

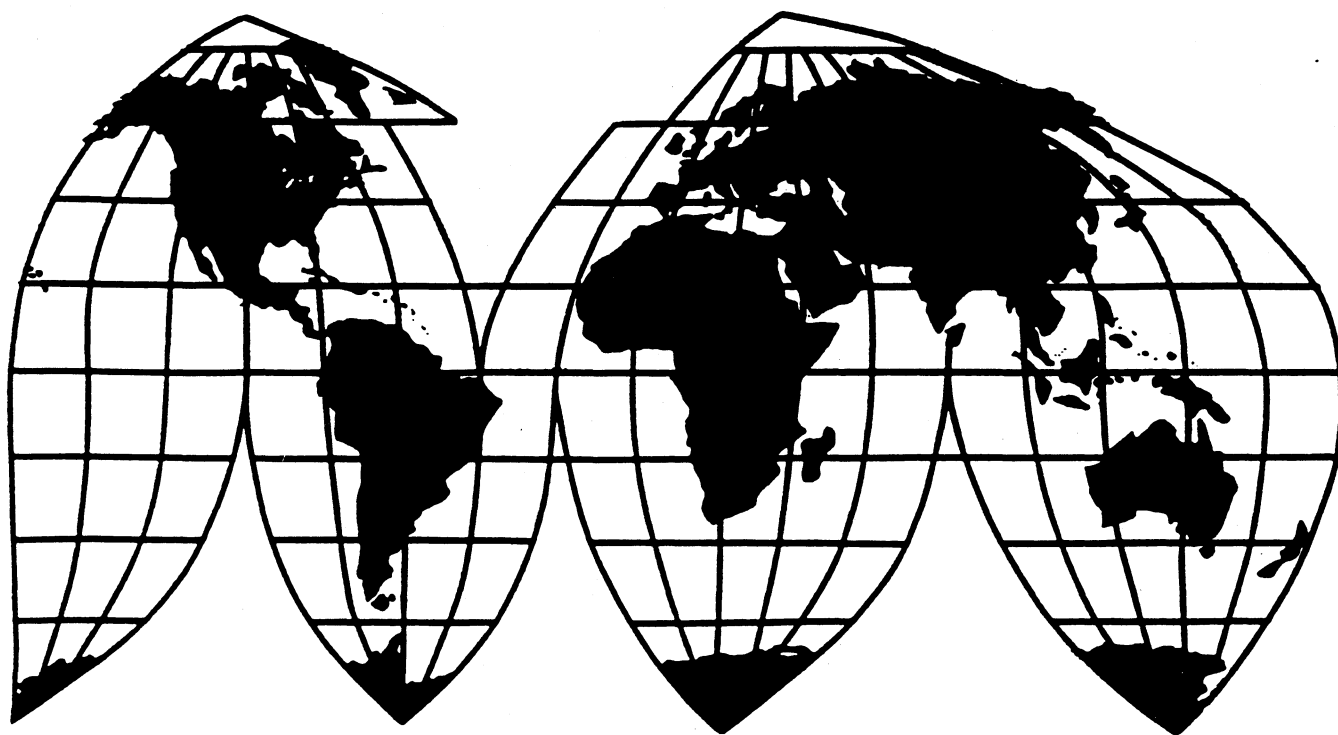
Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela

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

Publication 2836

December 1994

U.S. International Trade Commission



U.S. International Trade Commission

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Douglas Corkran, Investigator
Charles Yost, Industry Analyst
Cindy Cohen, Economist
John Ascienzo, Accountant
Shara Aranoff, 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

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

PART I

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

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

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from Brazil,² the People's Republic of China,³ and Ukraine,⁴ and that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Venezuela⁵ of silicomanganese, provided for in subheadings 7202.30.00 and 7202.99.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).⁶

Background

The Commission instituted these investigations effective June 16, 1994, following preliminary determinations by the Department of Commerce that imports of silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in

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

² Commissioners Rohr and Newquist determine that an industry in the United States is materially injured, and Chairman Watson determines that an industry in the United States is threatened with material injury, by reason of LTFV imports of silicomanganese from Brazil. Vice Chairman Nuzum and Commissioners Crawford and Bragg dissenting.

³ Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg determine that an industry in the United States is threatened with material injury, and Commissioners Rohr and Newquist determine that an industry in the United States is materially injured, by reason of LTFV imports of silicomanganese from the People's Republic of China. Commissioner Crawford dissenting.

⁴ Commissioners Rohr and Newquist determine that an industry in the United States is materially injured, and Vice Chairman Nuzum determines that an industry in the United States is threatened with material injury, by reason of LTFV imports of silicomanganese from Ukraine. Chairman Watson and Commissioners Crawford and Bragg dissenting.

⁵ Commissioners Rohr and Newquist dissenting.

⁶ At the Commission's briefing and vote on these investigations, Commissioner Rohr and Commissioner Newquist each announced an affirmative finding pursuant to 19 U.S.C. § 1673d(b)(4)(A) with respect to LTFV imports from Ukraine. The affirmative findings were based on information that certain imports would be encompassed in the period of retroactive application of antidumping duties, subsequently found to be erroneous due to an incorrect calculation of such period. Commissioner Rohr and Commissioner Newquist therefore make a negative finding pursuant to 19 U.S.C. § 1673d(b)(4)(A) with respect to imports from Ukraine.

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 July 15, 1994 (59 F.R. 36212). The hearing was held in Washington, DC, on November 3, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel. On November 30, 1994, the Department of Commerce notified the Commission that it had suspended its investigation on silicomanganese from Ukraine, and on December 2, 1994, the Department of Commerce notified the Commission that it had continued its investigation on silicomanganese from Ukraine. Accordingly, pursuant to section 207.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.42), the Commission continued its investigation on silicomanganese from Ukraine.

VIEWS OF COMMISSIONERS DAVID B. ROHR AND DON E. NEWQUIST

Based on the record in these final investigations, we determine 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 ("China"), Ukraine and Venezuela that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV"). We further determine, as required by section 735 (b)(4)(A), that, with respect to imports from China and Ukraine, as to which the Department of Commerce has made affirmative critical circumstances determinations under section 735 (a)(3), retroactive imposition of antidumping duties on the merchandise does not appear necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time.

We note that with respect to the investigations concerning imports from Brazil and Ukraine, the Commission made affirmative determinations on the basis of a 3-3 vote. For these two investigations, Commissioner Watson's affirmative determination with respect to Brazil is based on threat of material injury and Commissioner Nuzum's affirmative determination with respect to Ukraine is based on threat of material injury. Therefore, these present views represent the plurality of the Commission's statutory majority. With respect to the investigation involving imports from China, the Commission made an affirmative determination on the basis of a 5-1 vote, with a plurality of that majority making its affirmative determination on the basis of a threat of material injury. Thus, for purposes of that investigation, these views represent a separate minority position in support of an affirmative determination. With respect to the investigation of imports from Venezuela, the Commission made a negative determination on the basis of a 4-2 vote, and these views represent our dissent in favor of an affirmative determination.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether an industry in the United States is materially injured or 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 a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹ In turn, the Act defines "like product" as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."²

Commerce has identified the imported merchandise subject to these investigations as:

silicomanganese, which is sometimes called ferrosilicon manganese, . . . 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorus. All compositions, forms and sizes of silicomanganese are included within the scope of [these] investigation[s], including silicomanganese slag, fines and briquettes.³

¹ 19 U.S.C. § 1677(4)(A).

² 19 U.S.C. § 1677(10).

³ 59 Fed. Reg. 55432, 55433 (Brazil); 55435 (China); 55436 (Venezuela) (Nov. 7, 1994); 59 Fed. Reg. 62711 (Ukraine) (Dec. 6, 1994).

