons, valued at \$***, in 1993 and increased from *** short tons, valued at \$***, in interim 1993 to *** short tons, valued at \$***, in interim 1994. The average per-short-ton unit value of such export shipments in 1993 was slightly higher than the unit value in 1991, and it was *** percent higher in interim 1994 than in interim 1993.

U.S. Producers' Inventories

Data on U.S. producers' inventories of manganese metal are presented in table 5. As shown in the table, the total volume of inventories held by Elkem and KMCC combined rose by *** percent from yearend 1991 to yearend 1993, increasing from *** short tons at yearend 1991 to *** short tons at yearend 1993. Such inventories, however, fell *** from September 30, 1993, to September 30, 1994, falling from *** short tons at the end of interim 1993 to *** short tons at the end of interim 1994. This sharp reduction in inventories over the interim periods coincided with a significant increase in total shipments for both U.S. producers. The ratio of U.S. producers' end-of-period inventories to production and the ratio of such inventories to total shipments increased by 5.0 and 4.2 percentage points, respectively, from 1991 to 1993 and decreased by 13.7 and 15.4 percentage points between the interim periods. ***, the volume of inventories held by *** was *** in all periods than that which was held by ***. However, both producers generally experienced the same trends in inventory patterns.

Table 5
Unwrought manganese metal: End-of-period inventories of U.S. producers, by firms, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Producers' Purchases

Only *** purchased manganese metal during the period for which information was requested. ***'s purchases consisted of purchases from ***, purchases from ***, and ***. *** asserts that ***. According to ***, ***.²⁴ Concerning its other purchases, which occurred ***, *** contends that these were made ***. *** explains in its questionnaire response that manganese metal ***.²⁵ The totals of these other purchases in *** were *** short tons purchased from *** and *** short tons purchased from ***.

²⁴ Petitioners' postconference brief, p. 5.

²⁵ ***'s producers' questionnaire response, p. 16.

U.S. Employment, Wages, Compensation, and Productivity

In the Commission's questionnaire, U.S. producers were asked if they had reduced the number of production and related workers (PRWs) producing manganese metal by at least 5 percent or 50 workers during the period for which information was requested. Only *** reported any such reductions.²⁶ Reductions occurred in October 1991 and in December 1993. The October 1991 reduction involved *** PRWs who were terminated for a period of 3 months due to lack of sales. *** workers not directly involved in the production of manganese metal were permanently terminated in 1993 as a means to reduce manganese metal costs.²⁷ None of the PRWs employed by Elkem and KMCC are used to produce other products of these firms' respective reporting establishments. Only those PRWs employed by Elkem have union representation.

Data on employment, wages, compensation, and productivity for Elkem's and KMCC's manganese metal operations are shown in table 6. As a whole, the employment situation for both firms was generally stable during 1991-93 and less so between the interim periods. Hourly employment costs, however, as measured by hourly wages and hourly total compensation paid to PRWs, rose continuously throughout the period examined. Such costs increased by *** percent and *** percent, respectively, from 1991 to 1993 and rose *** percent each between the interim periods. The number of PRWs employed by Elkem and KMCC rose by *** percent from 1991 to 1993 and fell by *** percent from interim 1993 to interim 1994. Similarly, the number of hours worked by such PRWs increased by *** percent from 1991 to 1993 and declined by *** percent from interim 1993 to interim 1994. Productivity (short tons per 1,000 hours worked) of PRWs employed by Elkem and KMCC rose from *** short tons in 1991 to *** short tons in 1993, an increase of *** percent, and increased from *** short tons in interim 1993 to *** short tons in interim 1994, representing yet another increase of *** percent. Average unit labor costs for the two producers increased by *** percent from 1991 to 1993 and decreased by *** percent from interim 1993 to interim 1994.

Table 6

Average number of production and related workers producing unwrought manganese metal, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by firms, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Financial Experience of U.S. Producers

Two producers²⁸ of unwrought manganese metal, representing all reported U.S. production in 1993, reported income-and-loss and other financial information on their operations.

Overall Establishment Operations

KMCC, ***, produces unwrought manganese metal at its Hamilton, MS, plant. In addition to producing unwrought manganese metal, KMCC produces manganese/aluminum briquettes, a downstream product of manganese metal, and sodium chlorate. Merchant sales (domestic and exports) of unwrought manganese metal accounted for *** percent of total establishment sales in interim 1994.

Elkem produces unwrought manganese metal at its Marietta, OH, plant. The plant also produces manganese/aluminum briquettes from captively produced manganese metal as well as iron/aluminum

²⁶ An official with KMCC testified at the Commission's conference that KMCC's employment situation was stable during the period Jan. 1, 1991, through Sept. 30, 1994 (conference TR, p. 42).

²⁷ Ibid.

²⁸ The producers are Elkem and KMCC.

briquettes, ferrochrome, silicomanganese, and ferromanganese. Merchant sales (domestic and exports) of unwrought manganese metal accounted for *** percent of total establishment sales in interim 1994. Overall establishment operations of the producers are shown in table 7.

Table 7

Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein unwrought manganese metal is produced, fiscal years 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Operations on Unwrought Manganese Metal

Elkem uses slag, a byproduct of high-carbon ferromanganese produced in its establishment, to make unwrought manganese metal. KMCC imports manganese ore.

Elkem indicated that its fixed costs (maintenance and other plant costs) ***. KMCC's fixed costs were *** percent of total costs and its variable costs were *** percent in 1993.

