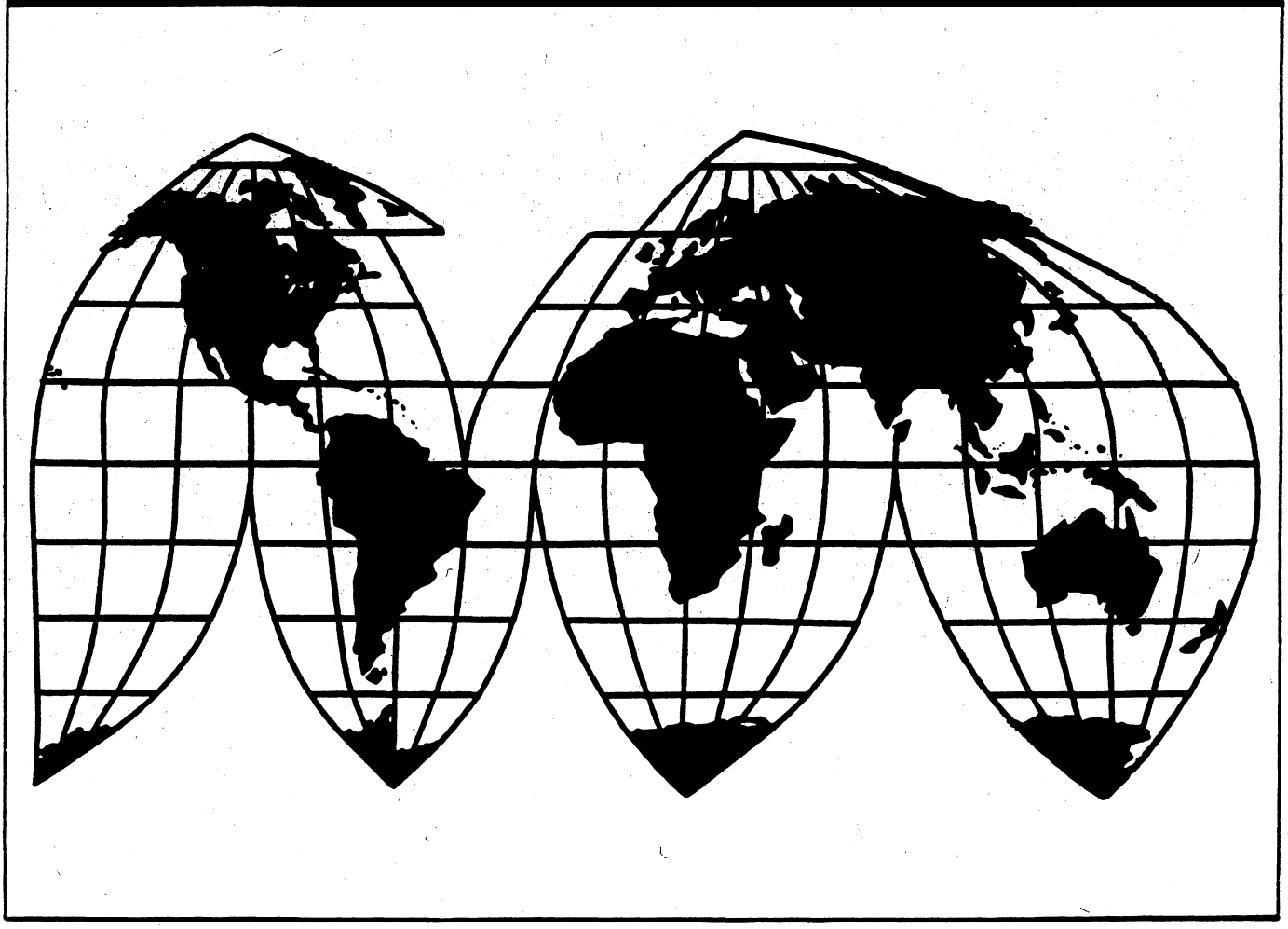
Silicomanganese From Brazil, The People's Republic of China, Ukraine, and Venezuela

Investigations Nos. 731-TA-671-674 (Preliminary)

Publication 2714 **December 1993**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Don E. Newquist, Chairman
Peter S. Watson, Vice Chairman
David B. Rohr
Anne E. Brunsdale
Carol T. Crawford
Janet A. Nuzum

Robert A. Rogowsky
Director of Operations

Staff assigned:

Janine Wedel, Investigator
Stephanie Kaplan, Industry Analyst
Wallace Fullerton, Economist
John Ascienzo, Accountant
Cynthia Johnson, Attorney

George Deyman, Supervisory Investigator

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

Silicomanganese From Brazil, The People's Republic of China, Ukraine, and Venezuela

Publication 2714

December 1993

CONTENTS

CONTENTS

CONTENTS

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-671-674 (Preliminary)

SILICOMANGANESE FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA, UKRAINE, AND VENEZUELA

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission unanimously determines, 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 materially injured, or threatened with material injury, by reason of imports from Brazil, the People's Republic of China, Ukraine, and Venezuela of silicomanganese (ferrosilicon manganese), provided for in subheading 7202.30.00 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 12, 1993, a petition was filed with the Commission and the Department of Commerce by Elkem Metals Company, Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local 3-639, Belpre, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela. Accordingly, effective November 12, 1993, the Commission instituted antidumping investigations Nos. 731-TA-671-674 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 23, 1993 (58 F.R. 61919). The conference was held in Washington, DC, on December 3, 1993, 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)).

VIEWS OF THE COMMISSION

Based on the record in these preliminary investigations, we unanimously determine that there is a reasonable indication that the industry in the United States producing silicomanganese is materially injured by reason of imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela that allegedly are sold in the United States at less than fair value ("LTFV").[1]

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in preliminary antidumping duty investigations requires us 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.[2] In applying this standard, we weigh the evidence before us to determine 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."[3] The U.S. Court of Appeals for the Federal Circuit has held that this interpretation of the standard "accords with clearly discernible legislative intent and is sufficiently reasonable."[4]

II. LIKE PRODUCT

To determine whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, we first define the "like product" and the "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 the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product..."[5] In turn, like product is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation..."[6]

Our like product determinations are factual, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] [8] We look for

---

[1] 19 U.S.C. § 1673b(a). Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[2] 19 U.S.C. § 1673b(a). See also American Lamb v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 386 (Ct. Int'l Trade 1992).

[3] American Lamb, 785 F.2d at 1001; see also Torrington Co. v. United States, 790 F. Supp. 1161, 1165 (Ct. Int'l Trade 1992).

[4] American Lamb, 785 F.2d at 1004.

[5] 19 U.S.C. § 1677(4)(a).

[6] 19 U.S.C. § 1677(10).

[7] 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).

[8] The Commission generally considers a number of factors in analyzing like product issues including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. See, e.g., Calabrian Corp. v. United States, 794 F. Supp. 377 (Ct. Int'l Trade 1992); Torrington Co. v. United States, (continued...)

clear dividing lines between like products,[9] and have found minor distinctions to be an insufficient basis for finding separate like products.[10]

The Department of Commerce ("Commerce") has defined the imported products subject to these investigations as follows:

> Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorus and sulfur. Silicomanganese generally contains by weight not less than 4% iron, more than 30% manganese, more than 8% silicon and not more than 3% phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of these investigations, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. These investigations cover all silicomanganese, regardless of its tariff classification.[11]

Silicomanganese is a metallic, silvery ferroalloy used primarily as an additive in the production of steel because of its desulfurizing, deoxidizing, and alloying properties. Silicomanganese is used as a source of both manganese and silicon. Manganese is intentionally present in most grades of steel, is a residual constituent of virtually all steels, and is also used as a desulfurizer and a deoxidizer. Silicon is added to steel as both a deoxidizer and an alloying agent. In 1992, the steel industry accounted for 90.1 percent of U.S. silicomanganese consumption. Additionally, silicomanganese is used as an alloying agent in cast iron production and in the production of medium-carbon ferromanganese.[12]

Silicomanganese is sold in three grades, A, B, and C, which are distinguished by their silicon and carbon contents. Under the American Society for Testing of Materials (ASTM) standard, all three grades contain 65 to 68 percent manganese, a maximum of 0.20 percent phosphorus, and a maximum of 0.04 percent sulfur by weight. Grade A contains 18.5 to 21.0 percent silicon and a maximum of 1.5 percent carbon. Grade B contains 16.0 to 18.5 percent silicon and a maximum of 2.0 percent carbon. Grade C contains 12.5

---

[8] (...continued)
767 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd. 938 F.2d 1278 (1991); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1170, n.7.(Ct. Int'l Trade 1988) (hereinafter ASOCOFLORES). No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a given investigation.

[9] See, e.g. Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China, Inv. No. 731-TA-621 (Final), USITC Pub. 2671 (August 1993).

[10] ASOCOFLORES, 693 F. Supp. at 1168-69; S. Rep. 249, 96th Cong., 1st Sess. 90-91 (1979); S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979). "It is up to [the Commission] to determine objectively what is a minor difference."

[11] 58 Fed. Reg. 64554 (December 8, 1993). Commerce's notice of initiation indicated that it intended to clarify the scope of these investigations at the time of its preliminary determinations. Id.

[12] Confidential Staff Report (hereinafter referred to as "CR") at I-4-9, Public Staff Report (hereinafter referred to as "PR") at II-3-5.

percent to 16.0 percent silicon and a maximum of 3.0 percent carbon.[13] The majority of sales in the United States is of Grade B silicomanganese. Limited quantities of grades A and C have also been marketed in the United States, but grade C is not produced in the United States.[14]

No single product can substitute for silicomanganese. However, some steelmakers use a combination of high-carbon ferromanganese and ferrosilicon to serve the same functions as silicomanganese.[15]

Petitioner asserts that the like product is all types of silicomanganese, regardless of grade. Respondents have not argued for a different definition of the like product.

Generally, we have been reluctant to find separate like products based only on the existence of differing grades.[16] All grades of silicomanganese appear to be used for the same purpose, i.e., as an additive in the production of steel.[17] The grades differ only in the composition of silicon and carbon present.[18] Thus, few differences exist in the physical characteristics and end uses of the various grades of silicomanganese. There is some disagreement between the parties as to the interchangeability between the various grades of silicomanganese. According to petitioner, an end user could use different grades of silicomanganese by adjusting the charge of the alloy to compensate for a higher or lower silicon content.[19] The Venezuelan respondents argue that Grade B and Grade C are distinct products.[20] The Ukrainian respondents argue that off-specification silicomanganese, such as that marketed from the Ukraine, is not interchangeable with material conforming to ASTM specification.[21] [22] We note, however, that all grades of silicomanganese are interchangeable at least in some steel-making processes.

Channels of distribution appear to overlap, since most silicomanganese is sold directly to the same type end users, e.g., steel producers.[23] Further, all grades of silicomanganese can be and are manufactured in the same facilities using the same furnaces and employees.[24] [25] Finally, according to petitioner, the domestically-produced Grades A and

---

[13] CR at I-4-5, PR at II-3-4. Silicomanganese containing more or less than the ASTM specified content of particular elements is still considered silicomanganese. The ASTM standard is neither universally followed outside the United States nor uniformly adhered to by purchasers within the U.S. market. CR at I-5, n.4, PR at II-4, n.4.

[14] CR at I-5, PR at II-4. The Venezuelan respondents claim that some quantity of Venezuelan Grade C is imported and used domestically.

[15] CR at I-13, PR at II-8.

[16] See, e.g.,Silicon Carbide from the People's Republic of China, Inv. No. 731-TA-651 (Preliminary), USITC Pub. 2668 (August 1993) at 9 and n.31; Ferrosilicon from Brazil and Egypt, Inv. Nos. 731-TA-641-642 (Preliminary) USITC Pub. 2605 (February 1993) at 7, n.24.

[17] See, e.g., CR at I-7, I-53, PR at II-5, II-23.

[18] CR at I-5, PR at II-4.

[19] Preliminary Conference Transcript at 45-46.

[20] Preliminary Conference Transcript at 130; CR at I-6, PR at II-4.

[21] See, e.g., Ukrainian respondents' Post-Conference Brief at 8-9.

[22] Respondents did not argue that differing grades of silicomanganese are separate like products. Rather, respondents' arguments regarding interchangeability were in the context of cumulation.

[23] CR at I-19, PR at II-11-12. Most domestically produced silicomanganese is Grade B. Petitioner stated that it has one customer that specifies Grade A. Preliminary Conference Transcript at 51. Thus, that product, by definition, would be sold directly to the end user.

[24] CR at I-12, PR at II-7.

B do not command significantly different prices.[26] On balance, we find that there is no clear dividing line between the various grades of silicomanganese.[27] Accordingly, we find the like product to be all grades of silicomanganese.

III. DOMESTIC INDUSTRY AND RELATED PARTIES

As previously stated, the domestic industry consists of the "domestic producers" of a "like product." Petitioner Elkem Metals Company ("Elkem") is the only domestic producer of silicomanganese.

We address respondents' argument that Elkem is a related party and that appropriate circumstances exist to exclude it from the domestic industry.[28] Under section 771(4)(B) of the Act, producers who are related to exporters or importers, or who are themselves importers of the dumped merchandise, may be excluded from the domestic industry in appropriate circumstances.[29]

While the sole U.S. producer, Elkem, is not an importer of record of the subject merchandise, the Ukrainian respondents argue that Elkem should be excluded from the domestic industry as a related party because of its "import" operations, i.e., the fact that it purchases and resells imported product, and engages in "swap" transactions.[30]

Elkem argues that the related parties provision cannot be applied to exclude it from the domestic industry simply because of its participation in swap transactions with AIOC, an importer of silicomanganese from all of the subject countries, or any other importer of the subject merchandise. Petitioner contends that there is no relationship between Elkem and the foreign exporters of subject merchandise that supply AIOC. Petitioner argues that the fact that it swaps, or exchanges product with other suppliers, does not amount to a "special

---

[25] (...continued)

[25] It appears relatively easy to produce some other ferroalloys, notably ferromanganese, in a silicomanganese facility but there is some evidence that conversion to other non-manganese ferroalloy products may be difficult and costly. According to petitioners, a product changeover generally takes only a short time and does not constitute a significant cost penalty. The Ukrainian respondents assert that a conversion from a manganese alloy to a non-manganese alloy involves changing the furnace configuration and is both time-consuming and very expensive. CR at I-12, PR at II-8. Commissioner Brunsdale would like to ascertain, in any final investigations, the nature and extent of any production shifting that occurs in the facilities used to produce silicomanganese. In these preliminary investigations, she concludes that silicomanganese of different grades is easily substitutable by both consumers and producers, and so defines them as a single like product.

[26] Preliminary Conference Transcript at 51.

[27] The domestic producer only produces grades A and B. We note that the Venezuelan respondents assert that some quantity of Grade C material has been imported from Venezuela, and that the Ukrainian material is off ASTM specification, i.e., it is neither Grade A, B, nor C. Because all silicomanganese, regardless of grade, is subject to investigation, the domestically-produced product that is most similar in characteristics and uses to the imported product would be the domestically-produced Grades A and B. See generally, Cambridge Lee Industries, Inc. v. United States, 728 F. Supp. 748, 750 (Ct. Int'l Trade 1989).

[28] See, e.g., Ukrainian respondents' Post-Conference Brief at 42-49.

[29] 19 U.S.C. § 1677(4)(B).