Silicomanganese is a metallic, silvery ferroalloy used primarily as an additive in the production of steel because of its desulfurization, deoxidation, and alloying properties. Silicomanganese provides a source of both manganese and silicon for advanced products in iron and steelmaking. In 1993, the steel industry accounted for 96 percent of U.S. silicomanganese consumption.⁴ Most silicomanganese is sold in three grades, American Society for Testing of Materials (ASTM) grades A, B, and C, which are distinguished by their silicon and carbon contents. Grade B silicomanganese accounts for the majority of sales in the United States. 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.⁵ Silicomanganese containing more or less than the ASTM specified content of particular elements is still considered silicomanganese.⁶ Producers and purchasers do not universally follow the ASTM standard either outside or within the United States.⁷

In our preliminary investigations, the Commission found a single like product consisting of all silicomanganese.⁸ In these final investigations, Ukrainian respondents argue for the first time that Ukrainian off-specification silicomanganese is a separate like product.⁹ Petitioner contends, as it did in the preliminary investigations, that there is a single like product.¹⁰

Ukrainian off-specification product is clearly within the scope of these investigations as defined by Commerce.¹¹ In our view, the like product question thus presented is whether "off-specification" silicomanganese is sufficiently different from other silicomanganese to justify its consideration as a separate like product. As indicated above, whether meeting ASTM specification or not, silicomanganese is a source of silicon and manganese for the steelmaking process. It is perceived as such by both producers and end users. Minor

⁴ Additionally, silicomanganese is used as an alloying agent by cast iron producers, and it is also used in the production of medium-carbon ferromanganese. Confidential Report ("CR") at I-5 - I-6, I-8 - I-12; Public Report ("PR") at II-4 - II-7.

⁵ CR at I-5 - I-6; PR at II-4. Under the 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 percent to 16.0 percent silicon and a maximum of 3.0 percent carbon.

⁶ CR at I-5 - I-7, PR at II-4 - II-5.

⁷ CR at I-5 - I-6 and n.5, I-85 - I-86, PR at II-4, II-36; Transcript of Commission Hearing (Nov. 3, 1994) at 108, 112 ("Hearing Tr."); Ukrainian Posthearing Brief, Exhibit 5 at 1-3; Letter dated Oct. 31, 1994, from Kent Baumgardner, Director of Purchasing, Georgetown Steel Corp., to the Commission.

⁸ Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Inv. Nos. 671-674 (Preliminary), USITC Pub. 2714 at I-7-I-8 (Dec. 1993).

⁹ Prehearing Brief on Behalf of Zaporozhye Ferroalloys Plant, Nikopol Ferroalloys Plant, AIOC Corp., and Minerais, U.S. Inc. (Oct. 28, 1994) at 23 and Exhibit 17 ("Ukrainian Prehearing Brief"). Venezuelan and Brazilian respondents do not address the issue of like product. No Chinese party entered an appearance in these investigations.

¹⁰ Petitioner's Prehearing Brief (Oct. 28, 1994) at 4-11; Petitioner's Posthearing Brief (Nov. 14, 1994) at 3. There are two petitioners in this investigation: Elkem, the sole domestic producer of silicomanganese, and the labor union that represents its silicomanganese production employees. For convenience, we refer to Elkem as "petitioner" in the singular.

¹¹ See, e.g., 59 Fed. Reg. 55432, 55433 (1994) ("All compositions, forms and sizes of silicomanganese are included within the scope of this investigation . . ."). Moreover, Commerce did not find Ukrainian silicomanganese to be a separate class or kind of imported merchandise.

differences in chemistry can be found in many different sources of silicomanganese.¹² Regardless of these differences, all types of silicomanganese perform the same functions. It is used for the same purpose, and it is sold through the same channels of distribution. We cannot find that there is a sufficiently bright line of distinction between ASTM specification silicomanganese and off-specification silicomanganese to justify finding separate like products for these two articles. We therefore reaffirm our finding from the preliminary investigation that there is a single like product consisting of all silicomanganese.¹³

The statute defines the domestic industry to consist of all domestic producers of the like product, which, in these investigations, is silicomanganese. There is only one such domestic producer, the petitioner Elkem. In defining the domestic industry the statute also provides that a domestic producer who is a "related party" may be excluded from the domestic industry for the purposes of an injury determination.¹⁴ The statute defines a related party as a domestic producer who is either related to exporters or importers of the product under investigation, or is itself an importer of that product.