Merchant sales of unwrought manganese metal primarily serve the steel market, whereas captive consumption is used to make briquettes for the aluminum industry. "For years the sole use of manganese metal was the steel industry, in flake form, but it has also been used by the chemical industry and by the steel weld rod industry. However, a substantial new use has developed not for manganese metal, but a different product, manganese aluminum briquettes containing 75 percent manganese. These briquettes are made by Petitioners and independent briquetters."^{28 29}

Internal consumption was ***. In this period, ***. Some of the transactions that occurred in this period follow:

Elkem.--***.

***. Unless domestic industry conditions improve, ***.³⁰

KMCC.--In order to respond to increased imports, KMCC's strategy was to ***.³¹ ***.

In their questionnaire responses, both companies reported their transfers of unwrought manganese metal flake to briquette operations on a *** basis. In the briquette process the flake is ground into powder. In the commercial market, KMCC sells flake and powder, but Elkem only sells flake.

In order to assess the overall profitability of the industry for both trade sales and transfers, ***.³² ***.

The aggregate unwrought manganese metal income-and-loss data of the two producers are shown in table 8. Although net sales rose *** between 1991 and 1993, the industry was *** in 1993 after being *** in 1991 and 1992.

Table 8

Income-and-loss experience of U.S. producers on their operations producing unwrought manganese metal, fiscal years 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

²⁸ Postconference brief of petitioners, p. 2.

²⁹ ***. Al Barlow, Business Analyst of Elkem, telephone interview, Dec. 5, 1994.

³⁰ Postconference brief of petitioners, p. 19.

³¹ Ibid, p. 19. KMCC noted that these are ***.

³² ***.

In interim 1994, sales values were *** higher than in interim 1993. The industry was *** in interim 1994, but *** in interim 1993.

Individual Company Analysis

Income-and-loss data, by company, are presented in table 9. Although Elkem ***. ***. Elkem's SG&A expenses ***. KMCC ***.

Table 9
Income-and-loss experience of U.S. producers on their operations producing unwrought manganese metal, by firms, fiscal years 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

A breakdown of the cost of goods sold, by firm, is shown in table 10.

Table 10
Major components of the U.S. producers' cost of goods sold on their unwrought manganese metal operations, by firms, fiscal years, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Investment in Productive Facilities and Net Return on Assets

Data on assets and return on assets for both producers are shown in table 11.

Table 11
Value of assets and return on assets of U.S. producers' establishments wherein unwrought manganese metal is produced, by firms, fiscal years 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital Expenditures

Data on capital expenditures by the two producers are shown in the following tabulation (in 1,000 dollars):

* * * * *

Research and Development Expenses

Research and development expenditures are shown in the following tabulation (in 1,000 dollars):

* * * * *

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of manganese metal from China on their growth, investment, ability to raise capital, or on their existing development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix D.

CONSIDERATION OF ALLEGED THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors³³--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

³³ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.³⁴

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation; information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix D. Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows. Other threat indicators have not been alleged or are otherwise not applicable.

U.S. Importers' Inventories

Data on U.S. importers' end-of-period inventories of manganese metal from China and from all other sources combined are shown in table 12. The bulk of U.S. importers' inventories was composed of manganese metal imported from South Africa and France. U.S. importers' inventories of manganese metal from all sources fell irregularly from *** short tons in 1991 to *** short tons in 1993 and increased from *** short tons in interim 1993 to *** short tons in interim 1994. U.S. importers' inventories of Chinese-produced manganese metal, composed entirely of unwrought manganese metal, increased from *** short tons in 1991 to 585 short tons in 1993 and rose from 402 short tons in interim 1993 to 1,028 short tons in interim 1994. The ratio of U.S. importers' inventories of manganese metal of Chinese origin to their imports fell steadily throughout the period for which information was requested, falling by *** percentage points from 1991 to 1993 and by 2.5 percentage points between the interim periods. The ratio of U.S. importers' inventories to total shipments of the Chinese product increased from *** percent in 1991 to *** percent in 1992 but then declined to 43.3 percent in 1993 and dropped from 30.7 percent in interim 1993 to 26.4 percent in interim 1994.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

To obtain information for this section of the report, the Commission sent a telegram to the U.S. Embassy in Beijing requesting information on the manganese metal industry in China. The Embassy did

³⁴ Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry." In November 1991, an antidumping petition was filed on behalf of Pechiney Electrometallurgie (Pechiney), the only manganese metal producer in France, with the Commission of the European Communities against manganese metal imported from China. Although an investigation was initiated, it was subsequently terminated following Pechiney's decision to discontinue manganese metal production (petition, pp. 5 and 6).

Table 12
Manganese metal: End-of-period inventories of U.S. importers, by products and by sources, 1991-93,
Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.--	
				1993	1994
<i>Quantity (short tons)</i>					
Unwrought manganese metal:					
China	***	***	585	402	1,028
Other sources	2,531	511	512	687	1,740
Total	***	***	1,097	1,089	2,768
Other manganese metal:					
China	-	-	-	-	-
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Manganese metal:					
China	***	***	585	402	1,028
Other sources	***	***	***	***	***
Total	***	***	***	***	***
<i>Ratio to imports (percent)</i>					
Unwrought manganese metal:					
China	***	***	33.6	25.4	22.9
Other sources	26.9	6.7	21.3	6.3	12.4
Average	***	***	26.2	8.7	15.0
Other manganese metal:					
China	-	-	-	-	-
Other sources	***	***	***	***	***
Average	***	***	***	***	***
Manganese metal:					
China	***	***	33.6	25.4	22.9
Other sources	***	***	***	***	***
Average	***	***	***	***	***
<i>Ratio to total shipments of imports (percent)</i>					
Unwrought manganese metal:					
China	***	***	43.3	30.7	26.4
Other sources	26.8	5.3	24.1	6.5	14.1
Average	***	***	31.1	9.1	17.0
Other manganese metal:					
China	-	-	-	-	-
Other sources	***	***	***	***	***
Average	***	***	***	***	***
Manganese metal:					
China	***	***	43.3	30.7	26.4
Other sources	***	***	***	***	***
Average	***	***	***	***	***