[30] Because of the time and expense of transporting silicomanganese to the customer, a trader may seek to identify a competitor who has material available close to the customer. If so, the competitor will frequently supply the customer in exchange for a like amount of silicomanganese in another location that may be convenient to his own customers. CR at I-20, PR at II-12.

relationship" with the foreign producer or importer of record that might, in the absence of a corporate affiliation, make the related parties provision applicable.[31] [32]

For purposes of these preliminary investigations, we decline to find Elkem to be a related party under the statute. Based on available data at this time, it does not appear that Elkem has a special relationship with any importer of subject merchandise, or that it controls purchases by subject importers of large volumes of subject imports.[33] Accordingly, we find that Elkem is not a "related party" under the statute. We will investigate further in any final investigations, however, the nature of its purchases of subject imports and relationships with importers of subject merchandise.[34]

IV. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is a reasonable indication of material injury to a domestic industry by reason of allegedly dumped imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States. These include output, sales, inventories, capacity utilization, market share, employment,

---

[31] Petitioner's Post-Conference Brief at 13-17.

[32] In Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2528 at 9-14 (June 1992), the Commission stated that the related party provision may apply to all domestic producers who have a "special relationship" with the importer of record or otherwise control the purchase of large volumes of imports by the importer of record. In that investigation, the Commission found a domestic producer to be "related" when it was the principal domestic purchaser of subject imports and controlled the purchases of three importers of record of the subject imports. Further, in Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil, Inv. No. 731-TA-572 (Final), USITC Pub. 2662 at 18-19 (July 1993), a domestic producer was found to be "related" when its purchases constituted the dominant share of an importer's imports throughout the period of investigation.

[33] We note further that while it purchases significant amounts of subject merchandise, petitioner asserts that its purchases were not the dominant share of any importers' subject imports during the period of investigation. Petitioner's Post-Conference Brief at 15-16.

[34] Commissioner Crawford concurs in the finding that, for purposes of these preliminary investigations, petitioner should not be treated as a related party. In light of Commission precedents that a firm can be a related party even if it is not the importer of record, however, she believes the following information on the record merits further evaluation in any final investigations. First, petitioner is the sole domestic producer and is a relatively small player in the U.S. market, a market dominated by imports, both subject and nonsubject. Second, petitioner purchases and resells both subject and nonsubject imports. Third, there is evidence that petitioner is affiliated with foreign producers, apparently in countries that are a significant source of imports that petitioner did not include in its petition. Fourth, there is evidence that nonsubject imports may be priced lower than subject imports and the domestic product. Finally, the extent of petitioner's resales of imported products, compared with sales of its own production, may indicate that petitioner's primary interest is not in producing silicomanganese. In any final investigations, she expects that petitioner will provide specific, comprehensive information that will allow the Commission to evaluate clearly the sources of its imports, the geographic location of its individual sales, its affiliations with foreign producers, the prices it pays for subject and nonsubject imports and all other relevant information regarding the related party issue. She believes it is necessary to evaluate the totality of the circumstances to determine whether petitioner is a related party and, if so, whether appropriate circumstances exist to exclude petitioner from the domestic industry.

wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[35]

Silicomanganese marketed in the United States is sold directly to end users -- steel producers and iron foundries -- or to trading companies and distributors for subsequent resale.[36] As previously noted, in 1992, the steel industry accounted for 90.1 percent of U.S. silicomanganese consumption, with the remaining 9.9 percent used to produce cast iron, alloys, and other products.[37] Most of the silicomanganese consumed in the United States is purchased by minimills.[38] Demand for silicomanganese is derived from demand for steel produced by minimills. During the period examined, demand for silicomanganese increased.[39]

Competition in the silicomanganese industry is also characterized by the presence of a large number of suppliers of silicomanganese in the United States market. Indeed, as discussed above, the only domestic producer of silicomanganese, Elkem, itself imports significant quantities of nonsubject silicomanganese, and also purchases both subject and nonsubject silicomanganese on the open market.[40] Finally, most, if not all, traders in silicomanganese also participate in "swap transactions".[41] We take these conditions of competition into account in evaluating the condition of the domestic industry producing silicomanganese.

Both the quantity and value of U.S. consumption of silicomanganese rose overall throughout the period examined. The quantity of U.S. consumption increased from 1990 to 1992. In interim (January-September) 1993, more silicomanganese was consumed than in interim 1992.[42] The domestically-produced share of apparent consumption increased from 1990 to 1992. However, its share was smaller in interim 1993 compared with interim 1992.[43]

Domestic production increased from 1990 to 1992. Production was lower, however, in interim 1993 compared with interim 1992. Capacity utilization followed the same trends. Capacity, however, declined from 1990 to 1992. Capacity was higher in interim 1993 compared with interim 1992.[44]

The U.S. producer's domestic shipments increased from 1990 to 1992. Its U.S. shipments, however, were lower in interim 1993 compared with interim 1992.[45] The U.S. producer's inventories declined from 1990 to 1991, and then increased in 1992. Inventory levels were higher in interim 1993 compared with interim 1992.[46] Inventories as a ratio to total shipments declined from 1990 to 1991, and then increased in 1992. Inventories as a ratio of total shipments were higher in interim 1993 compared with interim 1992.[47]

---

[35] 19 U.S.C. § 1677(7)(C)(iii).
[36] CR at I-53, PR at II-23.
[37] CR at I-7, PR at II-5.
[38] CR at I-13, PR at II-8.
[39] CR at I-15, PR at II-9.
[40] CR at I-51, PR at II-23.
[41] CR at I-20, PR at II-12. We intend to investigate, in any final investigations, the nature and extent of the swap transactions which take place in this market.
[42] Table 1, CR at I-16; PR at II-10.
[43] Table 18, CR at I-52, PR at II-23.
[44] Table 3, CR at I-22, PR at II-13.
[45] Table 4, CR at I-24, PR at II-14.
[46] Table 5, CR at I-25, PR at II-14.
[47] Id.

The number of production workers producing silicomanganese and their hours worked increased from 1990 to 1992. However, both the number of production workers and hours worked were lower in interim 1993 compared with interim 1992.[48] Total wages and total compensation followed similar trends.[49]

The U.S. producer's net sales increased from 1990 to 1992. During interim 1993, however, its net sales were less than in interim 1992.[50] Operating income increased from 1990 to 1991, and then became an operating loss in 1992. The industry experienced an operating loss in interim 1993, whereas it had operating income in interim 1992.[51] We note that the Commission staff has indicated that there are inconsistencies in the financial data provided to the Commission by the petitioner. We will examine these data in greater detail in any final investigations.

Capital expenditures fluctuated throughout the period examined. Capital expenditures declined from 1990 to 1991 and then increased in 1992, although to levels below that of 1990. Capital expenditures were higher in interim 1993 compared with interim 1992. Research and development expenses increased from 1991 to 1992.[52] [53]

V. CUMULATION

In determining whether there is material injury by reason of the LTFV imports, the Commission is required to cumulate the volume and effects of imports from two or more countries of like products subject to investigation if such imports compete with one another and with the domestic like product in the United States market.[54] The Commission may decline to cumulate imports from a subject country that it finds are negligible and have no discernable adverse impact on the domestic industry.[55]

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including

> (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
> (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
> (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
> (4) whether the imports are simultaneously present in the market.[56]

---

[48] Table 6, CR at I-25-26, PR at II-14.

[49] Id.

[50] Table 8, CR at I-30, PR at II-15.

[51] Id.

[52] CR at I-34-35, PR at II-16. The domestic producer was unable to provide research and development expenses for 1990. Id.

[53] Based upon examination of the relevant statutory factors, Chairman Newquist and Commissioner Rohr conclude that there is a reasonable indication that the domestic industry producing silicomanganese is currently experiencing material injury.

[54] 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

[55] 19 U.S.C. § 1677(7)(C)(v).

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

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide us with a framework for determining whether the imports compete with each other and with the domestic like product.[57] Further, only a "reasonable overlap" of competition is required.[58]

The parties have disputed whether cumulation is appropriate in these investigations. Petitioner argues that we must cumulate imports from all of the countries subject to investigation because there is a high degree of fungibility between the unfairly traded imports and domestic silicomanganese. The Venezuelan respondents argue that imports from that country do not compete with domestically-produced silicomanganese because their imports are sold in the southwest region of the country, where Elkem allegedly does not compete. The Venezuelan respondents argue that petitioner limits its marketing efforts to a relatively narrow regional base around its Marietta, Ohio facility. They assert that if petitioner does market in other regions, it does so by reselling imports it has purchased, or "swaps" material with other importers.[59]

The Ukrainian respondents argue that their silicomanganese is not fungible with either the U.S. product or the other subject imports because it has a different metallurgical composition than other silicomanganese, is used by a limited customer base for limited applications, is marketed differently than other silicomanganese, and is a different size. They further argue that the Ukrainian product is marketed in a different geographic region than the domestic like product, has not been simultaneously present in the market with other imports and domestic silicomanganese, and is marketed differently than silicomanganese from other sources.[60]

For purposes of these preliminary investigations, we find that there is a reasonable overlap of competition between the domestically-produced product and the imported products from each of the subject countries, and between the imported products which are subject to investigation. We note that the imported products and the domestic like product appear to compete in the same geographic regions. Petitioner has in fact sold silicomanganese in the Southwest, the same geographic areas in which the Venezuelan and Ukrainian imports are sold. There is some dispute as to whether petitioner's Southwest sales and offers for sale are domestically-produced silicomanganese or imported product purchased by Elkem. We will examine more closely in any final investigations the extent of geographical competition between domestically-produced silicomanganese and that imported from the subject countries. We expect that the petitioner will provide more complete information as to the nature and extent of its sales of its domestically-produced silicomanganese, including the areas in which the domestically-produced product is marketed and sold.

---

[57] See Wieland Werke, AG v. United States, 718 F.Supp. 50 (Ct. Int'l Trade 1989); Granges Metallverken AB v. United States, 716 F.Supp. 17 (Ct. Int'l trade 1989); Florex v. United States, 705 F.Supp. 582 (Ct. Int'l Trade 1989).

[58] See Wieland Werke, AG, 718 F. Supp at 52 (completely overlapping markets are not required."); Granges Metallverken AB, 716 F.Supp. at 21-22 ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products . . . the Commission need only find evidence of reasonable overlap in competition") Florex, 705 F.Supp. at 592 ("completely overlapping markets is [sic] not required.")

[59] Venezuelan respondents' Post-Conference Brief at 11.

[60] Ukrainian respondents' Post-Conference Brief at 8-17.

For purposes of these preliminary investigations, we also find that the imports from each of the countries and the domestic like product are fungible.[61] While the Ukrainian product has a higher manganese and phosphorus content than both the domestic like product and the other subject imports, we note that the evidence on the record is somewhat mixed regarding the impact of these differences on end uses. Although there is some evidence that the Ukrainian product is used by some producers only in lower end applications due to its higher phosphorus content, such as in the manufacture of reinforcing bar, there appears to be competition between the domestic product and the subject products in these low end applications.[62] For purposes of these preliminary investigations, we find that there is a reasonable overlap of competition between the Ukrainian goods and the domestically-produced product and with the other imports. We will, however, revisit the issue of the competition of the Ukrainian product with the domestic like product and other imports in any final investigations.

Further, we find that the domestic and imported products are sold through similar channels of distribution, inasmuch as most silicomanganese is sold directly to end users.[63] Finally, with respect to whether the imports were simultaneously present in the market, we note that all but the Ukrainian product were present during the entire period of investigation. Importation of the Ukrainian product began in late 1992, and since then, it has been simultaneously present in the market with the other imports and the domestic product.[64]

Accordingly, we find that there is a reasonable overlap of competition between the domestic like product and the subject imports, and among the subject imports from Brazil, China, Venezuela, and the Ukraine.[65]

---

[61] Chairman Newquist notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Chairman Newquist find products to be "like" and then turn around and find that, for purposes of cumulation, there is no "reasonable overlap of competition" based on some roving standard of substitutability. See Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. No. 2664 (August 1993).

[62] See, e.g., Preliminary Conference Transcript at 83 (Testimony of Mr. Pryor, President of AIOC-Pryor, an importer of the Ukrainian product). (When asked if Ukrainian product did not compete at all with the Elkem product, he responded: "No, I'm saying that there are applications where the Ukrainian material cannot complete [sic] with the Elkem material".)

[63] CR at I-19, PR at II-11.

[64] No party has argued that imports from any of the subject countries are negligible. We do not find any of the imports in these investigations to be negligible, as import levels have been above those we typically consider to raise an issue concerning negligibility. See e.g., Table 18, CR at I-52, PR at II-23.

[65] Commissioner Brunsdale notes that, in Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 (Nov. 1993), Commissioner Crawford and she expressed their concern with the heavily discretionary test for cumulation the Commission has taken to using. Instead, they proposed that the Commission "should find competition between two products to exist only if changes in their relative price will affect the demand for each. Contemporaneous sales of standardized products to the same buyers or sales of practically identical customized products at comparable prices will suffice." Id. at I-23. On this record, she concludes that silicomanganese from all sources competes against each other because of the evidence of contemporaneous sales of what certainly appears to be a very standardized product.

VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGED LTFV IMPORTS

In a preliminary antidumping investigation, the Commission is to determine whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[66] The Commission must consider the volume of imports, their effect on prices of the like product, and their impact on domestic producers of the like product.[67] Although the Commission may consider causes of injury other than the allegedly LTFV imports, it is not to weigh causes.[68] [69] [70] For the reasons discussed below,

---

[66] 19 U.S.C. § 1673b(a).

[67] 19 U.S.C. § 1677(7)(B)(i).

[68] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101. Chairman Newquist, Commissioner Rohr and Commissioner Nuzum further note that the Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. See, e.g., Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, SA v. United States, 704 F. Supp. at 1101.

[69] Vice Chairman Watson notes that the courts have interpreted the statutory requirement that the Commission consider whether there is material injury "by reason of" the subject imports in a number of different ways. Compare United States Engineering & Forging v. United States, 779 F. Supp. 1375, 1391 (Ct. Int'l Trade 1991)("[I]t must determine whether unfairly traded imports are contributing to such injury to the domestic industry...Such imports, therefore, need not be the only cause of harm to the domestic industry")(citations omitted) with Metallverken Nederland B.V. v. United States, 728 F. Supp. at 741 (affirming a determination by two Commissioners that "the imports were a cause of material injury") and USX Corp. v. United States, 682 F. Supp. 67, 69 (Ct. Int'l Trade 1988)("any causation analysis must have at its core the issue of whether the imports at issue cause, in a non de minimis manner, the material injury to the industry").

Accordingly, Vice Chairman Watson has determined to adhere to the standard articulated by Congress, in the legislative history of the pertinent provisions, which states that "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury." S. Rep. No. 249 at 275.

[70] Commissioners Brunsdale and Crawford note that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly LTFV imports. They find that the clear meaning of the statute is to require a determination on whether the domestic industry is materially injured by reason of allegedly LTFV imports, not by reason of allegedly LTFV among other things. Many, if not most domestic industries, are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently is causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249 at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the allegedly LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249 at 74. Rather, it is to determine whether any injury "by reason of" the alleged LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission

(continued...)

we find that there is a reasonable indication that the domestic industry producing silicomanganese is materially injured by reason of allegedly LTFV imports from Brazil, the People's Republic of China, Ukraine, and Venezuela.[71]

The volume of imports of silicomanganese from Brazil, China, Ukraine and Venezuela increased steadily throughout the period examined. Imports from these sources were 31,079 short tons in 1990; 60,260 short tons in 1991 and 92,724 short tons in 1992. The volume of imports in interim 1993 increased to 103,531 short tons compared with 46,330 short tons in interim 1992.[72] Similarly, market penetration of the subject imports increased throughout the period examined.[73] At the same time, the U.S. producer's share of U.S. consumption increased from 1990 to 1992. The U.S. producer's U.S. market share, however, was significantly lower in interim 1993 compared with interim 1992. Furthermore, the U.S. producer's U.S. market share also was significantly smaller than either that of the cumulated subject imports or nonsubject imports. We note that some of the gain in market share of the subject imports was at the expense of imports from other countries throughout much of the period examined. During interim 1993, however, the U.S. producer as well as nonsubject imports lost market share (compared to interim 1992), while the subject imports increased their market share. Based on the foregoing, we find the volume of subject imports to be significant. We further find the increase in that volume to be significant both in absolute terms, and relative to domestic consumption and production.