In our preliminary determinations, we found that Elkem was not a related party.¹⁵ In these final investigations, Ukrainian and Brazilian respondents offer multiple reasons why Elkem should be considered a related party.¹⁶ Petitioner responds that the related parties provision is intended to reach only relationships that affect the condition of the domestic industry and that none of the asserted relationships has such an effect.¹⁷

We find that Elkem is not a "related party" within the terms of the statute.¹⁸ Elkem did purchase silicomanganese that had been imported from the countries subject to this investigation, but has never been the importer of record of such products.¹⁹ Respondents'

¹² CR at I-86, I-88 - I-89, PR at II-36 - II-37.

¹³ Ferrosilicon from Egypt, Inv. No. 731-TA-642 at 8 (Final).

¹⁴ 19 U.S.C. §1677 (4)(B).

¹⁵ Prelim. Det. at I-8 - I-9.

¹⁶ Specifically, respondents argue that: (1) Elkem imports and purchases significant quantities of non-subject imports and has corporate and/or commercial ties with foreign producers of non-subject imports; (2) Elkem has purchased subject imports, although it was not the importer of record; (3) Elkem "takes title to" or is the "consignee" of subject imports and is therefore itself an "importer" as defined in the Commission's importer's questionnaire; (4) Elkem has swapped domestic product for subject imports; and (5) Elkem has a corporate relationship with an importer of the subject merchandise. See Prehearing Brief on Behalf of Companhia Paulista de Ferro-Ligas and Sibra Electro-Siderurgica Brasileira S/A (Oct. 28, 1994) at 9-13 ("Brazilian Prehearing Brief"); Ukrainian Prehearing Brief at 59-66; Brazilian Posthearing Brief at 24-26; Ukrainian Posthearing Brief, Exhibit 4 at 1-4.

¹⁷ Petitioner's Posthearing Brief, Exhibit 2 at 1-2. Petitioner argues that: (1) relationships with producers or importers of non-subject imports are irrelevant for purposes of the related parties provision; (2) Elkem has no corporate affiliation with any producer of merchandise subject to investigation and "is neither an importer of subject merchandise nor related to any importers of subject merchandise"; (3) swaps are ad hoc, post-sale events by nature and therefore cannot be the basis for a finding of any relationship between Elkem and a swap partner; and (4) the mere fact that Elkem benefits from its purchases of subject imports is not enough to create a related status where it has no special relationship with any importer and is no importer's principal customer. Petitioner's Prehearing Brief at 12-15; Petitioner's Posthearing Brief, Exhibit 2 at 1-7.

¹⁸ 19 U.S.C. § 1677(4)(B).

¹⁹ Elkem's purchases of subject imports were *** short tons or *** percent of total U.S. shipments of subject imports in 1991, *** short tons or *** percent of U.S. shipments of subject imports in
(continued...)

argument that, because Elkem eventually took title to this merchandise, Elkem effectively became an "importer" is simply wrong. Any entity that eventually purchases an imported product takes title to it, but not all of them are "importers" for purposes of U.S. trade laws, and most particularly the related party provisions of Title VII. The statute's concern is with the party that controls the importation or on whose account the product is originally imported, not later entities in the chain of sales.