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

not respond to the Commission's request for information. The information that follows is based on information supplied by petitioners and independent sources, when obtainable.³⁵

According to petitioners, there are an estimated 45 to 50 plants that produce manganese metal in China.³⁶ Most of these plants are believed to produce less than 1,000 metric tons of manganese metal per year.³⁷ Manganese metal capacity for the approximately 50 plants is estimated to total *** metric tons, or *** short tons, in 1994.³⁸ Petitioners believe that the current estimated capacity for China represents a significant increase over China's capacity in 1992, which petitioners estimate was approximately *** metric tons (*** short tons). According to petitioners, capacity utilization in China will increase from *** percent in 1992 to *** percent in 1994.⁴⁰ Japan, Europe, and the United States are believed to be the three most important export markets for Chinese manganese metal.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Importers' questionnaires were sent to 22 firms believed to import manganese metal. Responses were received from 16 firms, 13 of which supplied usable data on their imports of the subject merchandise. When compared with official statistics of the U.S. Department of Commerce, U.S. imports of all manganese metal from China as reported in questionnaire responses represented *** percent of the total of all manganese metal (unwrought and other) as reported in official statistics in 1991, *** percent in 1992, 58.1 percent in 1993, and 80.2 percent in interim 1994. The information that follows on U.S. imports of manganese metal is based on official statistics of Commerce.⁴¹

U.S. imports of all manganese metal from all sources fell unevenly from 17,380 short tons, valued at \$29.1 million, in 1991 to 16,502 short tons, valued at \$26.6 million, in 1993 (table 13). Between the interim periods, such imports rose from 12,726 short tons, valued at \$20.7 million, in interim 1993 to 18,311 short tons, valued at \$28.1 million, in interim 1994. South Africa was the leading source of U.S. imports during the period, followed distantly by China and all other sources. U.S. imports from China, about one-fourth of U.S. imports from South Africa in 1993, increased in all periods, rising by 54.3 percent from 1991 to 1992, by 73.4 percent from 1992 to 1993, and increasing by 118.7 percent between the interim periods. Although the value of such imports from China increased similarly, the per-short-ton unit value of such imports fell irregularly from \$1,437 in 1991 to \$1,412 in 1993, and dropped from \$1,427 in interim 1993 to \$1,296 in interim 1994.

The bulk of U.S. imports of manganese metal from China from 1991 through interim 1994 was composed of unwrought manganese metal. Other manganese metal, however, accounted for an increasing share of the total over this period, increasing from less than 2 percent of the total in 1991 to 8.1 percent of the total in 1993. By interim 1994, the share had risen to 37.7 percent.

U.S. Importers' Current Orders

In the Commission's questionnaire, U.S. importers were asked if they had imported or arranged for the importation of manganese metal from China for delivery after September 30, 1994. Five firms

³⁵ No Chinese producer or exporter was represented by counsel in this investigation.

³⁶ Conference TR, p. 10; petition at pp. 49 and 50.

³⁷ Conference TR, p. 10.

³⁸ *Ibid.*, p. 50.

³⁹ World manganese metal capacity was reported to be 76,000 metric tons annually in 1985 and estimated to be about the same in 1992 (Thomas S. Jones, *Manganese 1992, Annual Report*, U.S. Department of Interior, Bureau of Mines, 1992).

⁴⁰ Petition, p. 50.

⁴¹ Data on U.S. imports of manganese metal based on responses to Commission questionnaires are presented in app. E.

Table 13

Manganese metal: U.S. imports, by products and by sources, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.--	
				1993	1994
	<i>Quantity (short tons)</i>				
Unwrought manganese metal:					
China	1,099	1,632	2,757	1,735	2,612
South Africa	9,457	7,308	8,386	6,302	10,048
All other sources	150	289	271	240	1,158
Total	10,706	9,228	11,414	8,277	13,818
Other manganese metal:					
China	22	99	243	183	1,583
South Africa	6,513	5,679	4,378	3,840	2,118
All other sources	138	291	467	426	792
Total	6,674	6,068	5,089	4,449	4,493
Manganese metal:					
China	1,121	1,730	2,999	1,919	4,195
South Africa	15,970	12,987	12,764	10,142	12,166
All other sources	288	579	738	666	1,950
Total	17,380	15,297	16,502	12,726	18,311
	<i>Value (1,000 dollars)</i>				
Unwrought manganese metal:					
China	1,585	2,431	3,931	2,506	3,499
South Africa	16,453	12,351	13,540	10,227	16,286
All other sources	220	440	538	475	1,704
Total	18,258	15,222	18,010	13,209	21,490
Other manganese metal:					
China	27	113	304	231	1,938
South Africa	10,274	8,771	6,927	6,070	3,293
All other sources	575	1,572	1,326	1,239	1,411
Total	10,875	10,456	8,557	7,540	6,642
Manganese metal:					
China	1,611	2,544	4,236	2,737	5,437
South Africa	26,727	21,122	20,467	16,297	19,580
All other sources	794	2,012	1,864	1,714	3,115
Total	29,133	25,679	26,567	20,749	28,132
	<i>Unit value (per short ton)</i>				
Unwrought manganese metal:					
China	\$1,442	\$1,490	\$1,426	\$1,444	\$1,340
South Africa	1,740	1,690	1,615	1,623	1,621
Other sources	1,465	1,524	1,986	1,980	1,472
Average	1,705	1,650	1,578	1,596	1,555
Other manganese metal:					
China	1,194	1,145	1,253	1,258	1,224
South Africa	1,577	1,544	1,582	1,581	1,555
All other sources	4,156	5,409	2,836	2,911	1,782
Average	1,629	1,723	1,682	1,695	1,478

Table continued on next page.