Substitutability between the domestic like product and subject imports is also a factor we considered in evaluating the price effects of the subject imports. As a general matter, the more substitutable the alleged LTFV imports are with the domestic like product, the more likely consumers will base their purchasing decisions on price differences between the products. It appears on this record that imported and domestic silicomanganese are close substitutes.[74]

The Commission asked the U.S. producer and importers to report f.o.b. prices (i.e. plant or U.S. point-of-shipment) and total quantities and values of ASTM Grade B bulk silicomanganese sold to steel producers under quarterly requirement contracts and as spot sales. In the event that the respondent did not sell ASTM Grade B silicomanganese during the period, the Commission requested that it provide prices for an alternative product that it did sell. Alternate product definitions and price data were provided by importers of Ukrainian and Venezuelan silicomanganese.[75]

Reported domestic prices and imported prices from the four subject countries generally declined from January 1990 through March 1993. With one exception, reported prices of all countries dropped sharply in April-June 1993 before rebounding in the following quarter, although to levels below that seen previously. In that same quarter, prices for the

---

[70] (...continued)
must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

[71] Vice Chairman Watson does not join the remainder of this majority determination. See, Separate Views of Vice Chairman Watson.

[72] Table 16, CR at I-49, PR at II-22.

[73] Table 18, CR at I-52, PR at II-23.

[74] Chairman Newquist notes that in most investigations the like product analysis and determination based on characteristics and uses establishes a reasonable degree of substitutability between the subject imports and the domestic product. Thus, in his view, further inquiry into substitutability issues is not usually warranted.

[75] CR at I-58, PR at II-26.

exception only slightly declined.[76] The reported data for contract sales of U.S.-produced and imported silicomanganese resulted in 32 price comparisons, and the price data for spot sales resulted in 11 price comparisons. The imported products were priced below the U.S. producer's price in 10 of the 32 comparisons for contract sales and in 10 of the 11 for spot sales. Most of the instances of underselling for the contract sales occurred in the first three quarters of 1993.[77]

During the period examined, total production costs increased from 1990 to 1991, and again in the interim period.[78] Further, there is a significant increase reported in the cost of goods sold as a ratio to net sales from 1991 to 1992. This ratio was higher in interim 1993 compared with interim 1992.[79] Based on the foregoing, Chairman Newquist, Commissioner Rohr and Commissioner Nuzum find that there was significant underselling in interim 1993, and that the subject imports had significant price depressing effects. They base this finding on their conclusion that the record does not contain evidence of other reasons for declining prices (such as declines in production costs) that would account fully for such price declines.[80] [81]

Accordingly, in light of the commodity nature of the products, coupled with significant underselling, declining domestic prices and relatively low and declining import prices, they find evidence in these preliminary investigations suggests that lower prices of the allegedly LTFV imports have depressed domestic prices.

Chairman Newquist, Commissioner Rohr and Commissioner Nuzum find that the significant volume and market share of the subject imports, significant underselling, and price depressing effect have had an adverse effect on the domestic industry, as reflected in the deteriorating financial performance, and declining domestic production during the interim period. In that connection, they note that the domestic producer asserts that it was forced to shut down silicomanganese production for five months during 1993 because it was unable to compete with low priced subject imports. Respondents, however, have offered alternative explanations as to why petitioners were forced to cease domestic production. Chairman Newquist, Commissioner Rohr and Commissioner Nuzum expect the parties to provide further information on Elkem's cessation of silicomanganese production in any final investigations.

Commissioner Brunsdale and Commissioner Crawford do not find it likely that the subject imports have had a significant price effect on the domestic prices for silicomanganese. First, the cost of silicomanganese is a relatively small part of the cost of producing steel. Therefore, any increase in sales of silicomanganese is unlikely to lower prices. They also note again that silicomanganese from various sources is highly substitutable. Finally, there is a high elasticity of supply for silicomanganese: there are numerous sources of supply, significant unused domestic capacity, and a large export market for U.S.-made silicomanganese. In a market with these characteristics, the effect of unfairly-priced imports will be a reallocation of market share, i.e., a volume effect, rather than a price effect.

---

[76] CR at I-59, PR at II-26-27.

[77] It is not surprising that more underselling was not observed due to the apparent near-commodity nature of the products from the various sources.

[78] CR at I-32, PR at II-15.

[79] Table 8, CR at I-30, PR at II-15.

[80] They note that there is a discrepancy between the production costs reported and the cost of goods sold as a ratio to sales, and expect the petitioner to provide further information in any final investigations.

[81] Commissioner Rohr will be seeking more information regarding nonsubject imports of silicomanganese in any final investigations.

Prices in this market did decline, but the decline is more likely to reflect lower marginal production costs. Nevertheless, they fully agree with their colleagues that the significant market share held by the subject imports reasonably indicates that those imports are materially injuring the domestic industry.[82]

CONCLUSION

Based on the information of record in these preliminary investigations, we determine that there is a reasonable indication that the domestic industry producing silicomanganese is materially injured by reason of imports of alleged LTFV imports from Brazil, the People's Republic of China, Ukraine, and Venezuela.

---

[82] Another factor considered by Commissioners Brunsdale and Crawford is the magnitude of the dumping margin, which provides information on how much below a fair level the import price is. The greater the difference between the actual price of the imports and the fair price level, the more likely it is that the domestic industry is being materially injured by unfair imports. In these preliminary investigations, the alleged margin for subject imports from Brazil, as adjusted by Commerce, is 17.6 percent; the alleged margins for Venezuela, as adjusted by Commerce, range from 37.2 to 55.4 percent; the alleged margin for China is 150.0 percent; and the alleged margin for the Ukraine is 125.3 percent. While the alleged margins are little more than petitioner's claims, they are the best information currently available concerning the level of the dumping and suggest that the price of imported silicomanganese may be significantly below fair levels. If subject imports had been priced at fair levels, it is likely that the domestic industry would have been able to significantly increase its sales, and thus would have been materially better off. Therefore, they find a reasonable indication that the domestic industry is materially injured by reason of allegedly LTFV subject imports.

SEPARATE VIEWS OF VICE CHAIRMAN WATSON

I concur with my fellow Commissioners that there is a reasonable indication that the domestic industry is currently experiencing material injury by reason of cumulated imports of silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela. In reaching these determinations, I have focused primarily on the most recent data gathered by the Commission in these investigations, namely the nine month 1993 interim period. It is only during this portion of the period of investigation that the evidence supports a finding of a reasonable indication of material injury.

From 1990 through 1992, the domestic producer's share of domestic consumption rose steadily along with production and capacity utilization.[1] It was not until the last quarter of 1992 that operating income as a percentage of sales began to decline.[2] *** losses were posted by Elkem in the interim 1993 period.[3] At the same time, production and capacity utilization fell ***.[4] The record indicates that there may have been a number of reasons unrelated to the subject imports why the financial condition of the sole domestic producer took a *** turn for the worse.[5] Nonetheless, given the legal standard for preliminary determinations, the record does contain sufficient evidence to support an affirmative determination.

In regard to the volume effects of the cumulated subject imports, I note that the quantity and value of those imports as well as their market penetration increased significantly throughout the period of investigation.[6] Despite these import trends, the domestic industry was also able to gain market share until 1993.[7]

As discussed in the majority determination, the subject imports and the domestic product appear to be close substitutes.[8] In light of this conclusion, I find that the generally declining prices of the subject imports may have negatively affected Elkem's pricing

---

[1] Table C-1, CR at C-4, PR at C-4.

[2] Id.

[3] Table 8, CR at I-30, PR at II-15. Although the record indicates that Elkem's cost of goods sold as a percentage of net sales rose *** in the interim 1993 period, it is not clear to what extent this is due to Elkem's decision to cease production of silicomanganese for 5 months in 1993. See, CR at I-31; PR at II-15.

[4] Table C-1, CR at C-4, PR at C-4.

[5] In any final investigations I shall seek further information regarding the following: 1) the effect of Elkem's decision to *** in the latter part of the period of investigation (Table 17, CR at I-51, PR at II-23; 2) the extent of the financial relationship between Elkem's silicomanganese and ferromanganese production (CR at I-17, PR at II-9; CR at I-23, PR at II-13); 3) the circumstances surrounding and effects of the explosions at Elkem's Marietta plant (CR at I-23, PR at II-13); 4) the circumstances surrounding and the effects of Elkem's cessation of production of silicomanganese for 5 of the 9 months in the interim 1993 period; and 5) further explanation for various inconsistencies in Elkem's financial data including production and cost of goods sold data (CR at I-32, PR at II-15-16).

[6] Table 16, CR at I-49, PR at II-22; Table C-1, CR at C-3, PR at C-3. Market penetration of the subject imports was most pronounced during the interim period.

[7] Table C-3, CR at C-3, PR at C-3. The subject imports' ability to significantly increase their market penetration in 1993 appears to be related to Elkem's decision to cease domestic production of silicomanganese during the first five months of 1993.

[8] See Infra at I-15.

decisions.[9] Such a conclusion is supported by anecdotal evidence regarding the importance of price in purchasing decisions.[10] I do not find, however, that the pricing data gathered in these preliminary investigations supports a conclusion that the subject imports have depressed "...prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree."[11] Comparisons of requirement contract sales prices made in these preliminary investigations show sporadic sales and only mixed instances of overselling and underselling.[12]

I have also considered Elkem's contention that it was forced to suspend production of silicomanganese from March to July of 1993 due to the lower priced subject imports.[13] While respondents have offered alternative explanations, I note that Elkem's contention is supported by an affidavit.[14]

Having found that there is a reasonable indication that the domestic industry is currently experiencing material injury by reason of the cumulated subject imports, I am not required to consider whether there is a reasonable indication that the domestic industry is threatened by material injury.[15] I note, however, that the data gathered by the Commission in these preliminary investigations are insufficient for me to conclude at this time that a real and imminent threat of material injury *does not* exist. The Commission has obtained only limited data on the operations of Brazilian and Chinese silicomanganese producers.[16] Although both Ukrainian producers of silicomanganese responded to the Commission's foreign producers' questionnaire, there are questions as yet unanswered regarding future production of silicomanganese.[17] Data regarding the sole Venezuelan producer indicates that it plans to continue producing ***.[18] It is my hope that in any final investigations, the Commission will obtain more complete data regarding the operations of the foreign producers from the subject countries.

---

[9] Table 16, CR at I-49, PR at II-22; CR at I-59, PR at II-26. Requirement contract sales constitute the vast majority of sales in the domestic market. The record indicates that transaction prices reported for requirement contracts to supply silicomanganese generally follow the same declining trends for both the subject imports and the domestic product produced by Elkem. Given the relatively small share of domestic consumption held by Elkem, it is unlikely that Elkem has sufficient market power to significantly affect domestic prices.

[10] CR at I-67-74; PR at II-28-29.

[11] 19 U.S.C. § 1677 (7)(C)(ii)(II).

[12] Table 19, CR at I-60, PR at II-26. The pricing data gathered in these preliminary investigations are not sufficient for me to conclude that there has been significant price underselling by the subject imports during the period of investigation.

[13] Conference transcript at 28.

[14] Petitioners' Postconference Brief at Exhibit 3.

[15] In any final investigations, should the record not support a conclusion that the domestic industry is experiencing present material injury by reason of the subject imports, I would be required to do so.

[16] CR at I-41-42, PR at II-19-20. The Commission received incomplete data from several Chinese producers and individual data on the operations of one Chinese producer, Jinzhou. While the record is not clear as to the proportion of total Chinese production accounted for by Jinzhou, it appears that Jinzhou ***.

[17] CR at I-45, PR at II-20. One of the Ukrainian producers, Nikopol, reportedly has the world's largest production capacity of silicomanganese but is currently operating at about *** capacity due to a severe energy crisis throughout Ukraine.

[18] CR at I-47, PR at II-21.

PART II

INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On November 12, 1993, a petition was filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by counsel for Elkem Metals Company, Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local 3-639, Belpre, OH, alleging that an industry in the United States is being materially injured and is threatened with further material injury by reason of imports of silicomanganese[1] from Brazil, the People's Republic of China (China), Ukraine, and Venezuela that are alleged to be sold in the United States at less than fair value (LTFV).

Accordingly, effective November 12, 1993, the Commission instituted antidumping investigations Nos. 731-TA-671-674 (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 threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determinations within 45 days after receipt of the petitions, or in these investigations by December 27, 1993. Notice of the institution of these investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on November 23, 1993 (58 FR 61919). Commerce published its notice of initiation in the *Federal Register* of December 8, 1993 (58 FR 64553).[2] The Commission held a public conference in Washington, DC, on December 3, 1993, at which time all interested parties were allowed to present information and data for consideration by the Commission.[3]

There are no known Commission investigations on silicomanganese prior to the current investigations.

THE PRODUCT

Description and Uses

Silicomanganese is a metallic, silvery ferroalloy that turns dark grey when exposed to oxygen. Silicomanganese is composed principally of manganese, silicon, and iron, and normally contains much smaller proportions of other elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight more than 30 percent manganese, more than 8 percent silicon, not less than 4 percent iron, and not more than 3 percent phosphorus.

Commercially, silicomanganese is differentiated by grade and size. Silicomanganese is manufactured and sold in three grades, A, B, and C, which are distinguished by their silicon and carbon contents. Under the American Society for Testing of Materials (ASTM) standard, all three grades contain 65 to 68 percent manganese, a maximum of 0.20 percent phosphorous, and a

---

[1] Silicomanganese (sometimes called ferrosilicon manganese), according to Commerce's definition, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of these investigations, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. These investigations cover all silicomanganese, regardless of tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.00 of the Harmonized Tariff Schedule of the United States (HTS). Some silicomanganese also may be classifiable under HTS subheading 7202.99.50.

[2] Copies of the Commission's and Commerce's *Federal Register* notices are presented in app. A.

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

maximum of 0.04 percent sulfur by weight.[4] Grade A contains 18.5 to 21.0 percent silicon and a maximum of 1.5 percent carbon. Grade B contains 16.0 to 18.5 percent silicon and a maximum of 2.0 percent carbon. Grade C contains 12.5 to 16.0 percent silicon and a maximum of 3.0 percent carbon. The ASTM standard establishes limitations on minor elements, specifying that all three grades contain no more than 0.10 percent arsenic, 0.010 percent tin, 0.030 percent lead, 0.05 percent chromium, 0.20 percent nickel, and 0.10 percent molybdenum.

The majority of sales in the United States are of Grade B silicomanganese. Limited sales of Grade A are also made.[5] According to petitioners, Grade C is not used commercially in the United States.[6] Respondents from Venezuela assert that they have made sales of Grade C silicomanganese in the United States through their exclusive arrangement with Mannesmann Pipe & Steel Corp.[7]

Parties disagree over the fungibility of various grades of silicomanganese. According to petitioners, grades A, B, and C are completely fungible commodities,[8] and silicomanganese that does not conform to the ASTM specification for Grade B is fully fungible with Grade B silicomanganese in many applications.[9] According to respondents from Venezuela, Grade B and Grade C are not fungible, and are marketed as distinct products and different prices.[10] Respondents from Ukraine assert that Ukrainian silicomanganese is different and distinct from both domestic and other imported material. According to respondents, Ukrainian material has a different metallurgical composition than other silicomanganese, is used by a limited customer base for limited applications, is marketed differently from other silicomanganese, and has a different size.[11] Ukrainian silicomanganese reportedly does not meet ASTM specifications for any grade, due to higher manganese[12] and phosphorus[13] content.[14] The high phosphorus content reportedly makes Ukrainian silicomanganese unusable for higher quality steel applications, although it can be used for lower-end applications, such as reinforcing bar.[15]

Silicomanganese is sold primarily in sized-lump form. Two systems are used to specify product size: one is based strictly on dimensions, the other on a mix of dimension and weight. In the first system, sizes generally vary from eight inches by four inches to two inches by down.[16] The most common sizes are intermediate sizes, such as four inches by one inch and three inches by one inch. Generally, the sizes express the maximum and minimum dimensions of the lumps found in a

---

[4] Silicomanganese containing more or less than the ASTM specified content of particular elements is still considered silicomanganese. The ASTM standard is neither universally followed outside the United States nor uniformly adhered to by purchasers within the U.S. market. For purchasers, the precise chemical formulation of silicomanganese is generally less important than the presence of manganese, silicon, and other elements in sufficient quantities in the proper proportions to allow the alloy to perform its metallurgical functions of desulfurization and deoxidization, and to act as an alloying agent. Baker & Botts, postconference brief, p. 4.