In these investigations, there is no record evidence that Elkem either controlled the importation of subject merchandise or was the party on whose account the merchandise was imported. Rather, Elkem purchased these imports, duty paid, from other domestic entities in the domestic open market.²⁰ Nor is there any evidence that the importers from which Elkem made its purchases were operating pursuant to contractual arrangements with, or on advance orders from Elkem.²¹ Indeed, there is no evidence that Elkem has any regular, sustained relationship with any particular importer.²² Accordingly, we do not find Elkem to be a related party by virtue of its non-import purchases of subject merchandise.²³

Respondents also suggest that Elkem is a related party because of its relationship with Broken Hill Proprietary ("BHP U.S.A."), an importer of ***.²⁴ This relationship consists of a joint venture between their respective parent corporations.²⁵ Elkem and BHP U.S.A. have no common ownership. BHP U.S.A. has never supplied subject imports to Elkem.²⁶ There is no evidence on the record in these investigations that either Elkem or Elkem A/S can exercise control over the importing activities of BHP U.S.A., due to the absence of common corporate control.²⁷ Therefore, in light of the attenuated nature of the corporate affiliation between Elkem and BHP U.S.A., the absence of any evidence that Elkem or its parent can in

¹⁹ (...continued)

1992, *** short tons or *** percent of U.S. shipments of subject imports in 1993, and *** short tons in interim 1994 compared with *** short tons and *** percent of total subject imports in interim 1993. Table G-2, CR at G-4, PR at G-3; Table 21, CR at I-76, PR at II-31. Elkem's purchases included imports from ***.

²⁰ Table G-2, CR at G-4, PR at G-3 (indicating the source of Elkem's shipments).

²¹ Petitioner's Posthearing Brief, Exhibit 2 at 4.

²² CR at G-5 and n.1, PR at G-3. Contrast Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 at 12-13 (June 1992) (relying on facts that domestic producer had a contractual relationship with several importers, was their principal customer, and controlled their purchases in finding the producer to be a related party).

²³ We also find that Elkem is not a related party by virtue of its swap transactions. Elkem's swap transactions are ***. Table 8, CR at I-45, PR at II-20 (swaps of Marietta material), and CR at G-6, PR at G-3 (swaps of non-Marietta material). Moreover, there is no evidence that Elkem has any kind of "special relationship" with any importer with whom it engaged in swaps or controlled any importer's purchases for purposes of regular swap dealings of any magnitude.

²⁴ Table 1, CR at I-22, PR at II-13; Petitioner's Posthearing Brief, Exhibit 2 at 5-6. Although BHP U.S.A. is ***, CR at I-23, PR at II-13.

²⁵ Elkem is a wholly-owned subsidiary of the Norwegian corporation Elkem A/S. BHP U.S.A. is a subsidiary of Broken Hill Proprietary Co. ("BHP"), an Australian silicomanganese producer. Elkem A/S and BHP are joint venture partners in ***. CR at D-4 n.1 and n.2, PR at D-3; Petitioner's Posthearing Brief, Exhibit 2 at 5-6.

²⁶ ***, CR at I-23, PR at II-13.

²⁷ While BHP U.S.A.'s shipments of subject imports have been to ***, this is likely due to ***, and not the result of a concerted effort by joint venture partners Elkem A/S and BHP to avoid competing in the U.S. market. Compare CR at I-23 and n.47, PR at II-13, with Table 5, CR at I-36, PR at II-17.

fact exercise any control over BHP U.S.A.'s importing operations, the minor nature of BHP U.S.A.'s dealings in ***, and the absence of any dealings between Elkem and BHP with respect to the subject imports, we determine that Elkem is not a related party within the meaning of the statute.²⁸

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of 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 consumption, production, capacity, shipments, inventories, employment, wages, productivity, and financial performance. 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."²⁹

The nature of the competition in the U.S. silicomanganese market is an important factor in our decision. A large number of importers participate in the U.S. silicomanganese market.³⁰ More than a dozen non-subject countries, in addition to the four subject countries, export silicomanganese to the United States.³¹ Many industry participants use an industry publication, Metals Week, as a guide when negotiating sales prices,³² and most end users reported seeking bids from an average of 6 or 7 suppliers for each purchase of silicomanganese.³³