Table 13--Continued

Manganese metal: U.S. imports, by products and by sources, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.-- 1993	1994
	<i>Unit value (per short ton)</i>				
Manganese metal:					
China	\$1,437	\$1,470	\$1,412	\$1,427	\$1,296
South Africa	1,674	1,626	1,603	1,607	1,609
All other sources	2,756	3,473	2,524	2,575	1,598
Average	1,676	1,679	1,610	1,630	1,536
	<i>Share of total quantity (percent)</i>				
Unwrought manganese metal:					
China	10.3	17.7	24.2	21.0	18.9
South Africa	88.3	79.2	73.5	76.1	72.7
All other sources	1.4	3.1	2.4	2.9	8.4
Total	100.0	100.0	100.0	100.0	100.0
Other manganese metal:					
China3	1.6	4.8	4.1	35.2
South Africa	97.6	93.6	86.0	86.3	47.1
All other sources	2.1	4.8	9.2	9.6	17.6
Total	100.0	100.0	100.0	100.0	100.0
Manganese metal:					
China	6.4	11.3	18.2	15.1	22.9
South Africa	91.9	84.9	77.3	79.7	66.4
All other sources	1.7	3.8	4.5	5.2	10.6
Total	100.0	100.0	100.0	100.0	100.0
	<i>Share of total value (percent)</i>				
Unwrought manganese metal:					
China	8.7	16.0	21.8	19.0	16.3
South Africa	90.1	81.1	75.2	77.4	75.8
All other sources	1.2	2.9	3.0	3.6	7.9
Total	100.0	100.0	100.0	100.0	100.0
Other manganese metal:					
China2	1.1	3.6	3.1	29.2
South Africa	94.5	83.9	81.0	80.5	49.6
All other sources	5.3	15.0	15.5	16.4	21.2
Total	100.0	100.0	100.0	100.0	100.0
Manganese metal:					
China	5.5	9.9	15.9	13.2	19.3
South Africa	91.7	82.3	77.0	78.5	69.6
All other sources	2.7	7.8	7.0	8.3	11.1
Total	100.0	100.0	100.0	100.0	100.0

Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.

reported orders totaling 606 short tons scheduled for delivery in the United States during October through December 1994.⁴² The reported volume scheduled for delivery in the first 2 months of 1995 totals 1,279 short tons. Respondent Cometals reported that ***.⁴³

Market Penetration by the Subject Imports

Market penetration ratios of U.S. imports of manganese metal from China based on official U.S. import statistics are presented in tables 14 and 15.⁴⁴ As a share of the quantity and value of apparent U.S. consumption of all manganese metal, imports from China rose from *** percent and *** percent, respectively, in 1991 to *** percent and *** percent, respectively, in 1993 (table 14). Between the interim periods, the ratios rose from *** percent and *** percent, respectively, in interim 1993 to *** percent and *** percent, respectively, in interim 1994. For unwrought manganese metal, the ratio based on apparent consumption quantity rose from *** percent in 1991 to *** percent in 1993 and rose from *** percent in interim 1993 to *** percent in interim 1994. The ratio increased similarly based on the value of apparent consumption, rising by 4.7 percentage points from 1991 to 1993 and rising by 0.1 percentage point between the interim periods.

Based on the quantity and value of apparent U.S. open-market consumption, the market penetration ratio of U.S. imports from China of unwrought manganese metal increased from *** percent and *** percent, respectively, in 1991 to *** percent and *** percent, respectively, in 1993 (table 15). Between the interim periods, the ratios fell from *** percent and *** percent, respectively, in interim 1993 to *** percent and *** percent, respectively, in interim 1994.

Table 14
Manganese metal: Apparent U.S. consumption and market penetration, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table 15
Manganese metal: Apparent U.S. open-market consumption and market penetration, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Prices

Marketing Characteristics

The demand for manganese metal is derived from the demand for the products that use manganese metal. These products include steel alloy, manganese/aluminum briquettes for can stock, and chemical applications. Manganese metal accounts for a small portion of the total cost of these final end-use products. Both U.S. producers and two U.S. importers of Chinese product captively use manganese metal in the production of other downstream products. During 1993, nearly *** percent of the U.S.-produced manganese metal

⁴² Includes *** short tons for trial purposes that *** reported it is scheduled to take delivery of during November and December.

⁴³ Cometals' importers' questionnaire response, p. 7.

⁴⁴ Market penetration ratios based on U.S. importers' shipments as reported in Commission questionnaires are presented in app. F.

was used captively by U.S. producers to produce manganese/aluminum briquettes for the can stock market.⁴⁵ Two U.S. importers also reported importing Chinese manganese metal for their captive use. One importer, ***, uses the product to produce manganese/aluminum briquettes for the can stock market and the other importer, ***, uses the product for copper-based alloys. Captively consumed imported manganese metal from China represented *** percent of U.S. imports during 1993, but *** percent during January-September 1994.⁴⁶

U.S. producers and the responding U.S. importers agreed that there are no direct substitutes for manganese metal. However, they reported that manganese metal can substitute for ferromanganese, but ferromanganese does not substitute for manganese metal. The reason is that the price of ferromanganese is significantly lower than that of manganese metal; therefore, any substitution of ferromanganese for manganese metal has already occurred.