[5] Testimony of Keith Curry, Vice President and General Manager for Manganese, Chromium, and Special Metals, Elkem Metals Company, conference transcript (TR), p. 51. Elkem sells Grade A silicomanganese to ***. Petition, p. 4.

[6] Testimony of William Kramer, Baker & Botts, counsel to petitioners, TR, p. 46.

[7] Testimony of Pedro Marquez, Director, Hevensa, and Ross Baker, Division Manager, Ferroalloys and Raw Materials, Mannesmann Pipe and Steel Corp., TR, p. 109.

[8] Testimony of Russell Craig, Marketing Manager for Manganese and Chromium Alloys, Elkem Metals Company, TR, p. 45.

[9] Baker & Botts, postconference brief, p. 26.

[10] Testimony of Ross Baker, TR, p. 130.

[11] O'Melveny & Meyers, postconference brief, pp. 8-9.

[12] Ukrainian content of 72 to 73 percent manganese versus ASTM specification of 65 to 68 percent.

[13] Ukrainian content of 0.50 percent maximum phosphorus versus ASTM specification of 0.20 percent maximum.

[14] Testimony of Larry Pryor, President, AIOC-Pryor, Inc., TR, p. 76.

[15] Ibid., TR, p. 77.

[16] "Down," when used as a minimum size, means that no more than 15 percent of the product will pass through a 2.36 millimeter screen.

given shipment. Sizes are determined by a sieving or screening process. The dimensions express the diameters of the openings used in the standard screens or sieves used to size silicomanganese. For example, in a shipment sized at four inches by one inch, no more than 10 percent of the product will be retained on a screen with 4-inch openings and no more than 10 percent of the product will pass through a screen with 1-inch openings.

Lump sizes may also be expressed as a maximum weight and a minimum dimension. One common size of silicomanganese is 75 pounds by 4 inches, which refers to lumps weighing no more than 75 pounds and having a 4-inch minimum diameter. Ukrainian material is reportedly smaller than other silicomanganese, necessitating screening of the material by the importer before resale.[17]

Silicomanganese is used primarily by the steel industry. In 1992, the steel industry accounted for 90.1 percent of U.S. silicomanganese consumption, with the remaining 9.9 percent used to produce cast iron, alloys, and other products.[18] Depending upon the practices employed by the steelmaker, silicomanganese may be introduced directly into the steel furnace or used as a ladle addition. When used in the furnace itself, silicomanganese is introduced in larger sizes, such as four inches by one inch. As a ladle addition, silicomanganese is used in smaller sizes, such as two inches by one-fourth inch. Silicomanganese performs the same functions whether added in the furnace or the ladle.

Silicomanganese is a source of both manganese and silicon. Manganese is intentionally present in most grades of steel, and is a residual constituent of virtually all steels. Manganese is used as a desulfurizer and a deoxidizer. By removing sulfur from steel, manganese improves its hot workability by preventing the formation of iron sulfides, which can cause embrittlement. In addition, manganese increases steel strength and resistance to deformation during rolling or forging. Manganese also increases the hardenability of heat-treatable steels.

Silicon is added to steel as both a deoxidizer and an alloying agent. As a deoxidizer, silicon minimizes the reaction of carbon and oxygen in molten steel, which helps eliminate bubbling during solidification. This process is known as "killing" the steel, and steel produced with silicon is referred to as "silicon-killed" steel. Approximately 60 percent of the steel produced in the United States is silicon-killed.[19] Chemical composition and mechanical properties of killed steels are relatively more uniform throughout the steel shape than unkilled steels. As an alloying agent, silicon enhances hardenability and increases the strength, toughness, corrosion resistance, and magnetic and electrical properties of steel.[20]

Silicomanganese is also used as an alloying agent in cast iron production. Silicomanganese briquettes, which consist of silicomanganese fines[21] agglomerated with a bonding agent, are introduced into iron furnaces as a source of silicon and manganese, which impart desireable characteristics to finished cast iron products. Silicomanganese can also be used in the production of medium-carbon ferromanganese.

Production Processes

As shown in figure 1, silicomanganese is produced by smelting together in a submerged arc furnace sources of silicon, manganese, iron, and a carbonaceous reducing agent, usually coke. To produce silicomanganese, the sources of manganese, silicon, iron, and the reducing agent are

---

[17] Testimony of Mr. Pryor, TR, p. 78.

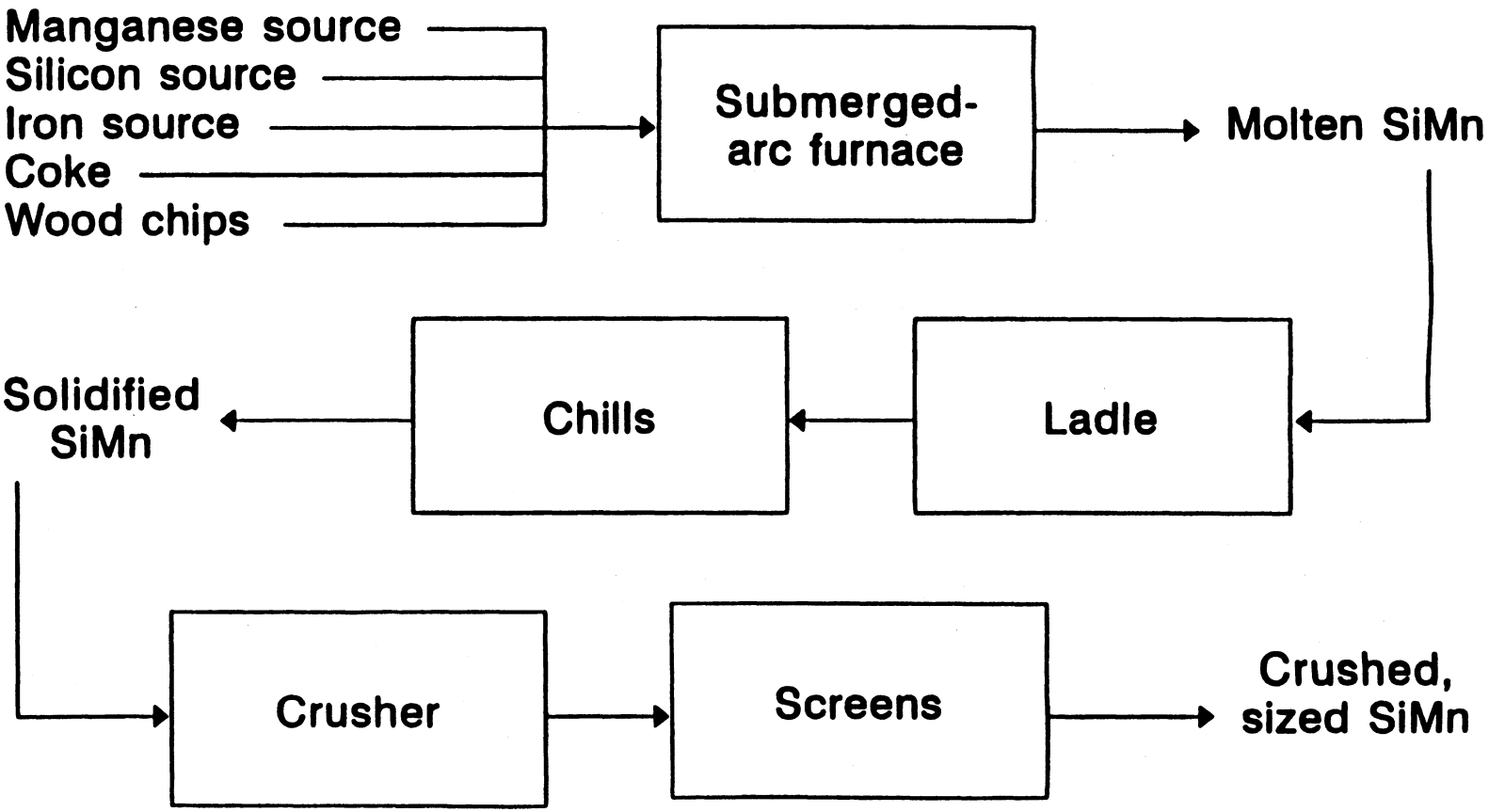
[18] Thomas S. Jones, *Manganese Annual Report 1992*, U.S. Department of the Interior, Bureau of Mines, Sept. 1993, table 5, p. 15.

[19] Petition, p. 8.

[20] Testimony of Mr. Craig, TR, pp. 22-23.

[21] "Fines" are extremely small pieces of silicomanganese or other ferroalloys. Fines are routinely generated during the production and handling or silicomanganese. Since fines are simply small pieces of the parent alloy, they retain the chemistry of the parent alloy.

Figure 1
Silicomanganese: Simplified production flow chart



combined in a "charge," which is introduced into the silicomanganese furnace. Depending on the mix of raw materials, the charge may also include wood chips, which are used as a bulking agent,[22] dolomite, or a similar base element, which reduces the acidity of the mix, and a fluxing agent.

A variety of inputs containing the necessary manganese and silicon content can be used to produce silicomanganese; the makeup of the charge depends on furnace design, desired alloy chemistry, materials available, and production practices of the individual producer.[23] Manganese can be derived from manganese ore, ferromanganese slag, or silicomanganese fines or slag. In locations where manganese ore is abundant, ore is the preferred manganese source. Similarly, producers with access to inexpensive ferromanganese slag or other manganese-bearing metallics typically prefer to use such material as their manganese source. Some producers, ***, use a combination of several sources, adjusting the mix according to the availability and prices of input materials.

Because silicon in its elemental form is not found in nature, silica[24] in the form of quartzite is the principal source of silicon. Other silicon sources may also be used, including ferrosilicon slag, fines, or dross, silicon metal fines, or silicon metal scrap or fines. As with manganese source selection, the silicon source used by a given producer depends on the availability and price of inputs and producer practices.

Depending on the manganese and silicon inputs used in silicomanganese production, additional sources of iron may be added. Manganese ore contains some iron, although the content varies by ore source. High-carbon ferromanganese slag has relatively little iron content. Ferrosilicon slag, which may be used as a silicon source, contains substantial amounts of iron. Iron may be added to the charge in the form of steel mill scale[25] or iron pellets.[26]

In the furnace, which may be open or closed in design, a transformer system delivers high-current, low-voltage electricity to the charge through graphite electrodes. The electrical energy heats the charge to a temperature of 1,300° to 1,400° Centigrade. At this temperature, silica is reduced to its components, silicon and oxygen. Oxygen combines with carbon to form carbon monoxide gas. Silicon is released and alloys with manganese and iron. Impurities are released and form slag, which rises to the top of the furnace. At the end of the smelting process, the furnace contains molten slag and molten silicomanganese.

Depending on the furnace design, molten metal and slag are removed or "tapped" from the furnace through either one or two holes. Newer furnace designs allow molten alloy to be tapped from a taphole located on the lower portion of the furnace, near the hearthline, while the slag is tapped from a second taphole located on the opposite side and higher up on the furnace. In older furnace designs, both slag and metal are tapped through a single taphole located near the hearthline into a ladle. The ladle is then poured into a skimmer, which separates slag from alloy.

Once separated from the slag,[27] molten silicomanganese is poured into large molds, called chills, where it cools and hardens. The metal is allowed to cool until solid, and is then removed from the chills and allowed to cool completely. The alloy is then crushed and sized for sale.

All grades of silicomanganese can be and are manufactured in the same facilities using the same furnaces and employees. There is also limited ability to manufacture other ferroalloys using

---

[22] Bulking agents are used to increase the porosity of the charge, which allows gas generated by the chemical reaction in the furnace to escape. When manganese ore is used as the primary source of manganese, bulking agents are not needed because the charge is sufficiently porous.

[23] Testimony of Mr. Craig, TR, p. 17.

[24] Silica is a compound consisting almost entirely of silicon dioxide (SiO_2).

[25] Mill scale (FeO, Fe_2O_3, and Fe_3O_4) is a byproduct of the steelmaking process produced by surface oxidation during rolling and reheating operations.

[26] USITC staff fieldwork, Nov. 30, 1993.

[27] Silicomanganese slag can be used in the silicomanganese production process as a source of both silicon and manganese. Whether a particular producer reuses slag depends on the producer's smelting practices.

silicomanganese facilities. According to petitioners, a product changeover[28] generally takes only 8 to 24 hours and does not constitute a significant cost penalty.[29] However, according to the Ukrainian respondents, a conversion from the production of a manganese alloy to a non-manganese alloy[30] involves changing the furnace configuration and is both time-consuming and very expensive. Having made such an investment, it would not be economically feasible to convert back to manganese alloy production.[31]

The silicomanganese production process is highly energy-intensive. On average, 4,400 kilowatt hours (kwh) are required to produce one metric ton of alloy, which translates to approximately 2 kwh per pound of silicomanganese. Exact electricity usage depends in large part upon the raw materials used. Manganese ore and quartzite must be smelted to extract manganese and silicon, increasing energy usage. In contrast, slags and fines need only be remelted, reducing energy requirements.[32]

Substitute Products

No single product can substitute for silicomanganese. However, some steelmakers use a combination of high-carbon ferromanganese and ferrosilicon to serve the same functions as silicomanganese. Certain mills do not switch back and forth between silicomanganese and a mix of ferromanganese and ferrosilicon, either because they lack storage space for multiple ferroalloys, they have difficulty rapidly altering their input mix, or they find it more convenient and cost-effective to deal with only one alloy.[33] Reportedly, use of silicomanganese is about equal to the combined application of high-carbon ferromanganese and ferrosilicon.[34] Most of the silicomanganese consumed in the United States is purchased by minimills.[35] Although aluminum is also used as a deoxidizing agent in steel production, neither silicon and aluminum nor silicon-killed and aluminum-killed steels are considered to be substitutes.[36]

U.S. Tariff Treatment

U.S. imports of silicomanganese are classified under subheading 7202.30.00 of the Harmonized Tariff Schedule of the United States (HTS). The most-favored-nation (MFN) (col. 1-general) rate of duty, applicable to products of Brazil, China, Ukraine,[37] Venezuela, and all other MFN countries is 3.9 percent ad valorem. Imports of silicomanganese from Venezuela may be eligible for duty-free entry under the Generalized System of Preferences (GSP), based on importer request and demonstration that shipments qualify. Silicomanganese imports from Brazil, China, and Ukraine are not eligible for GSP duty-free entry.

Limited amounts of silicomanganese entering the United States may fall outside the scope of the above subheading. These imports, which may include silicomanganese slag and "off-specification" silicomanganese, are classified under HTS subheading 7202.99.50. The MFN rate of duty for such imports is 5.0 percent ad valorem. No such imports are eligible for GSP duty-free entry.

---

[28] From silicomanganese to high-carbon ferromanganese.
[29] Testimony of Mr. Craig, TR, p. 64.
[30] Specifically ferrochrome.
[31] Testimony of Mr. Pryor, TR, pp. 92-93.
[32] Testimony of Mr. Curry, TR, p. 33.
[33] USITC staff fieldwork, Nov. 30, 1993.
[34] Baker & Botts, postconference brief, p. 20.
[35] Petition, p. 9.
[36] Testimony of Mr. Craig, TR, pp. 47-48.
[37] Ukraine obtained MFN status on June 23, 1992 (57 FR 28771).