The large number of suppliers is an important factor because demand is driven largely by the level of steel production of producers using electric arc furnaces (minimills).³⁴ Over the period of investigation, the demand for advanced types of steel increased significantly, thereby resulting in an increase in the amount of silicomanganese required. Moreover, silicomanganese accounts for only a small percentage of the cost of the finished steel product, generally less than 3 percent. Thus, demand for silicomanganese tends to be inelastic and the high level of competition results in switching purchases among suppliers rather than increasing the overall amount of silicomanganese sold.³⁵ Further, because of the increasing derivative demand for silicomanganese, the major effect of the large number of suppliers is likely to be reflected in the overall price level for silicomanganese.

²⁸ The Commission has previously stated that, to establish a "relationship" for purposes of the related parties provision, a corporate affiliation between an exporter or importer and a domestic producer must pertain to the unfairly traded articles under investigation. Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 97 (Aug. 1993); Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529 at 14 n.45 (July 1992). Compare Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Preliminary), USITC Pub. 2824 at I-7 (Oct. 1994) (petitioner is related party where sister company was substantial importer of subject merchandise and petitioner marketed all those imports for its sister company).

²⁹ 19 U.S.C. § 1677(7)(C)(iii). No arguments addressing the business cycle were raised by any of the parties to these investigations. As discussed below, demand for silicomanganese is derived from demand for the advanced steels whose manufacture requires the use of this product. The effects of this relationship are discussed below.

³⁰ CR at I-22, PR at II-13.

³¹ Table F-5, CR at F-5, PR at F-5.

³² CR at I-83, PR at II-35.

³³ CR at I-88, PR at II-37.

³⁴ Memorandum EC-R-116 (Dec. 2, 1994) at 12.

³⁵ Memorandum EC-R-116 at 13, 32-33.

Apparent U.S. consumption by quantity of silicomanganese rose significantly from 1991 to 1993 and was higher in interim 1994 (January to June) than in interim 1993.³⁶ Apparent U.S. consumption by value of silicomanganese followed the same trend.³⁷

During the period of investigation, domestic production of silicomanganese increased from 1991 to 1992, fell *** between 1992 and 1993, and was higher in interim 1994 than in interim 1993.³⁸ Reported production capacity, measured as end-of-period capacity, fell from 1991 to 1992, then rose from 1992 to 1993 and between the interim periods. Reported average-of-period capacity rose consistently over the period of investigation.³⁹ End-of-period capacity utilization rose from 1991 to 1992, fell in 1993, remaining above its 1991 level, and was higher in interim 1994 than in interim 1993. Average-of-period capacity utilization followed the same trend from 1991 to 1993, but was lower in interim 1994 than in interim 1993, and remained at all times at *** levels.⁴⁰ The capacity and capacity utilization levels are also affected by the fact that the domestic producer can and did use the same facilities it uses to produce silicomanganese to produce other products.⁴¹ We therefore find that the capacity data, particularly the average of period capacity, does not represent a "hard" cap on the actual ability of the domestic industry to produce silicomanganese.

U.S. shipments of silicomanganese, including internal transfers,⁴² rose from 1991 to 1993 and were higher in interim 1994 than in interim 1993.⁴³ Domestic end-of-period inventories of silicomanganese also rose from 1991 to 1993 and were higher in interim 1994 than in interim 1993.⁴⁴ The ratio of inventories to total shipments (including exports) fell from 1991 to 1992, rose in 1993 to greater than its 1991 level, and was higher in interim 1994 than in interim 1993.⁴⁵

The average number of production and related workers producing silicomanganese rose from 1991 to 1992, declined from 1992 to 1993, remaining above its 1991 level, and was higher in interim 1994 than in interim 1993.⁴⁶ Hours worked, total wages, and total compensation followed the same trend, while hourly wages, hourly compensation, and productivity rose consistently over the period of investigation.⁴⁷

³⁶ Apparent consumption rose from ***. In interim 1994, apparent consumption was ***. Table 2, CR at I-30, PR at II-15.