Manganese metal is priced on a per-pound basis and varies depending on the total quantity ordered and the type of customer (whether a distributor or an end user).⁴⁷ U.S. producers reported that pricing did not differ depending on whether the product is sold in powder or flake form. Moreover, they reported that there was little, if any, difference in price depending on the purity level of manganese. However, one U.S. importer reported that higher purity Chinese manganese metal does have a price premium.⁴⁸

Manganese metal is sold on both an f.o.b. port/warehouse and delivered basis. U.S. producers and importers reported sales terms of ***, although *** importers reported sales terms of **. Manganese metal is packaged in pallet boxes or drums, and inland shipping typically takes place by truck. Transportation costs are not considered an important factor in the sale of manganese metal and typically account for between *** and *** percent of the total cost of the product. U.S. producers reported lead times of between *** and *** days from inventory, whereas importers reported order lead times of *** from inventory and between *** and *** months on a made-to-order basis.

The Commission requested U.S. producers and importers to report whether they were ever unable to supply manganese metal to a customer in a timely manner at prevailing prices and in the quantities desired during January 1991-September 1994. Although both U.S. producers reported no supply problems, three importers reported recent supply problems. *** reported that floods in China resulted in erratic delivery of manganese metal powder, *** reported that insufficient quantities were available to meet their current requirements, and *** reported that, in the last 6 months, an increase in power costs in China resulted in a supply reduction. *** further commented that some Chinese producers shut down entirely due to their inability to sell at a profit.

Product Comparisons

The two U.S. producers reported that both U.S. and Chinese manganese metal are interchangeable and of the same quality for sales to all end-use markets except to the aluminum can stock market. In this market, the Chinese product cannot be used because of its high selenium content.⁴⁹ Six of the eight responding importers of the Chinese product agreed that the Chinese product could not be used in the aluminum application because of the high selenium content. Moreover, one importer reported that, although the Chinese producers manufacture a low selenium product, their product is not competitively priced with either the U.S. product or the South African product. However, another importer, ***, reported that it imports Chinese product for ***. ***.

*** importers also reported additional problems with the quality of the Chinese material. The Chinese product was sometimes wet, had poor packaging, had higher than acceptable sulfur content, had powder in the flake product, and had contaminated drums. Also, these importers reported that many steel mills would not accept Chinese manganese metal because of its high gas content (e.g., hydrogen,

⁴⁵ ***.

⁴⁶ ***.

⁴⁷ Distributors receive discounts that typically range from *** to *** percent.

⁴⁸ Questionnaire response of ***.

⁴⁹ U.S. producers sell approximately *** percent of their manganese metal to the aluminum market.

oxygen, and nitrogen). One importer reported that, because of these reasons, the Chinese material must be sold at a discount.

Questionnaire Price Data

The Commission requested price and quantity information from U.S. producers and importers for their largest quarterly and total quarterly sales of three types of manganese metal sold to distributors and directly to end users during the period January 1991-September 1994.⁵⁰ The three products are described below:

- Product 1: Unwrought manganese metal in powder form, containing not less than 99.5 percent manganese by weight.
- Product 2: Unwrought manganese metal in flake form, containing not less than 99.5 percent manganese by weight.
- Product 3: Manganese metal other than unwrought, containing not less than 99.5 percent manganese by weight.

Usable price data for products 1 and 2 were received from both U.S. producers of manganese metal and eight U.S. importers of manganese metal from China.⁵¹ Reported pricing accounted for 100 percent of reported U.S. producers' and nearly 85 percent of importers' open-market domestic shipments of manganese metal in 1993.⁵²

Price trends

Domestic weighted-average prices for the specified manganese metal products either trended downward or fluctuated during January 1991-September 1994 (table 16, figure 1). Overall, prices for product 1 (powder) sold to end users showed ***. Prices for U.S.-produced product 2 (flake) sold to end users and distributors declined by *** percent and *** percent, respectively, between January-March 1991 and July-September 1994.

Prices for manganese metal imported from China also generally trended downward for all sales, regardless of the type of outlet into which the material was sold. Overall, prices for imported product 2 sold to end users declined by *** percent between October-December 1991 and July-September 1994, and prices for imported product 2 sold to distributors declined by *** percent between October-December 1992 and July-September 1994.

Table 16
Average net f.o.b. selling prices and quantities of U.S.-produced and imported products 1 and 2 from China, by customer types, by products, and by quarters, Jan. 1991-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

⁵⁰ Prices discussed in this section are average prices computed from quarterly total sales and quantity data.
⁵¹ U.S. producers and importers reported no sales of product 3.
⁵² Approximately *** percent of U.S. producers' shipments were used captively during 1993. *** U.S. importers purchase Chinese product for ***. ***.

Figure 1

Average net f.o.b. selling prices of U.S.-produced and imported products 1 and 2 from China, by customer types, by products, and by quarters, Jan. 1991-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Price comparisons

There were 25 instances where price comparisons between the domestic and Chinese products were possible (table 17). In 22 of these instances, the Chinese product was priced below the U.S. product, with margins ranging from *** to *** percent. In the remaining 3 instances, the Chinese product was priced above the U.S. product, with margins ranging from *** to *** percent.