THE NATURE AND EXTENT OF ALLEGED SALES AT LTFV

To obtain the estimated dumping margins of silicomanganese imported from Brazil and Venezuela, the subject market economy countries, petitioner compared the U.S. price (USP) of covered products with their foreign market value (FMV). As adjusted by Commerce, the alleged LTFV margin for Brazil is 17.6 percent; for Hevensa, Venezuela's sole exporter of silicomanganese to the United States, the alleged LTFV margins range from 37.2 to 55.4 percent, depending on the date of sale.

To obtain the estimated dumping margins of silicomanganese imported from China and Ukraine, the subject nonmarket economy countries, petitioner chose surrogate market economy countries for investigation. Using India as a surrogate for China, petitioners calculated an alleged LTFV margin of 150.0 percent. Using Mexico as a surrogate for Ukraine, petitioners computed an alleged LTFV margin of 125.3 percent.

THE U.S. MARKET[38]

Apparent U.S. Consumption

Table 1 presents the quantity and value of apparent U.S. consumption of silicomanganese. Both the quantity and value of U.S. consumption of silicomanganese rose overall throughout the period for which information was requested. The quantity of U.S. consumption of silicomanganese increased *** percent from 1990 to 1991, then rose *** percent in 1992. In interim 1993, *** percent more silicomanganese was consumed than in interim 1992. The value of consumption increased from 1990 to 1991 (by *** percent), declined slightly in 1992 (by *** percent), but then rose during the interim periods (by *** percent).

U.S. Producer

Elkem Metals Company (Elkem), Pittsburgh, PA, the petitioner, is the sole U.S. producer of silicomanganese. Established in 1981, Elkem is wholly owned by Elkem A/S, Oslo, Norway. Elkem has three plants in the United States, located in Alloy, WV, Ashtabula, OH, and Marietta, OH. The Marietta facility produces manganese and chromium alloys, including ferromanganese, silicomanganese, manganese-aluminum, ferrochrome, and chromium-aluminum, as well as specialty alloys including electrolytic manganese and electrolytic chrome. Elkem's other plants are dedicated to ferrosilicon and silicon metal production.

Elkem has a contract with the Defense Logistics Agency (DLA) to upgrade stockpile metallurgical-grade manganese ore into high-carbon ferromanganese at its Marietta works. Under the DLA contract, valued at $43.7 million and dated September 1992, about 142,000 tons of ore were to be converted into 76,100 tons of ferromanganese by December 31, 1994. In 1992, about 115,000 tons of ore were upgraded into about 70,000 tons of ferromanganese at a cost of $45.4 million, under an existing DLA contract.[39]

Elkem's silicomanganese production is closely integrated. Slag from high-carbon ferromanganese production at the Marietta works is used as a manganese source for silicomanganese production. Elkem's principal sources of silicon are silicon metal fines and scrap and ferrosilicon fines and slag, all purchased from its sister plants. Elkem's use of slags and fines as production inputs significantly reduces its electricity requirements. Electricity is produced by an on-site, coal-based power station owned 30 percent by Elkem and 70 percent by American Municipal Power-Ohio, Inc. In addition to producing silicomanganese, Elkem imports the product from Norway ***.

---

[38] Summary data on the U.S. market are presented in app. C.
[39] Thomas S. Jones, *Manganese Annual Report 1992*, p. 4.

Table 1
Silicomanganese: U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993[1]

Item	1990	1991	1992	Jan.-Sept.-- 1992	1993
	Quantity (short tons)				
Producer's U.S. shipments	***	***	***	***	***
U.S. imports from--					
Brazil	24,554	51,656	61,512	40,873	51,723
China	187	5,848	12,591	3,307	13,995
Venezuela	6,338	2,756	9,810	2,149	13,764
Ukraine	0	0	8,810	0	24,048
Subtotal	31,079	60,260	92,724	46,330	103,531
Other sources	214,449	223,140	190,763	136,145	131,612
Total	245,528	283,400	283,487	182,474	235,143
Apparent consumption	***	***	***	***	***
	Value (1,000 dollars)				
Producer's U.S. shipments	***	***	***	***	***
U.S. imports from--					
Brazil	12,321	24,349	26,322	17,425	21,030
China	135	2,984	5,628	1,493	5,526
Venezuela	3,190	1,373	4,215	894	5,054
Ukraine	0	0	3,640	0	8,974
Subtotal	15,646	28,706	39,804	19,812	40,585
Other sources	111,151	111,545	90,052	63,512	57,695
Total	126,797	140,251	129,856	83,324	98,280
Apparent consumption	***	***	***	***	***

[1] This table excludes *** short tons of silicomanganese purchased by Elkem from the Defense Logistics Agency (DLA) in 1992 and *** short tons in 1993.

Note.--Because of rounding, shares 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.

U.S. Importers

The 10 firms that import subject silicomanganese are listed in table 2. Commission staff mailed importers' questionnaires to the 6 importers of subject product listed in the petition, as well as 11 other companies thought to import silicomanganese based on Customs' records. Commission staff verified that 4 of these 11 indeed import the subject product.

Table 2
Silicomanganese: U.S. importers, locations, and shares of the quantity of U.S. subject imports in 1992

Names of firms and establishments	Location of headquarters	Share of subject imports
		Percent
AIOC Corp	New York, NY	***
***	***	***
***	***	***
***	***	***
***	***	(1)
***	***	(1)
***	***	***
***	***	***
***	***	(1)
***	***	(1)
Other and unknown		11.0
Total		100.0

[1] ***.

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.

AIOC Corp. (AIOC) is the only known importer that buys silicomanganese from all subject countries. Since 1991, AIOC has purchased silicomanganese from ***. The company began importing the subject product from *** in early 1993. While AIOC is the importer of record, AIOC-Pryor, Inc., a joint venture company with AIOC Corp., is the marketing arm in the United States, Mexico, and Canada for products imported by AIOC Corp.

*** imports silicomanganese ***.

Other notable importers of subject product are ***, which buys silicomanganese from ***, ***, which imports silicomanganese from ***, and ***, which purchases silicomanganese ***.

In addition, *** import ***, *** buy silicomanganese from ***, and *** imports silicomanganese from ***.

Channels of Distribution

Most silicomanganese marketed in the United States by both the U.S. producer and the importers is sold directly to the end users (steel producers and iron foundries), although significant amounts are also exchanged among trading companies or sold to distributors for subsequent resale.

The U.S. producer, Elkem, is also a *** importer of the product and purchases for resale *** quantities of imported silicomanganese from other trading companies. Elkem reported in its questionnaire that, in 1992, *** percent of its sales of U.S.-produced silicomanganese went directly to steel producers, *** percent went to iron foundries, and *** percent went to brokers, distributors, and other middlemen. Virtually all of the sales to end users ***.[40]

[40] For further discussion of contract and spot sales, see the section of this report entitled "Prices."

Importers generally reported that between 70 and 90 percent of 1992 sales were directly to the end user, although the exact share varied among importers, and one importer of subject imports reported selling only *** percent directly to the end user. As with the domestic product, most end user customers were steel producers.

Most, if not all, traders in silicomanganese also participate in swaps of material with other traders. Because of the time and expense of transporting silicomanganese to the customer, a trader may seek to identify a competitor who has material available close to the customer. If so, the competitor will frequently supply the customer in exchange for a like amount of silicomanganese in another location that may be convenient to his own customers. These swaps are likely to include the exchange of silicomanganese from one country for that of another, including material from the United States, subject countries, and non-subject countries. The frequency at which swaps take place is unknown.

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

Section 771(7)(B) of the Act (19 U.S.C. § 1677(7)(B)) provides that in making its determination in these investigations the Commission--

> Shall 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 States; and
>
> May consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

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

> In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.
>
> In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
>
> In examining the impact required to be considered under subparagraph (B)(iii), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to, (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and (IV) 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.

Available information on the volume of imports (item (B)(I) above) is presented in the section of this report entitled "U.S. Imports." Information on most of the other factors specified is presented in this section, and (except as noted) is based on Elkem's questionnaire response.

U.S. Production, Capacity, and Capacity Utilization

Data for Elkem's production, capacity, and capacity utilization are presented in table 3. As shown, the capacity to produce silicomanganese *** by *** percent from 1990 to 1992. However, capacity *** from the interim period of 1992 to the comparable period of 1993. Capacity data reported by Elkem ***.

Table 3
Silicomanganese: Elkem's capacity, production, and capacity utilization, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Elkem's silicomanganese and ferromanganese production facilities are interchangeable. In its questionnaire response, Elkem reported that its *** was designed and built to produce silicomanganese and Elkem is attempting to *** to the production of silicomanganese. *** has also been used to produce high-carbon ferromanganese. Changeover from silicomanganese to high-carbon ferromanganese generally requires from *** days during which material is produced "out of grade." No significant downtime is required during the change from one product to the other.

Elkem's production *** from 1990 to 1992, but declined by *** percent during the interim period. Elkem reports that its production decline during 1993 is due to suspension of production of silicomanganese from March 4, 1993 to July 26, 1993. In its questionnaire response, Elkem attributed this suspension to ***. However, during the conference, respondents alleged, citing an industry publication,[41] that the production decline instead is due to explosions that caused extensive damage and the shutdown of two of Elkem's three ferromanganese furnaces. According to respondents, this shutdown resulted in Elkem's switching the furnace used to make silicomanganese to ferromanganese production.[42] In its postconference brief, however, Elkem countered that only one of the furnaces exploded, and that this furnace was at the time of the explosion (and is currently) used to produce ferromanganese, not silicomanganese, and that there was no effect on its silicomanganese production. Elkem maintains that a second furnace experienced a "burn-through," not an explosion, and was merely put out of operation for seven days and had no relation to the suspension of silicomanganese production.[43]

Elkem's capacity utilization *** from 1990 to 1992, but *** by *** percentage points in January-September 1993 compared to January-September 1992.

---

[41] *American Metal Market*, Dec. 14, 1992.
[42] TR, p. 72.
[43] Petitioner's postconference brief, exhibit 3, pp. 1-3.

U.S. Producer's Shipments and Inventories

The quantity and value of Elkem's U.S. shipments *** from 1990 to 1992, increasing from *** short tons valued at $*** in 1990 to *** short tons valued at $*** in 1992 (table 4). During the interim period of 1993, U.S. shipments fell by *** percent by quantity and by *** percent by value. The unit value of U.S. shipments of silicomanganese declined steadily throughout the period.

Table 4
Silicomanganese: Elkem's shipments, by types, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Elkem's exports, which *** during 1990-92, *** of the company's total sales of silicomanganese throughout the period for which information were requested. Elkem's principal export market is ***.

Elkem's end-of-period inventories of silicomanganese are presented in table 5. Elkem's inventories declined by *** percent from 1990 to 1991, rose by *** percent from 1991 to 1992, and further increased by *** percent in January-September 1993 compared with the level of inventories in January-September 1992.

Table 5
Silicomanganese: Elkem's end-of-period inventories, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

U.S. Employment, Wages, and Productivity

Elkem workers are represented by the Oil, Chemical and Atomic Workers Local 3-639, Belpre, OH. The number of Elkem silicomanganese workers and hours worked *** from 1990 to 1992, but *** by *** percent and *** percent, respectively, during the interim period of 1993 (table 6).

Table 6
Average number of total employees and production and related workers in U.S. establishments where silicomanganese is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, by products, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Total compensation paid to production and related workers (PRWs) producing silicomanganese *** from 1990 to 1992, but *** by *** percent from January-September 1992 to January-September 1993. Hourly wages, hourly total compensation, and productivity all *** during the period, while unit labor costs *** overall.

Financial Experience of the U.S. Producer

Elkem, the only U.S. producer of silicomanganese, reported profit and loss data on its overall establishment operations and its silicomanganese operations. The company produces silicomanganese at its plant in Marietta, OH. Besides silicomanganese, Elkem also produces special metals and other manganese alloys at the facility. Elkem has a furnace dedicated to the production of silicomanganese at the Marietta facility, although the furnace can and has produced other alloys. Sales of silicomanganese accounted for about *** percent of overall establishment net sales in 1992, *** percent in 1990. Elkem's fiscal year ends December 31.

Overall Establishment Operations

Profit-and-loss data for on Elkem's overall establishment operations are shown in table 7. Operating results all *** from 1990 to 1991, as net sales, gross profits, and operating income all ***. Net profits and cash flow were both ***.

Table 7
Income-and-loss experience of Elkem on the overall operations of its establishment wherein silicomanganese is produced, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

The company's results *** in 1992. Gross profits *** respectively.
The picture was ***.

Operations on Silicomanganese

Elkem's profit-and-loss data on its silicomanganese operations are shown in table 8. 1990 results reflect *** activity. Operating *** that year were ***.

Table 8
Income-and-loss experience of Elkem on its operations producing silicomanganese, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Although net sales quantity ***.
Interim 1993 results were *** the unit sales value ***.
According to Elkem, there are *** unit costs.
Elkem's argument has merit, but the staff is not entirely sure that it is applicable in this case. The tabulation below gives details on Elkem's per-unit production costs for silicomanganese from 1990 through the first nine months of 1993, in dollars per short ton. Production costs are related to but different than cost of goods sold. They are the actual costs incurred each period to produce product for sale, and are therefore an accurate record of costs from period to period. Costs of goods sold, on the other hand, are equal to production costs plus beginning inventory minus ending inventory. If there is no beginning or ending inventory, production costs will equal cost of goods sold. However, if inventory is either increasing or decreasing, and production costs are either increasing or decreasing, production costs and cost of goods sold can diverge.

* * * * * * *

According to the data above, Elkem's per-unit production costs ***. The staff does not understand how the unit cost for the first nine months of 1992 *** for the entire year. If the unit cost for the nine month period were ***. Staff also cannot understand how the trends in unit cost of goods sold (COGS) presented in table 8 *** in unit production costs just discussed. Staff contacted ***.

According to Elkem's data, ***.
In order to try to *** if such an approach is used--

* * * * * * *

Despite the *** in interim 1993.

Investment in Productive Facilities and Net Return on Assets

Data on Elkem's assets and return on its assets are shown in table 9. The company has *** over the last few years.

Table 9
Value of Elkem's assets and its return on assets on operations producing silicomanganese, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Capital Expenditures

Data on Elkem's capital expenditures are shown on table 10. The level of Elkem's expenditures *** assets.

Table 10
Elkem's capital expenditures, by products, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Research and Development Expenses

Elkem's research and development expenses for its overall establishment operations were *** R&D expenses.

Capital and Investment

The Commission requested Elkem to describe any actual or potential negative effects of imports of silicomanganese from Brazil, China, Ukraine, and/or Venezuela 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). Elkem's response is shown in appendix D.

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

Section 771(7)(F)(i) of the Act of 1930 (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 factors[44]--

> (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,
>
> (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

---

[44] 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."

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.[45]

The available 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

U.S. importers' end-of-period inventories of silicomanganese from the subject countries increased overall during the period of investigation, as shown in table 11.

Table 11
Silicomanganese: End-of-period inventories of U.S. importers, by sources, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

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

The manufacture and shipment of silicomanganese in the subject countries is (with some exceptions) generally stable and is projected to remain so during the rest of 1993 and into 1994. Information on foreign manufacturers/exporters of silicomanganese for each subject country is presented below.[46]

Brazil

As identified in the petition, there are five Brazilian producers of silicomanganese that export to the United States: Cia Paulista de Ferroligas (Paulista), Bozel Meneracoa e Ferroligas SA (Bozel), Ferroligas Assofun SA (Assofun), Sibra Electrosiderugica Brasileira SA (Sibra), and Rima Electrometalurgica (Rima). Two of these five companies, Paulista and Sibra, have filed for the

---

[45] 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."