³⁷ Apparent consumption by value rose from ***. Table 2, CR at I-30, PR at II-15.

³⁸ Production rose from ***. Table 6, CR at I-41, PR at II-19.

³⁹ Reported end-of-period capacity ***. End-of-period capacity reflects Elkem's capacity if its furnace is dedicated full-time to the production of silicomanganese. The rise in Elkem's end-of-period capacity ***. CR at I-42, PR at II-19; Table 6, CR at I-41, PR at II-19. Average-of-period capacity ***. Average-of-period capacity reflects Elkem's capacity to produce silicomanganese during those periods of time that the furnace was not dedicated to the production of ferromanganese. Id.

⁴⁰ Reported end-of-period capacity utilization ***. Table 6, CR at I-41, PR at II-19. Reported average-of-period capacity utilization ***. Id.

⁴¹ Hearing Tr. at 40.

⁴² Elkem's internal transfers consist of fines generated by its production process that are recycled in the furnace. Elkem does not captively consume fines in the production of downstream products. ***. CR at I-41 n.62, PR at II-19; Table 4 and n.1., CR at I-33, PR at II-16.

⁴³ Shipments rose from ***. Table 8, CR at I-45, PR at II-20. U.S. open market shipments (excluding ***) followed the same trend, ***. Id. ("all domestic shipments").

⁴⁴ Inventories rose from ***. Table 9, CR at I-47, PR at II-21.

⁴⁵ The ratio of inventories to total shipments ***. Table 9, CR at I-47, PR at II-21.

⁴⁶ The number of PRWs ***. Table 10, CR at I-48, PR at II-21.

⁴⁷ Table 10, CR at I-48, PR at II-21.

Because there is only one domestic producer of silicomanganese, we can only discuss financial performance in general terms in our public views.⁴⁸ However, the financial performance of the industry is critical to our evaluation of the condition of the industry because of the nature of the competition in this market. The nature of competition forced Elkem to adopt a strategy of lowering price to meet the competition from the subject imports. As a result, the primary impact of the imports are reflected in the financial condition of the domestic industry.

Elkem earned a net profit in 1991 in its domestic silicomanganese production operations.⁴⁹ Over the period 1991 to 1993, Elkem's profits declined and the company's gross, operating and net income deteriorated.⁵⁰ In 1992 Elkem suffered a loss at the operating level, and in 1993 it suffered losses at all levels.⁵¹ Although these trends began to reverse in interim 1994, Elkem's silicomanganese operation remained unprofitable.⁵²

Capital expenditures on silicomanganese ***.⁵³ The value of total assets employed in Elkem's silicomanganese operations ***.⁵⁴ Elkem reported that investment plans *** were cancelled or postponed due to the effects of the subject imports.⁵⁵

Based upon the above, we conclude that the domestic industry is currently experiencing material injury.

⁴⁸ During the course of these investigations, allegations were made that petitioner may have failed to serve certain documents, including its audited financial statements, on other parties at the time those documents were provided to the Commission. Commission rule 207.3(b) provides that "[a]ny party submitting a document for inclusion in the record of the investigation shall . . . serve a copy of each such document on all other parties to the investigation . . ." This rule has been a source of confusion where, as in this instance, documents are provided directly to Commission staff on an ad hoc basis. Under the rules, while such information need not be formally filed with the Secretary, it does constitute part of the record of the investigation and therefore must be served when it is provided to the Commission. See 19 C.F.R. § 207.2(f)(1) ("record" includes all information presented to or obtained by the Commission during an investigation). Based on explanations provided by petitioner at our request, we have determined not to take action against petitioner for any of the service irregularities that occurred in these investigations. We caution the parties and the public, however, that breaches of the Commission's service rules may result in sanctions against either the party or counsel found to be responsible. See 19 C.F.R. § 207.3(b); 19 C.F.R. § 207.3(c); 19 U.S.C. § 1677e(c) and 19 C.F.R. § 207.8; 19 C.R.F. § 201.15(a).