Table 17

Margins of under(over)selling from average sale prices of importers of the Chinese product, by customer types, by products, and by quarters, Jan. 1991-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Exchange Rates

The nominal value of the Chinese yuan (figure 2) depreciated by 39.8 percent relative to the U.S. dollar during January 1991-June 1994. The sharp drop in the nominal exchange rate at the beginning of 1994 is the result of changes in the way the People's Bank of China sets the exchange rate.⁵³ Producer price index information for China is unavailable, thus real exchange rates cannot be calculated.

Lost Sales and Lost Revenues

The Commission received *** allegations of lost revenues and *** allegations of lost sales from the two U.S. producers, Elkem and KMCC (table 18). These allegations involved *** purchasers of manganese metal. The lost revenue allegations involved approximately *** pounds of manganese metal totalling \$*** and the lost sale allegations involved *** pounds of manganese metal totalling \$***.⁵⁴ Staff contacted all *** purchasers cited in these allegations.⁵⁵

*** reported having purchased the imported material from China because it was lower-priced, although the firm reported that the quantities and the values of the lost sales were overstated. The firm purchased *** pounds of the Chinese product rather than the alleged *** pounds. The firm indicated that it was its policy to take the lowest quotation and not to negotiate. On this basis, if *** was not the low bidder initially, then it would not obtain the sale.⁵⁶

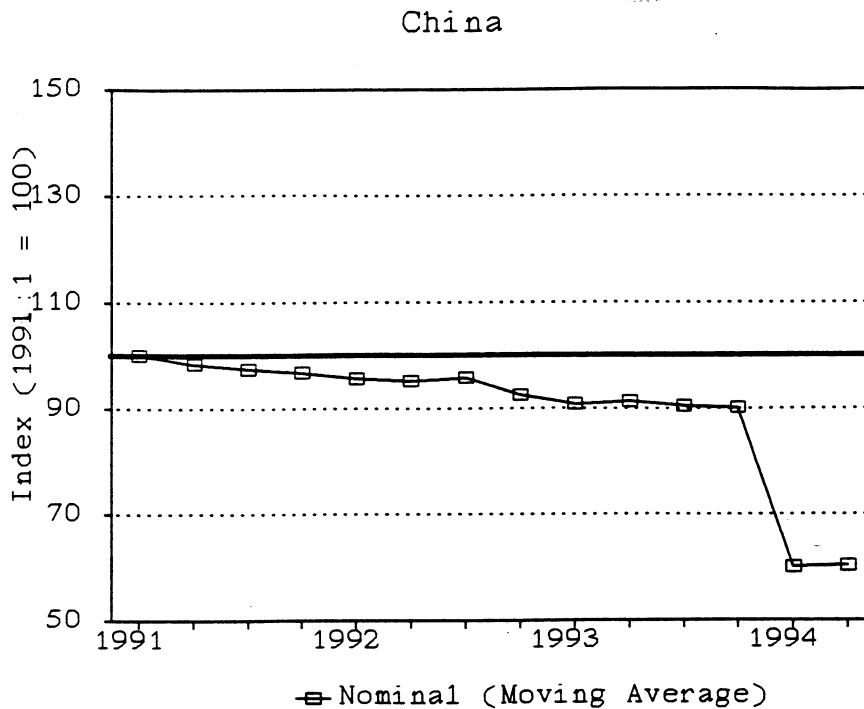
⁵³ International Monetary Fund, *International Financial Statistics*, Nov. 1994, p. 164.

⁵⁴ *** cited *** additional lost revenue allegations involving *** pounds of manganese metal totaling \$***. These allegations involved ***.

⁵⁵ ***.

⁵⁶ ***.

Figure 2
 Index of the nominal exchange rate between the U.S. dollar and Chinese yuan,
 by quarters, Jan. 1991-June 1994



Source: International Monetary Fund, *International Financial Statistics*, Nov. 1994.

Table 18
 Lost sale and lost revenue allegations reported by U.S. producers of manganese metal

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

***. It currently purchases *** percent of its requirements from *** at *** cents per pound and *** percent from Chinese suppliers at *** cents per pound. U.S. product, at 99.9-percent purity, is required for ***, whereas Chinese and U.S. product can be used in ***. These applications require product with only a 99.7-percent purity.

*** was unable to comment on the allegations because it reportedly does not know the origin of the imports it purchases. A representative for the firm indicated that U.S.-produced and imported manganese metal are highly similar products and that imported and domestic material are frequently inventoried together in warehouses; therefore, purchasers are not commonly aware of the origin of the product. *** uses manganese metal in the production of *** and reported that it was common practice to blend the U.S. and foreign material.

The remaining two firms, *** and ***, denied the alleged lost sales. *** indicated that the Chinese product did not meet its specifications and *** reported that it did not purchase any imports during the time periods specified by ***.⁵⁷ ***. It resells manganese metal to ***.

⁵⁷ Telephone interviews with representatives of *** and ***, Dec. 7, 1994.

APPENDIX A
CITED *FEDERAL REGISTER* NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-724
(Preliminary)]

**Manganese Metal From The People's
Republic of China**

AGENCY: United States International
Trade Commission.

ACTION: Institution and scheduling of a
preliminary antidumping investigation.

SUMMARY: The Commission hereby gives
notice of the institution of preliminary

antidumping investigation No. 731-TA-724 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of manganese metal, provided for in subheadings 8111.00.45 and 8111.00.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 23, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Woodley Timberlake (202-205-3188), Office of Investigations, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on November 8, 1994, by Elkem Metals Company, Pittsburgh, PA, and Kerr-McGee Chemical Corporation, Oklahoma City, OK.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list

containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 29, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-205-3188) not later than November 25, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 2, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified

by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §§ 207.12 of the Commission's rules.