[46] Unless otherwise noted, information was compiled from Richard Serjeantson, ed., Ferro-Alloy Directory & Databook, 2d ed., (Surrey, England: Metal Bulletin Books Ltd., 1988) or from data submitted in response to the Commission's foreign producer questionnaire.

equivalent of Chapter 11 bankruptcy, according to information obtained from the U.S. Consulate in Rio de Janeiro.

Bozel, headquartered in Sau Paulo, SP, was established in 1972 and has one plant in Sao Joao Del Rey, Minas Gerais. The company has three submerged arc furnaces and a total capacity of 30,000 metric tons. In addition to silicomanganese, Bozel produces ferrosilicon and calcium silicon.

Paulista, headquartered in Sau Paulo, SP, was established in 1964 and has numerous plants. Those that produce silicomanganese include Barbacena, Minas Gerais (5 open submerged arc furnaces,[47] 20,750 metric ton capacity); Rancharia, Minas Gerais (1 closed submerged arc furnace, 27,000 metric ton capacity); Corumba, Mato Grosso do Sul (3 open submerged arc furnaces, 17,000 metric ton capacity); and Caxambu, Minas Gerais (5 open submerged arc furnaces, 21,000 metric tons). According to petitioners, Paulista has an annual production capacity of 200,000 metric tons of silicomanganese. In addition to silicomanganese, Paulista produces ferrochrome, ferromanganese, ferromolybdenum, ferrophosphorus, ferrosilicon, silicon metal, ferrotitanium, ferrotungsten, and ferrovanadium.

Assofun is wholly owned by Paulista. Its annual production capacity is included above.

Rima, headquartered in Minas Gerais, was established in 1974 and has one plant in Vila Magnesita. This mill contains one electric reduction furnace dedicated to silicomanganese, with an annual capacity of 6,000 metric tons. In addition to silicomanganese, Rima produces ferrosilicon, silicon metal, calcium-silicon, and calcium-silicon-barium.

Sibra, headquartered in Bahia, was established in 1963. Public information on Sibra's capacity and equipment is not available. In addition to silicomanganese, Sibra produces ferromanganese. According to petitioners, the combined annual capacity for Sibra and Rima is 58,000 metric tons.

In response to the Commission's request for information on the Brazilian industry, the U.S. Consulate in Rio de Janeiro provided limited data on the operations of five Brazilian silicomanganese producers (table 12). These firms were identified by the Brazilian Association of Ferroalloy Producers (ABRAFE). ABRAFE could not supply any data on firms' end-of-period inventories, distribution of exports, or projections for calendar years 1993 and 1994.

Table 12
Silicomanganese: Brazil's capacity, production, capacity utilization, and shipments, 1990-92

* * * * * * *

China

Petitioners have identified eight Chinese producers of silicomanganese: Capital Iron & Steel Ferroalloy Plant (Capital); Chonguing Ferroalloys Works (Chonguing); Emei Ferroalloy Works (Emei); Hunau Ferroalloy Plant (Hunan); Jiangxi Xinyu Iron & Steel Works (Jiangxi); Jinzhou Ferroalloys Works (Jinzhou); Shanghai Ferro-Alloy (Shanghai); and Zinyu Ferro-Alloy Plant (Zinyu). According to petitioners, Capital produces 2,000 metric tons of silicomanganese annually. Zinyu is reported to have produced 164,000 metric tons of ferroalloys in 1991. Zinyu's annual production capacity is reportedly 160,000 metric tons.

A firm representing the Chinese industry provided limited data on the operations of Jinzhou (table 13). The proportion of total Chinese production of silicomanganese accounted for by this producer is not known. Jinzhou ***.

[47] The Barbacena works also include 2 furnaces which are used to produce ferromanganese but can be used to produce silicomanganese. The total capacity of these furnaces is 17,000 metric tons.

Table 13
Silicomanganese: Jinzhou's capacity, production, capacity utilization, inventories, and shipments, 1990-93

* * * * * * *

The same firm representing the Chinese industry provided limited data on the operations of four companies, Liaoyang Ferroalloy Works, Emei, Dandong Joint Venture, and Guizhou Ferroalloy Works. According to the data received by Commission staff, these companies *** during the period for which information was requested. The quantity of the combined production and shipments of these companies is listed in the following tabulation.

* * * * * * *

Ukraine

Both Ukrainian producers of silicomanganese, Nikopol Ferro-Alloy Works (Nikopol) and Zaporozhye Ferroalloy Works (Zaporozhye), responded to the Commission's foreign producers' questionnaire. Ukraine's production *** during the period for which information was requested, and is projected to *** during 1993 and 1994 (table 14).

Table 14
Silicomanganese: Ukraine's production, inventories, and shipments, 1990-92, Jan.-Sept. 1992, Jan.-Sept. 1993, and projected 1993-94

* * * * * * *

According to petitioners, Nikopol has the world's largest production capacity of 1 million gross metric tons.[48] According to respondents, on November 29, 1993, *** directed Nikopol to cease production because of a severe energy crisis throughout Ukraine. Nikopol is reportedly currently operating at about *** percent of its total manganese alloy capacity.[49]

The Zaporozhye facility was built in 1993 and, according to petitioners, has an annual production capacity of approximately 160,000 metric tons. According to respondents, silicomanganese production capacity may be reduced due to product mix diversification and furnace conversion to produce ***. About half of Zaporozhye's silicomanganese is consumed domestically, with Turkey, the European Union, and Eastern Europe the principal destinations of Ukrainian exports. Japan also is a growing market for Ukrainian silicomanganese.[50]

Venezuela

Venezuela's production *** during the period for which information was requested, while its exports to the U.S. market and to other export markets *** overall. Venezuelan sales to the United States are expected to *** in 1994 (table 15).

---

[48] Petition, p. 68, citing *Metals Week*, July 6, 1993, p. 6.

[49] Affidavit of Vyacheslav Alexeyvich Gavrilov, O'Melveny & Myers postconference brief, exhibit 11, p. 1; Nikopol's foreign producers' questionnaire.

[50] Testimony of Nina Shafran, O'Melveny & Meyers, TR, pp. 80-82.

Table 15
Standard Grade B silicomanganese: Venezuela's capacity, production, inventories, capacity utilization, and shipments, 1990-92, Jan.-Sept. 1992, Jan.-Sept. 1993, and projected 1993-94

* * * * * * *

Hornos Electricos de Venezuela S.A. (Hevensa) is the only producer of silicomanganese in Venezuela. Hevensa is wholly owned by Cia Minera Autlan SA de CV of Mexico, and was established in 1953. Hevensa has four furnaces; annual production capacity is approximately 43,000 metric tons of silicomanganese.[51] Hevensa reportedly has no plans to increase its production capacity.[52] In addition to silicomanganese, Hevensa produces ferrochrome, ferromanganese, ferrosilicon, and silicon metal.

Hevensa exports lump Grade B silicomanganese, Grade B silicomanganese fines, and Grade C silicomanganese to the United States. Grade C silicomanganese is produced through a proprietary process that recovers silicomanganese content from silicomanganese slag. Mannesmann Pipe and Steel Corporation is Hevensa's exclusive distributor in the United States. Sales of Venezuelan silicomanganese in the United States are made in the Southwest, primarily Texas.[53] Other export markets for Hevensa include Trinidad, Colombia, and Peru.[54]

Antidumping Actions Outside the United States

Silicomanganese is the subject of recent, as well as a pending, antidumping investigations outside the United States. On February 3, 1993, the Government of Japan imposed antidumping duties of 5-27 percent on imports of silicomanganese from China. (A complaint had been filed by the Japan Ferroalloy Association against imports from China, Norway, and South Africa, but negative determinations were made on Norway and South Africa.) On April 8, 1993, the European Union (EU), responding to a complaint filed by Euro Alliages on behalf of all EU silicomanganese producers, initiated antidumping investigations on imports from Brazil, Georgia, Russia, South Africa, and Ukraine.

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

U.S. Imports

In 1992, imports of silicomanganese from the subject countries accounted for about one-third of the quantity of all silicomanganese imports that entered the United States (table 16). Unit values of silicomanganese differed among sources and generally declined throughout the period for which data were collected. Specifically, imports from Brazil and China generally were valued the highest among the subject imports on a per-ton basis, followed by silicomanganese from Venezuela, with imports from Ukraine generally valued the lowest.

The quantity of subject imports of silicomanganese nearly tripled from 1990 to 1992 and more than doubled from interim 1992 to interim 1993. The value of such imports more than doubled from 1990 to 1992 and from interim 1992 to interim 1993. By both quantity and value, imports from Brazil, China, and Ukraine rose consistently throughout the period, while imports from Venezuela fell from 1990 to 1991, increased from 1991 to 1992, and further rose during the interim period.

---

[51] Testimony of Mr. Marquez, TR, p. 107.
[52] Shearman & Sterling, postconference brief, p. 22.
[53] Testimony of Mr. Baker, TR, p. 115.
[54] Testimony of Mr. Marquez, TR, p. 107.

Table 16
Silicomanganese: U.S. imports, by sources, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

Item	1990	1991	1992	Jan.-Sept.-- 1992	1993
	Quantity (short tons)				
Brazil	24,554	51,656	61,512	40,873	51,723
China	187	5,848	12,591	3,307	13,995
Venezuela	6,338	2,756	9,810	2,149	13,764
Ukraine	0	0	8,810	0	24,048
Subtotal	31,079	60,260	92,724	46,330	103,531
Other sources	214,449	223,140	190,763	136,145	131,612
Total	245,528	283,400	283,487	182,474	235,143
	Value (1,000 dollars)				
Brazil	12,321	24,349	26,322	17,425	21,030
China	135	2,984	5,628	1,493	5,526
Venezuela	3,190	1,373	4,215	894	5,054
Ukraine	0	0	3,640	0	8,974
Subtotal	15,646	28,706	39,804	19,812	40,585
Other sources	111,151	111,545	90,052	63,512	57,695
Total	126,797	140,251	129,856	83,324	98,280
	Unit value (per short ton)				
Brazil	$501.81	$471.37	$427.91	$426.32	$406.58
China	720.35	510.27	446.93	451.50	394.87
Venezuela	503.31	498.05	429.65	415.84	367.20
Ukraine	(1)	(1)	413.18	(1)	373.19
Average	503.44	476.36	429.28	427.63	392.01
Other sources	518.31	499.89	472.06	466.50	438.37
Average	516.43	494.89	458.07	456.63	417.96

[1] Not applicable.

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.

In their questionnaire responses, importers reported on their plans to purchase silicomanganese after September 30, 1993 and during 1994. In its questionnaire, *** states it arranged for the importation of *** metric tons of silicomanganese from Ukraine in November 1993 and *** metric tons of silicomanganese from China in November 1993. The company offers that its transactions with Ukraine ***. *** reports it arranged to import *** metric tons of silicomanganese from France in October and November 1993; *** metric tons from China in December 1993; *** metric tons from India in January and February 1994; and *** metric tons from Ukraine in October 1993.

*** states it has arranged to import *** metric tons of silicomanganese from Venezuela in November and December 1993; *** is to import *** metric tons of silicomanganese from Brazil in October and November 1993; *** is to import *** metric tons of silicomanganese from Brazil in the fourth quarter of 1993; *** is to import *** metric tons of silicomanganese from China in December

1993; and *** is to import *** short tons of unspecified silicomanganese for delivery during November 1993-January 1994.

Imports and Purchases by Elkem

The quantity of Elkem's imports, nonimport purchases, and purchases from the Defense Logistics Agency (DLA) are shown in table 17.

Table 17
Silicomanganese: Elkem's imports and nonimport purchases, by sources, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Market Penetration of Imports

Data on penetration by subject imports of the U.S. market for silicomanganese are shown in table 18. The market share accounted for by nonsubject imports declined steadily, while the market share accounted for by subject imports rose consistently. Market penetration by total subject imports increased from *** percent in 1990 to *** percent in 1992 and from *** percent during January-September 1992 to *** percent during January-September 1993. Market penetration of imports from each of the subject countries increased overall through the period.

Table 18
Silicomanganese: Market shares of U.S. shipments of domestic product, U.S. imports, and apparent U.S. consumption, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

* * * * * * *

Prices

Marketing Practices

Silicomanganese marketed in the United States is sold directly to the end users--steel producers and iron foundries--or to trading companies and distributors for subsequent resale. Several importers reported that between 70 and 90 percent of 1992 sales were directly to the end user, although one importer of subject imports sold *** percent directly to the end user. The U.S. producer, in addition to its domestic production of silicomanganese, also has been *** importer of the product and purchases for resale *** imported silicomanganese from other trading companies. The petitioner reported that *** percent of its sales of U.S.-produced silicomanganese were directly to end users in 1992.

Neither importers nor the U.S. producer maintain price lists for silicomanganese. Questionnaire responses and testimony indicate that prices are generally negotiated based largely on perceived market conditions and customer feedback, often using the prices reported in the publication Metals Week as a guide.[55] Because silicomanganese is traded internationally and most of that consumed in the United States is imported, prices and market conditions in foreign locations may also affect the underlying price structure.

---

[55] Testimony of Mr. Marquez, TR, pp. 114.

Elkem reports that its prices are usually quoted on a delivered basis. Importers report more varied terms, and commonly quote according to the customer's specific preferences, including f.o.b. warehouse, f.o.b. customer's location, and c.i.f. delivered to the customer. Payment terms also vary somewhat according to the needs of the purchaser. Elkem and most importers report that payment is typically expected net 30 days, while several importers report payment terms can also be net 60 or net 90 days.

Silicomanganese is sold to some extent on a spot basis by many of the suppliers, but most is sold on a contract basis.[56] Spot sales depend on market conditions prevailing at the time of sale, including availability of the desired silicomanganese. Contracts typically determine the quantity of the customers' total silicomanganese requirements that will be provided by the supplier for a period of time such as 3 to 6 months,[57] although other lengths of time may be covered. Other terms that may be included in such contracts are payment terms, size and specification of the product, release or delivery dates, destination, etc.

The use of requirement contracts enables suppliers to anticipate their own purchase requirements well in advance and benefits both buyers and sellers in other ways. Having a picture of likely sales, the petitioner and many of the importers are able to use terminal and warehouse facilities located in the vicinity of their customer's base,[58] a practice that reduces shipping distances and lead times. Most respondents to the questionnaire reported that the largest share of sales were within 100 miles of the storage facility, and *** at distances greater than 500 miles.[59] The petitioner reported lead times of *** weeks while importers generally reported lead times of less than one week from their warehouse but considerably longer--30 days to 120 days--if the product was shipped from the foreign producer.

From the warehouse or plant, the vast majority of silicomanganese is shipped by truck. Barges are used extensively by a few importers but rail is used relatively little. Respondents to the questionnaire report that the actual cost of final transportation to the customers' facilities is generally small--2 to 5 percent of total delivered cost in most cases. This relatively low rate for a low-cost, bulky product is unusual and likely reflects the fairly short distances from warehouse to customer.[60]

The large number of warehouse facilities located near the various customers as well as the apparent interchangeability of most silicomanganese also permits the practice of swapping to occur. All parties agree that there are situations in which a supplier may provide a customer with silicomanganese from a competitor if the location of the competitor's material is more convenient to the customer. The competitor is then given the equivalent amount at another agreed-upon location, thereby saving both suppliers the cost of transportation to their desired locations.

Product Distinctions

Silicomanganese marketed in the United States is generally represented as meeting ASTM standards. These standards provide acceptable ranges of the primary constituent elements (silicon, manganese, and carbon) as well as other elements (phosphorus, sulphur, and others). The three classifications for silicomanganese, Grades A, B, and C, are distinguished primarily by the silicon

---

[56] One importer, ***, reported that sales are also made on a "multiple spot sales" basis. This appears to be a hybrid arrangement where the quantities, technical specifications, delivery terms, etc. are agreed upon but the price is based on market conditions at the time of each shipment.