Issued: November 14, 1994.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-28513 Filed 11-16-94; 8:45 am]

BILLING CODE 7020-02-P

Initiation of Investigation*The Petition*

On November 8, 1994, we received a petition filed in proper form from KMCC of Oklahoma City, Oklahoma, and ELKEM, of Pittsburgh, Pennsylvania (the petitioners). At the request of the Department of Commerce (the Department), the petitioners filed a supplement to support and clarify the data in the petition on November 22, 1994. In accordance with 19 CFR 353.12 (1994), the petitioners allege that manganese metal is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Scope of Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

United States Price and Foreign Market Value

The petitioners based United States price (USP) on observations of price quotations obtained for manganese metal from the PRC from December 1993 through May 1994. The terms of the prices observed in the salespersons' call reports included delivery to the customer. In calculating USP, the petitioners deducted a ten percent trading company commission, a U.S. port-to-customer delivery charge, imputed ocean freight, and U.S. duty. The Department did not allow the ten percent trading company commission as a deduction to U.S. price because petitioners could not support their assumption that the ten percent trading company commission applied to imports of manganese metal from the PRC.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-840]

Initiation of Antidumping Duty Investigation: Manganese Metal From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1777 or (202) 482-5288, respectively.

The petitioners contend that the PRC is a non-market economy (NME) country within the meaning of section 771(18)(A) of the Act. The Department has determined in all previous investigations that the PRC is an NME, and the presumption of NME status continues for purposes of initiation of this investigation. See, e.g., *Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the PRC*, 59 FR 51168 (October 7, 1994).

In accordance with section 773(c) of the Act, foreign market value in NME cases is based on NME producers' factors of production, valued in a market economy country. Consistent with Department practice, absent evidence that the PRC government determines which of its factories shall produce for export to the United States, we intend, for purposes of this investigation, to base FMV only on those factories that produced manganese metal sold to the United States during the period of investigation (POI).

In the course of this investigation, parties will have the opportunity to address our designation of the PRC as an NME and provide relevant information and argument related to the issues of the PRC's NME status and granting of separate rates to individual exporters. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act. See *Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China*, 57 FR 15052 (April 24, 1992).

Conforming with Department practice, the petitioners calculated FMV on the basis of the valuation of the factors of production and, claiming that their production process is similar to the Chinese production process, based the factors of production on their own experience. The factors of production were valued, where possible, on publicly available published information pertaining to India. The petitioners argue that India is both a country at a comparable level of economic development to the PRC and a significant producer of comparable merchandise, thus meeting the requirements of section 773(c)(4) of the Act. For purposes of this initiation, we have accepted India as an appropriate surrogate country selection.

Where Indian values were not available, the petitioners valued the factors of production using either a ratio

based on their own experience or their own costs.

In accordance with section 773(c)(1)(B) of the Act, the petitioners' FMV consisted of the sum of values assigned to materials, labor, energy, overhead and selling, general and administrative (SG&A) expenses. Certain of these factor values were adjusted for inflation. Pursuant to section 773(e)(1) of the Act, the petitioners added to the cost of manufacturing (COM), overhead and SG&A expenses, the statutory minimum of eight percent for profit.

Based on our analysis of the petition and the subsequent supplement to the petition, we have made certain adjustments to the petitioners' FMV calculation as follows:

- (1) we disallowed all factors valued by using the petitioners' own costs;
- (2) we recalculated factory overhead and depreciation expenses using the statistics in the December 1992 *Reserve Bank of India Bulletin*. This source is publicly available and has been used to value factory overhead in other investigations of imports from the PRC;
- (3) for the purpose of initiating this investigation, we recalculated the valuation of several process chemicals, using data from the *Chemical Marketing Reporter*. This information was supplied by the petitioners in their November 22, 1994, supplement to the petition. We accepted this surrogate information for the purpose of initiating the investigation because it is information that is reasonably available to the petitioners for supporting their allegations, within the meaning of section 732(b) of the Act.
- (4) we recalculated electrical consumption using the industrial rate for electricity in Indonesia, an appropriate surrogate country at a comparable level of economic development to the PRC. In our recent investigations of magnesium from the PRC, we found that the Indian rate for electricity was inappropriate. See *Preliminary Determinations of Sales at Less than Fair Value and Postponement of Final Determinations: Pure Magnesium and Alloy Magnesium from the People's Republic of China*, 59 FR 55424, 55426, November 7, 1994.

Fair Value Comparisons

Based on a comparison of USP and FMV, the petitioners' alleged dumping margins, as revised by the Department, range from 104.77 percent to 143.32 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition alleges the elements necessary for the imposition of a duty under section 731 of the Act and whether the petition contains information

reasonably available to the petitioner supporting the allegations.

We have examined the petition for manganese metal from the PRC, as amended, and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of manganese metal from the PRC are being, or are likely to be, sold in the United States at less than fair value. If this investigation proceeds normally, we will make our preliminary determination by April 27, 1995.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by December 23, 1994, whether there is a reasonable indication that imports of manganese metal from the PRC are materially injuring, or threatening material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, a negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.12(b).

Dated: November 28, 1994.
Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Dec. 94-29727 Filed 12-1-94; 8:45 am]
BILLING CODE 3510-DS-P

APPENDIX B
CALENDAR OF PUBLIC CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigation No. 731-TA-724 (Preliminary)

Manganese Metal from the People's Republic of China

Those listed below appeared as witnesses at the United States International Trade Commission's conference held in connection with the subject investigation at 9:30 a.m. on November 29, 1994, in the Main hearing room of the USITC Building, 500 E Street, SW, Washington, DC.

In support of the imposition of antidumping duties

Gardner, Carton & Douglas--Counsel
Washington, DC
on behalf of

Elkem Metals Co.
Kerr-McGee Chemical Corp.

Mr. David W. Ezell, business director, specialty & new products, Kerr-McGee Chemical Corp.
Mr. William A. Ferguson, global marketing manager, special metals, Elkem Metals Co.
Dr. James C. Burrows, vice president, Charles River Associates

W.N. Harrell Smith)
--OF COUNSEL
George N. Grammas)

In opposition to the imposition of antidumping duties

Cometals, Inc.

Mr. Jeffrey L. Kofsky, trader, minerals department

APPENDIX C
SUMMARY DATA CONCERNING THE U.S. MARKET

Table C-1

Manganese metal: Summary data concerning the U.S. market using official statistics for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table C-2

Manganese metal: Summary data concerning the U.S. open market using questionnaire data for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table C-3

Manganese metal: Summary data concerning the U.S. open market using official statistics for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table C-4

Unwrought manganese metal: Summary data concerning the U.S. market using official statistics for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table C-5

Unwrought manganese metal: Summary data concerning the U.S. open market using questionnaire data for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table C-6

Unwrought manganese metal: Summary data concerning the U.S. open market using official statistics for imports, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

APPENDIX D

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT
OF IMPORTS OF MANGANESE METAL FROM CHINA ON THEIR
GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS**

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of manganese metal from China on their growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product. Their comments are as follows:

1. Since January 1, 1991, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product, as a result of imports of manganese metal from the People's Republic of China?

Elkem

"***.

1. ***.

2. ***."

KMCC

"***."

2. Does your firm anticipate any negative impact of imports of manganese metal from the People's Republic of China?

Elkem

"1. ***.

2. ***.

3. ***."

KMCC

"1. ***.

2. ***."

3. Has the scale of capital investments undertaken been influenced by the presence of imports of manganese metal from the People's Republic of China?

Elkem

"***."

KMCC

"***."

APPENDIX E

U.S. IMPORTS BASED ON QUESTIONNAIRE RESPONSES

Table E-1

Manganese metal: U.S. imports, by products and by sources, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.--	
				1993	1994
<i>Quantity (short tons)</i>					
Unwrought manganese metal:					
China	***	503	1,741	1,187	3,365
Other sources	9,401	7,625	10,276	8,161	10,510
Total	***	8,128	12,017	9,348	13,875
Other manganese metal:					
China	0	0	0	0	0
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Manganese metal:					
China	***	503	1,741	1,187	3,365
Other sources	***	***	***	***	***
Total	***	***	***	***	***
<i>Value (1,000 dollars)</i>					
Unwrought manganese metal:					
China	***	791	2,460	1,613	5,813
Other sources	14,845	13,724	16,088	12,866	15,068
Total	***	14,515	18,548	14,479	20,881
Other manganese metal:					
China	0	0	0	0	0
Other sources	***	***	***	***	***
Total	***	***	***	***	***
Manganese metal:					
China	***	791	2,460	1,613	5,813
Other sources	***	***	***	***	***
Total	***	***	***	***	***
<i>Unit value (per short ton)</i>					
Unwrought manganese metal:					
China	\$***	\$1,573	\$1,413	\$1,359	\$1,727
Other sources	1,579	1,800	1,566	1,577	1,434
Average	***	1,786	1,543	1,549	1,505
Other manganese metal:					
China	(1)	(1)	(1)	(1)	(1)
Other sources	***	***	***	***	***
Average	***	***	***	***	***
Manganese metal:					
China	***	1,573	1,413	1,359	1,727
Other sources	***	***	***	***	***
Average	***	***	***	***	***

See footnote at end of table.

Table E-1--Continued

Manganese metal: U.S. imports, by products and by sources, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

Item	1991	1992	1993	Jan.-Sept.--	
				1993	1994
	<i>Share of total quantity (percent)</i>				
Unwrought manganese metal:					
China	***	6.2	14.5	12.7	24.3
Other sources	***	93.8	85.5	87.3	75.7
Total	100.0	100.0	100.0	100.0	100.0
Other manganese metal:					
China	0	0	0	0	0
Other sources	100.0	100.0	100.0	100.0	100.0
Total	100.0	100.0	100.0	100.0	100.0
Manganese metal:					
China	***	***	***	***	***
Other sources	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
	<i>Share of total value (percent)</i>				
Unwrought manganese metal:					
China	***	5.4	13.3	11.1	27.8
Other sources	***	94.6	86.7	88.9	72.2
Total	100.0	100.0	100.0	100.0	100.0
Other manganese metal:					
China	0	0	0	0	0
Other sources	100.0	100.0	100.0	100.0	100.0
Total	100.0	100.0	100.0	100.0	100.0
Manganese metal:					
China	***	***	***	***	***
Other sources	***	***	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

¹ Not applicable.

Note.--Because of rounding, shares may not add to the totals shown. Unit values are calculated using data of firms supplying both numerator and denominator information.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

APPENDIX F

**MARKET PENETRATION OF U.S. IMPORTS FROM CHINA
BASED ON COMMISSION QUESTIONNAIRES**

Table F-1

Manganese metal: Apparent U.S. consumption and market penetration, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table F-2

Manganese metal: Apparent U.S. open-market consumption and market penetration, by products, 1991-93, Jan.-Sept. 1993, and Jan.-Sept. 1994

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