[57] Such contracts are known as quarterly requirement contracts or semi-annual requirement contracts.

[58] The petitioner and importers use the same terminal and warehouse facilities in some locations.

[59] Elkem responded that ***. Elkem also claims that it competes actively in Texas and other southern market areas. This appears to conflict with testimony of Elkem's economic consultant that the firm is located close to the customers of the product. TR, p. 59. It is possible that in its questionnaire response to the question on customer location, Elkem did not distinguish between its sales of U.S.-produced products and its sales of imported products.

[60] There may be additional inland transportation costs in shipping the material from the port of entry to the warehouse that were not reported in the questionnaires. The estimate is based on importers' questionnaire responses; the petitioner did not provide this information in its questionnaire.

and carbon content.[61] Petitioners claim that, "silicomanganese is a homogeneous commodity product. Normally, there are no commercially significant differences among similar grades and forms of silicomanganese."[62]

Petitioners and respondents agree that most product sold in the United States meets the specifications for ASTM Grade B while there are occasional shipments of either Grade A or Grade C.[63] Generally both suppliers and purchasers view all silicomanganese meeting the requirements of a particular grade as being interchangeable.[64] In addition, there may be some substitution of material meeting different grade specifications, although this is apparently not widespread.[65]

Importers of Ukrainian silicomanganese state that their product does not meet any of the ASTM grade specifications because of a high phosphorus content and because its manganese content exceeds that permitted by the standard. The higher levels of phosphorus can cause brittleness and cracking in rolled products, for example, and therefore the Ukrainian product is used only for the production of less sensitive steel products such as reinforcing bar, according to AIOC-Pryor. AIOC-Pryor, an importer of Ukrainian silicomanganese, stated that it has had *** customers for the product, ***.[66]

Petitioners agree that the phosphorus content of Ukrainian silicomanganese exceeds ASTM specifications but believe that because it is sold to steel producers, it is interchangeable with silicomanganese from other sources. They state also that some customers consider the Ukrainian product to have an advantage in its higher manganese content.[67]

In addition to chemical content, silicomanganese can vary in size from dust through very large lumps. Certain size ranges appear to be most useful for steelmaking by minimills, notably those between 1 inch and 4 inches. Other sizes up to about 8 inches are also commonly used by steel makers. There is apparently no price distinction among these various sizes. On the other hand, the very small sizes (less than 1/4 inch) known as fines are of less commercial value and are not typically available in the United States. The petitioner states that it normally returns fines to the furnace for recycling because there is no commercial market for the material.[68]

---

[61] The permissible range of manganese content is the same in each of the three grades; silicon content is highest in Grade A and lowest in Grade C while the maximum carbon content is lower in Grade A than in the other grades.

[62] TR, p. 35.

[63] Petitioners testified that, on occasion, they have unintentionally produced silicomanganese that met Grade A standards and that they could produce it regularly if the market required it. TR, p. 52. Similarly, petitioners claimed that no Grade C product was sold in the United States (TR, p. 50) while respondents claim to have made a few shipments of Grade C silicomanganese (postconference brief of Hornos Electricos de Venezuela, app. 3).

[64] See comments of purchasers contacted for information in the section of this report entitled "Lost Sales and Lost Revenues." In general, the technical interchangeability of products does not take into account other considerations that may differentiate material from different sources. Such considerations include differing lead time, sales terms, cost of switching suppliers, etc.

[65] *** reports that ***.

[66] Two trading companies, AIOC-Pryor and ***, reported imports of Ukrainian silicomanganese in response to the Commission's questionnaires. Both firms stated that the phosphorus content of these imports limits its marketability even if higher manganese content makes it more desirable for some uses; according to these firms, Ukrainian material is not interchangeable with silicomanganese from the other subject countries. Six other importing trading companies that do not import Ukrainian material stated that the subject imports are interchangeable, although four of these also observed that the high phosphorus content of the Ukrainian material affected marketability or interchangeability to some degree.

[67] These questions are addressed further in "Lost Sales and Lost Revenues."

[68] The Venezuelan producer testified that sales of silicomanganese fines have occurred in 1993 but that the value of the shipment was significantly lower than normal commercial material. They also stated that fines are imported from Mexico for sale in the United States. TR, p. 108.

Questionnaire Price Data

The Commission requested the U.S. producer and importers to provide U.S. f.o.b. prices (i.e., plant or U.S. point-of-shipment), and total quantities and values of ASTM Grade B bulk silicomanganese sold to steel producers under quarterly requirement contracts and as spot sales. For each type of sale, the Commission requested price data for the largest sale to steel producers for each quarter during January 1990-September 1993. In the event that the respondent did not sell ASTM Grade B silicomanganese during the period, the Commission requested that it provide prices for an alternative product that it did sell. Alternative product definitions and price data were provided by importers of Ukrainian and Venezuelan silicomanganese.

The petitioner and nine importers reported price data, although not necessarily for all products, countries, or quarters during January 1990-September 1993. The responding importers of the subject product accounted for *** of reported imports from Brazil, and *** of reported imports from China, Ukraine, and Venezuela in 1992. Tables 19-20 and figure 2 present weighted-average net f.o.b. prices.

Table 19
Weighted-average net f.o.b. prices of Grade B silicomanganese sold under quarterly requirement contracts and total quantities sold, reported by Elkem and importers, and margins of underselling (overselling), by quarters, Jan. 1990-Sept. 1993

* * * * * * *

Table 20
Weighted-average net f.o.b. prices of Grade B silicomanganese sold on a spot basis and total quantities sold, reported by Elkem and importers, and margins of underselling (overselling), by quarters, Jan. 1990-Sept. 1993

* * * * * * *

Figure 2
Weighted-average net f.o.b. prices of Grade B silicomanganese sold under quarterly requirement contracts, reported by Elkem and importers, and margins of underselling (overselling), by quarters, Jan. 1990-Sept. 1993

* * * * * * *

Price Trends

Most sales of silicomanganese are made under requirement contracts, a fact reflected in the nearly complete price data gathered for the United States and Brazil. Imports from the other subject countries were in the U.S. market on a less consistent basis, mostly in late 1992 through the third quarter of 1993. Prices reported for spot sales were nearly complete only for Brazil, were sporadic for the U.S. producer and China, and were not reported for either Ukraine or Venezuela. The quantities associated with the reported spot sales were also small, generally *** in any quarter; only importers of silicomanganese from *** reported significant quantities sold on a spot basis, but even these were generally small when compared with sales made on a contract basis.

Transaction prices reported for requirement contracts to supply silicomanganese produced in the United States and imported from the four subject countries followed the same slowly declining trend during the period January 1990 through March 1993. In each case, prices in 1990 and 1991 remained above $*** per pound, but in 1992 declined below that level. With the exception of ***,

reported prices of all countries dropped sharply in April-June 1993 before rebounding in the following quarter. In that same quarter, prices of *** silicomanganese only slightly declined.

Price Comparisons

The reported price data for contract sales of U.S.-produced and imported silicomanganese during 1990-September 1993 resulted in 32 price comparisons, and the price data for spot sales resulted in 11 price comparisons. The imported products were priced below the U.S. producer's price in 10 of the 32 comparisons for contract sales and in 10 of the 11 comparisons for spot sales.

Reported sales of silicomanganese imported from Brazil provided the most complete set of price comparisons and, in most cases, total reported sales were large. Of the 15 possible comparisons for contract sales, the Brazilian product was sold at a lower price than the U.S. product in 2 instances, with margins of *** and *** percent. In the other 13 comparisons, the Brazilian product was priced above the domestic product by margins ranging from *** percent to *** percent. In the 8 possible comparisons for spot market sales, the Brazilian product was priced below the U.S. product in all cases; margins ranged from *** percent to *** percent.[69]

Sales of Chinese silicomanganese provided 6 possible price comparisons for contract sales and 3 comparisons for spot sales. In 3 instances, the contract price of the Chinese product was below that of the U.S. product by margins ranging from *** percent to *** percent; in the other 3 instances, the U.S. product was priced lower, with margins ranging from *** percent to *** percent. In two of the spot sale comparisons, the Chinese product was priced below the U.S. producer's price, with margins of *** and *** percent; in the other instance, the Chinese price was *** percent higher than the domestic product.

Data for contract sales of Ukrainian silicomanganese permitted only three comparisons. In one of these, the Ukrainian product was priced below the U.S. product by *** percent, while in the other two instances the U.S. product was the lower-priced, with margins of *** and *** percent.

Data for the Venezuelan product resulted in eight possible price comparisons for contract sales. In four of these comparisons, the Venezuelan product was priced below the U.S. product with margins ranging from *** to *** percent. In the other four comparisons, the U.S. product was lower priced by margins ranging from *** percent to *** percent.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Brazilian cruzeiro, the Chinese yuan, and the Venezuelan bolivar depreciated in relation to the U.S. dollar over the period January-March 1990 through July-September 1993 (figure 3). Exchange rate data for Ukraine are unreliable and are not presented here.

Figure 3
Exchange rates: Indexes of nominal and real exchange rates of the Brazilian cruzeiro, the Chinese yuan, and the Venezuelan bolivar, by quarters, Jan. 1990-Sept. 1993

* * * * * * *

The nominal value of the cruzeiro declined dramatically during this period, reaching approximately 1/1600 of its initial value in mid-1993. The nominal value of the bolivar also declined significantly, reaching approximately 50 percent of its initial value in mid-1993. When adjusted for movements in producer price indexes in the United States and the specified countries, the real value of the Brazilian currency declined by approximately 28 percent during January 1990-

[69] The total reported quantities of Brazilian silicomanganese sold on a spot basis were *** the quantities sold by the U.S. producer.

June 1993, while the Venezuelan currency appreciated by 1.5 percent during the period for which data were collected. Because reliable data for Chinese producer price indexes are not available, real exchange rates are not shown for that country.

Lost Sales and Lost Revenues

Elkem provided information concerning a total of 11 lost sales and 3 instances of lost revenues involving imports; in 5 of the allegations, however, Elkem was unable to specifically identify the country involved ***.[70] Eight purchasers were named in the allegations, of which four responded to the Commission's request for information. The value and quantity of alleged lost sales and lost revenues for each country are shown in the following tabulation:

* * * * * * *

Elkem alleged that a sale to *** was lost to imports from ***. According to Elkem ***. *** agreed that the pricing information in the *** allegation is correct but was unable to confirm that the silicomanganese came from *** because this was a purchase from *** who, he believes, usually trades ***.[71] The reason why he cannot be positive, however, is because among trading companies, swaps of silicomanganese are common to reduce freight costs. For example, he said that if a barge of silicomanganese was planning to go upstream from one trading company while another was planning on going downstream from a different trading company, these trading companies would simply save the freight costs of shipment by fulfilling the purchase obligations of the competitor. As long as the standards for the shipments are equivalent, the two trading companies will save shipment costs.

*** because the Ukrainian silicomanganese has a higher content of manganese than other sources of silicomanganese. ***. Silicomanganese with a higher proportion of manganese reduces the total amount of the product needed and, therefore, is worth more to *** than other sources of silicomanganese. When *** plans on buying silicomanganese, they do not calculate the cost per pound of silicomanganese, but rather they calculate the cost per pound of manganese. *** believes that the Ukrainian product was of a higher quality than the domestic product but only if quality is defined in terms of suitability for ***.

*** had no knowledge of the Chinese silicomanganese but he considered the Brazilian and the Venezuelan silicomanganese as equivalent in quality to the domestic product. *** reasoned that the Venezuelan product, however, may have a cost advantage over the domestic product in the southern or coastal areas of the United States because ocean freight is very cheap whereas shipping silicomanganese by truck or barge can be very expensive.

*** considers price to be the major determinant in buying silicomanganese within the context of the manganese content of the product. In addition, the availability and the business relationships that *** has with suppliers is also important. *** lists as excellent suppliers of silicomanganese several firms, including ***.

Elkem alleged that *** rejected a quoted Elkem price of ***.

*** responded to the Commission's request for information on these allegations. *** did not recall these specific sales and could not confirm that the material purchased was from any of the subject countries. However, he added that the numbers seemed about correct as far as the usual business that he conducts with silicomanganese sellers.

*** said that the quality of silicomanganese is, and must be, equivalent from whatever source (as long as they are in the same grade level) due to the fact that the product's quality is determined

---

[70] In one other instance, Elkem expressed uncertainty that it had correctly identified the source of the imported silicomanganese as Ukrainian.
Subsequent conversations with counsel for Elkem established that the firm believes it can identify the trading companies providing the material in these allegations but cannot specifically identify the country of origin. The companies identified, however, are known to provide material from ***.

[71] In its importer questionnaire, *** reported that it did not make any contract or spot sales of silicomanganese from *** until the final quarter of the year, and that ***. It reported that ***.

by an independent agency. He said that the Brazilian and the Venezuelan silicomanganese are equivalent in quality to the domestically produced silicomanganese. He stated that he has no direct knowledge of the Chinese or the Ukrainian silicomanganese. The characteristics that differentiate between grade levels include the chemistry and size of the product, as well as how much foreign material, such as dirt, is in the product.

*** buys silicomanganese only from alloy handling companies located within the United States. He does not buy directly from any foreign producers. He simply checks to see the future trading prices for silicomanganese and then tells the alloy trading company how much silicomanganese he wants to buy. A bidding process then begins for the sale and the lowest-priced silicomanganese gets the sale; price is the sole factor in determining where he buys the silicomanganese and the point of origin of the product is irrelevant since the quality of the product must be equivalent from whatever source it comes from.

Stressing the fact that price is the sole factor when buying, *** hypothesized that he may buy the Venezuelan product rather than the domestically produced product because the shipping costs from the northern United States to *** is located, may be higher than the shipping costs from Venezuela to ***.

Elkem alleged that *** pounds of silicomanganese and, in the face of competition from ***, Elkem made the sale at $*** per pound, ***.

*** does not recall this specific transaction but believes the general price and quantity information are in accordance with his usual business transactions involving silicomanganese. *** said that he only buys silicomanganese from *** alloy handling companies, ***,[72] or Elkem. *** does not know the source of their material and does not consider that information important to him because price is his sole determinant in buying silicomanganese. Asked if quality played any specific role in determining where the silicomanganese came from, *** said that it really did not because the silicomanganese must meet standard specifications for each grade level. If it does not, *** will not buy the material.

When asked about the specific countries and the silicomanganese that they produce, *** said that he did not know about the quality of the Chinese silicomanganese, but said that the Brazilian and the Venezuelan silicomanganese were equivalent to the domestically produced silicomanganese. The Ukrainian silicomanganese, however, has a reputation of having high amounts of sulfur in the product so *** does not buy the Ukrainian product.

Elkem alleged that *** pounds of U.S.-produced silicomanganese priced at ***, buying *** instead. ***.

*** reviewed his files and agreed that this information was substantially correct. However, he could not be positive that the silicomanganese was a *** product because he buys his silicomanganese from an alloy trading company. He does believe, though, that the silicomanganese involved ***.

Although price is a major consideration in *** purchases, it is not the only determinant. Quality, *** said, is also important. When asked if he could provide examples of the quality characteristics that *** looks for, *** said that the quality standards that *** adheres to closely resemble those of the ASTM specifications but are, at times, more rigorous and demanding. ***, for example, conducts its own tests of such things as chemical analysis equivalency between silicomanganese from different sources, oxygen and hydrogen content, and sizing of the product.

. The Chinese product, however, is considered by *** to be of an inferior quality to the domestic product. Therefore, *** would be willing to pay a price premium for the domestic product over the Chinese product, although he would not say what size price premium. *** has done this numerous times in the past, including the day prior to this conversation. ***. *** said that *** paid a higher price because of the quality differentials between the domestic product and the foreign product. The foreign-produced silicomanganese involved included *** material offered at $ per pound (representing a saving of $***). *** also rejected three higher quotes for *** material from *** for other imported silicomanganese at prices ranging from $*** to $*** per pound.

---

[72] In its importer questionnaire, *** during the period for which data were collected in these investigations.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-671-674 (Preliminary)]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-671-674 (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 Brazil, the People's Republic of China, Ukraine, and Venezuela of silicomanganese (ferrosilicon manganese), provided for in subheading 7202.30.00 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 27, 1993.

For further information concerning the conduct of these investigations 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 12, 1993.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-205-3178), 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.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 9, 1993, by Elkem Metals Company, Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local, Belpre, OH.

Participation in the investigations and public service list.

Persons (other than petitioners) wishing to participate in the investigations 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 these investigations 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 section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, 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 these investigations for 9:30 a.m. on December 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Janine Wedel (202-205-3178) not later than November 30, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations 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 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. 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 sections 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 investigations must be served on all other parties to the investigations (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: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 18, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28754 Filed 11-22-93; 8:45 am]

BILLING CODE 7020-02-M

[A-351-824, A-570-828, A-823-805, A-307-811]

Initiation of Antidumping Duty Investigations: Silicomanganese From Brazil, the People's Republic of China, Ukraine and Venezuela

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

EFFECTIVE DATE: December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Lori Way, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2613 and 482-0114, respectively.

INITIATION OF INVESTIGATIONS:

The Petition

On November 12, 1993, we received a petition filed in proper form by Elkem Metals Company and the Oil, Chemical & Atomic Workers Local 3-639 (petitioners). Petitioners filed supplements to the petition on November 17 and 24, 1993, pursuant to 19 CFR 353.12(e). In accordance with 19 CFR 353.12, petitioners allege that silicomanganese from Brazil, the People's Republic of China (PRC), Ukraine and Venezuela 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.

Petitioners have stated that they have standing to file the petition because they are interested parties as defined under sections 771(9) (C) and (D) of the Act, and because the petition was filed on

behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Under the regulations of the Department of Commerce (the Department), any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigations

The merchandise covered by these investigations is silicomanganese from Brazil, the PRC, Ukraine and Venezuela. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4% iron, more than 30% manganese, more than 8% silicon and not more than 3% phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of these investigations, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. These investigations cover all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTS). Some silicomanganese may also be classifiable under HTS subheading 7202.99.5040. Although the HTS subheading is provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

We have adopted the above scope for purposes of this initiation. We intend to clarify the scope of these investigations at the time of our preliminary determinations. For this purpose, we invite comments from interested parties. We also intend to solicit views from the U.S. Customs Service regarding the scope of these investigations.

United States Price

Petitioners based their estimates of U.S. price (USP) for all four countries on weighted-average Customs unit values calculated from Department import statistics. Petitioners made deductions for foreign inland freight in the cases of Brazil and Venezuela. Additionally, in the case of Brazil, petitioners made an addition for the Brazilian ICMS tax (VAT) imposed on home market, but not export, sales.

Foreign Market Value

1. Brazil

Petitioners based foreign market value (FMV) for Brazil on a ICMS tax-inclusive, FOB producer's plant, price quote developed by a market researcher in Brazil. From the quoted price, petitioners deducted an amount for credit expense. Petitioners adjusted the price quote for one month's inflation. We adjusted petitioners' methodology by conforming the calculation of credit expense to the Department's practice, and by substituting an inflation factor which we calculated using International Monetary Fund data.

Based on comparisons of USP and FMV, the margin of dumping of silicomanganese from Brazil alleged by petitioners is 17.6 percent.

2. Nonmarket Economies

Petitioners contend that the FMV of PRC- and Ukraine-produced imports subject to these investigations must be determined in accordance with section 773(c) of the Act, which concerns nonmarket economy ("NME") countries. The Department has determined the PRC and Ukraine to be NME countries, within the meaning of section 771(18)(A) of the Act; in previous cases (See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the PRC*, 58 FR 37908 (July 14, 1993)) and *Final Determinations of Sales at Less Than Fair Value: Ferrosilicon from Kazakhstan and Ukraine*, 58 FR 13050 (March 9, 1993), respectively). In accordance with 771(18)(C) of the Act, these determinations continue to apply for purposes of this initiation.

In the course of these investigations, parties will have the opportunity to address these NME determinations and provide relevant information and argument on this issue. In addition, parties will have the opportunity in these investigations to submit comments on whether FMV should be based on prices or costs in the PRC and Ukraine 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)).

Because of the extent of central government control in an NME, the Department further considers that a single antidumping margin, should there be one, is appropriate for all exporters from each NME. Only if individual NME exporters are free of central government ownership and can demonstrate an absence of central governmental control with respect to the pricing of exports, both in law and in fact, will they be considered eligible for separate, owner-specific deposit rates. (See *Final Determination of Sales at Less Than Fair Value: Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833 (September 20, 1993) for a discussion of the information the Department considers appropriate to warrant calculation of separate rates.)

In accordance with section 773(c) of the Act, FMV in NME cases is based on NME producers' factors of production valued in a market economy country. In accordance with section 773(C)(1)(B) of the Act, petitioners' FMV consisted of the sum of values assigned to materials, labor, energy and depreciation. To this, petitioners added general expenses and profit.

(a) PRC

Petitioners calculated FMV on the basis of the valuation of factors of production derived from information developed by a market researcher in India about production processes in India. Petitioners claim that India is comparable in economic development to the PRC and that India is a significant producer of silicomanganese. For purposes of this initiation, we have, pursuant to section 773(C)(4) of the Act, accepted India as an appropriate surrogate country because its economy is at a level of development comparable to the PRC's and because it is a significant producer of comparable merchandise. (See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated October 18, 1992, regarding *Certain Helical Spring Lock Washers from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection* which is on file in room B-099 of the Department of Commerce.)

One factor, which petitioner claims is captively produced in India, and for which petitioner was unable to find a value in India or other potential surrogate countries, was valued in the United States. Petitioners have stated

that this value was the only information reasonably available to them. Because an appropriate amount for factory overhead was not available from surrogate data, the amount added was based in part on the experience of Elkem's plant located in the United States. Petitioners added amounts for general expenses and profit based on the statutory minimum percentages. Packing cost is not applicable since this product is shipped in bulk.

The margin of dumping of silicomanganese from the PRC alleged by petitioners is 150.0 percent.

(b) Ukraine

Petitioners calculated FMV on the basis of the valuation of factors of production derived from information developed by a market researcher in Mexico about production processes in Mexico. Petitioners claim that Mexico is comparable in economic development to Ukraine and that Mexico is a significant producer of silicomanganese. For purposes of this initiation, we have, pursuant to section 773(C)(4) of the Act, accepted Mexico as an appropriate surrogate country because its economy is at a level of development comparable to Ukraine and because it is a significant producer of comparable merchandise. (See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 11, 1992, regarding *Ferrosilicon from Kazakhstan, Ukraine and Russia: Nonmarket Economy Status and Surrogate Country Selection* on file in room B-099 of the Department of Commerce.)

In the cases of two factors, where factor information was not available in Mexico, petitioners used the factors of a plant located in the United States. The factors were valued using Mexican values developed by the market researcher. One factor, which petitioner claims is captively produced in Mexico, and for which petitioner was unable to find a value in Mexico or other potential surrogate countries, was valued in the United States. Petitioners have stated that this value was the only information reasonably available to them. The amount added for factory overhead was based in part on the experience of Elkem's plant located in the United States. Petitioners added amounts for general expenses and profit based on the statutory minimum percentages. Packing cost is not applicable since this product is shipped in bulk.

The margin of dumping of silicomanganese from Ukraine alleged by petitioners is 125.3 percent.

3. Venezuela

Petitioners based FMV for Venezuela on a purchase order provided by a market researcher. The purchase order contains an FOB producer's plant price. Petitioners made no adjustments to this price.

The margin of dumping of silicomanganese from Venezuela alleged by petitioners ranges from 37.2 to 55.4 percent.

Initiation of Investigations

We have examined the petition on silicomanganese from Brazil, the PRC, Ukraine and Venezuela and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of silicomanganese from Brazil, the PRC, Ukraine and Venezuela are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

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

Preliminary Determination by the International Trade Commission

The ITC will determine by December 27, 1993, whether there is a reasonable indication that imports of silicomanganese from Brazil, the PRC, Ukraine and Venezuela are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, any ITC determination that is negative will result in the respective investigation being terminated; otherwise, the investigations 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 353.13(b).

Dated: December 2, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29959 Filed 12-7-93; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

Investigations Nos. 731-TA-671-674 (Preliminary)

SILICOMANGANESE FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA, UKRAINE, AND VENEZUELA

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigations on December 3, 1993, in Courtroom A, at the USITC Building, 500 E Street, S.W., Washington, DC.

In support of the imposition of antidumping duties

Baker & Botts--Counsel
Washington, DC
on behalf of--

Elkem Metals Company (Elkem) and the Oil, Chemical and Atomic Workers Local 3-639

Keith Curry, Vice President and General Manager for Manganese, Chromium and Specialty Metals, Elkem
Russell Craig, Marketing Manager for Manganese and Chromium Alloys, Elkem

Kenneth Button, Vice President, Economic Consulting Services Inc.
Brian Schultz, Economist, Economic Consulting Services Inc.

William D. Kramer, Esq.)
John B. Veach III, Esq.)--OF COUNSEL
Michael X. Marinelli, Esq.)

In opposition to the imposition of antidumping duties

O'Melveny & Myers--Counsel
Washington, DC
on behalf of--

AIOC Corporation and AIOC-Pryor, Inc. (AIOC)

Larry Pryor, President, AIOC-Pryor, Inc.

Zaporozhye Ferroalloy Works (Zaporozhye)

Nina Shafran, Esq.)
F. Amanda DeBusk, Esq.)--OF COUNSEL

--Continued--

In opposition to the imposition of antidumping duties--Continued

Shearman & Sterling--Counsel
Washington, DC
on behalf of--

Hornos Electricos de Venezuela, S.A. ("Hevensa")

Pedro Marquez, Director, Hevensa
Enrique Madero, Director, Hevensa
Ross Baker, Division Manager, Ferroalloys and Raw Materials, Mannesmann Pipe and Steel Corporation

Robert Herzstein, Esq.)
Jeffrey Winton, Esq.) --OF COUNSEL

APPENDIX C

SUMMARY DATA CONCERNING THE U.S. MARKET

Table C-1
Silicomanganese: Summary data concerning the U.S. market, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit COGS are per short ton, period changes=percent, except where noted)

Item	Reported data			Jan.-Sept.–		Period changes			
	1990	1991	1992	1992	1993	1990-92	1990-91	1991-92	Jan.-Sept. 1992-93
U.S. consumption quantity:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
Brazil	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Venezuela	***	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. consumption value:									
Amount	***	***	***	***	***	***	***	***	***
Producers' share[1]	***	***	***	***	***	***	***	***	***
Importers' share:[1]									
Brazil	***	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***	***
Venezuela	***	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***	***
Subtotal	***	***	***	***	***	***	***	***	***
Other sources	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
U.S. importers' imports from–									
Brazil:									
Imports quantity	24,554	51,656	61,512	40,873	51,723	+150.5	+110.4	+19.1	+26.5
Imports value	12,321	24,349	26,322	17,425	21,030	+113.6	+97.6	+8.1	+20.7
Unit value	$501.81	$471.37	$427.91	$426.32	$406.58	-14.7	-6.1	-9.2	-4.6
Ending inventory qty	***	***	***	***	***	***	***	***	***
China:									
Imports quantity	187	5,848	12,591	3,307	13,995	([2])	([2])	+115.3	+323.2
Imports value	135	2,984	5,628	1,493	5,526	([2])	([2])	+88.6	+270.1
Unit value	$720.35	$510.27	$446.93	$451.50	$394.87	-38.0	-29.2	-12.4	-12.5
Ending inventory qty	***	***	***	***	***	***	***	***	***
Venezuela:									
Imports quantity	6,338	2,756	9,810	2,149	13,764	+54.8	-56.5	+256.0	+540.5
Imports value	3,190	1,373	4,215	894	5,054	+32.1	-57.0	+207.0	+465.3
Unit value	$503.31	$498.05	$429.65	$415.84	$367.20	-14.6	-1.0	-13.7	-11.7
Ending inventory qty	***	***	***	***	***	***	***	***	***
Ukraine:									
Imports quantity	0	0	8,810	0	24,048	([3])	0	([3])	([3])
Imports value	0	0	3,640	0	8,974	([3])	0	([3])	([3])
Unit value	([3])	([3])	$413.18	([3])	$373.19	([3])	([3])	([3])	([3])
Ending inventory qty	***	***	***	***	***	***	***	***	***
Subject sources:									
Imports quantity	31,079	60,260	92,724	46,330	103,531	+198.3	+93.9	+53.9	+123.5
Imports value	15,646	28,706	39,804	19,812	40,585	+154.4	+83.5	+38.7	+104.9
Unit value	$503.44	$476.36	$429.28	$427.63	$392.01	-14.7	-5.4	-9.9	-8.3
Ending inventory qty	***	***	***	***	***	***	***	***	***

Footnotes on next page.

Table C-1--Continued
Silicomanganese: Summary data concerning the U.S. market, 1990-92, Jan.-Sept. 1992, and Jan.-Sept. 1993

(Quantity=short tons, value=1,000 dollars, unit values, unit labor costs, and unit COGS are per short ton, period changes=percent, except where noted)

Item	Reported data					Period changes			
				Jan.-Sept.--					Jan.-Sept.
	1990	1991	1992	1992	1993	1990-92	1990-91	1991-92	1992-93
U.S. importers' imports from--									
Other sources:									
Imports quantity .	214,449	223,140	190,763	136,145	131,612	-11.0	+4.1	-14.5	-3.3
Imports value . . .	111,151	111,545	90,052	63,512	57,695	-19.0	+0.4	-19.3	-9.2
Unit value	$518.31	$499.89	$472.06	$466.50	$438.37	-8.9	-3.6	-5.6	-6.0
Ending inventory qty	***	***	***	***	***	***	***	***	***
All sources:									
Imports quantity .	245,528	283,400	283,487	182,474	235,143	+15.5	+15.4	(4)	+28.9
Imports value . . .	126,797	140,251	129,856	83,324	98,280	+2.4	+10.6	-7.4	+17.9
Unit value	$516.43	$494.89	$458.07	$456.63	$417.96	-11.3	-4.2	-7.4	-8.5
Ending inventory qty	***	***	***	***	***	***	***	***	***

* * * * * * *

[1] 'Reported data' are in percent and 'period changes' are in percentage points.
[2] An increase of 1,000 percent or more.
[3] Not applicable.
[4] An increase of less than 0.05 percent.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other 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 and from official statistics of the U.S. Department of Commerce.

Figure C-1
Silicomanganese: Summary data for the U.S. market, 1990-92

* * * * * * *

APPENDIX D

COMMENTS RECEIVED FROM ELKEM ON THE IMPACT OF IMPORTS OF SILICOMANGANESE FROM BRAZIL, CHINA, UKRAINE, AND/OR VENEZUELA ON ITS GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, OR EXISTING PRODUCTION EFFORTS, INCLUDING EFFORTS TO DEVELOP A DERIVATIVE OR MORE ADVANCED VERSION OF THE PRODUCT

The Commission requested Elkem to describe any actual or potential negative effects of imports of silicomanganese from Brazil, China, Ukraine, and/or Venezuela 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). Its comments are as follows:

1. Since January 1, 1990, 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 silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela?

* * * * * * *

2. Does your firm anticipate any negative impact of imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela?

* * * * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela?

* * * * * * *