⁴⁹ Table 12, CR at I-53, PR at II-23.

⁵⁰ Id.

⁵¹ Id.

⁵² Hearing Tr. at 23, 28-29, 39-40. Domestic producers' net sales of silicomanganese produced in its establishment by value ***. Table 12, CR at I-53, PR at II-23. The industry's operating income ***. Table 12, CR at I-53, PR at II-23. The industry's operating income as a percentage of net sales ***. Table 12, CR at I-53, PR at II-23.

⁵³ Table 15, CR at I-61, PR at II-24.

⁵⁴ Table 14, CR at I-60, PR at II-24.

⁵⁵ CR at E-3, PR at E-3. Elkem's allegations with respect to the temporary conversion of its silicomanganese furnace to the production of ferromanganese in March through July of 1993 are discussed infra.

III. CUMULATION

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and effects of imports of like products subject to investigation from two or more countries if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market.⁵⁶ Such cumulative assessment is not required, however, if imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.

Preliminarily, we address the issue of whether the Commission may properly cumulate imports from Ukraine with other subject imports given the recent suspension agreement with Ukraine. The Commission has previously determined that imports subject to a suspension agreement, but as to which the investigation has been continued pursuant to 19 U.S.C. § 1673c(g), are "subject to investigation" for purposes of cumulation.⁵⁷ On December 2, 1994, Commerce notified the Commission of its final determination regarding Ukraine, which included a notice of continuation of the investigation. Thus, for purpose of this cumulation analysis, imports from the Ukraine are "subject to investigation", and therefore may be cumulated.

In assessing whether imports compete with each other and with the domestic like product, the Commission generally considers 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.^{58 59}

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

⁵⁷ See Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Inv. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 at 12 (Sep. 1987).

⁵⁸ 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 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁵⁹ Commissioner Newquist notes that, in his view, the statutory language requires scrutiny primarily of geographic and temporal competition between the subject imports and the domestic like products. Thus, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner 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).

The vast majority of imports of silicomanganese from all four subject countries overlapped geographically with each other and with the domestic product. There were very few instances in which silicomanganese from one subject country was present in a geographic market to the exclusion of imports from another subject country or of the domestic product.⁶⁰ In fact, in 1993 imports from the countries under investigation competed directly with each other, or with the domestic product, in the majority of the 29 states in which subject imports were shipped in that year.⁶¹ Moreover, at least *** of the commercial shipments of imports from each country were to states in which the domestic producer also shipped its product.⁶² These facts satisfy the requirement that subject imports and the domestic product compete in the same geographic regions.

We also conclude that subject imports and the domestic product were simultaneously present in the market. Except for the Ukrainian product, all subject imports were present in the U.S. during the entire period of investigation.⁶³ Silicomanganese from Brazil was imported into the U.S. market in 34 of the 42 months that comprise the period of investigation; imports from China were present in 16 months; and imports from Venezuela in 15 months.⁶⁴ Finally, the Ukrainian imports, which began entering the U.S. market in December 1992, were thereafter present in 8 of the remaining 18 months of the period of investigation.⁶⁵ We therefore find that all subject imports were simultaneously present in the market with the other imports and the domestic product.

The Ukrainian and Brazilian respondents have argued that their respective products should not be cumulated because they are not fungible with the domestic product or with the other imports. However, based on the end use of silicomanganese regardless of source, we find these arguments unpersuasive.⁶⁶

Most subject imports and domestic silicomanganese serve a single end use -- the production of steel,⁶⁷ and most purchasers routinely buy from multiple sources.⁶⁸ The record in these final investigations indicates that most silicomanganese purchasers do not know or care about the source of the product, so long as it meets their chemical requirements.^{69 70} We

⁶⁰ See Table 5, CR at I-36 - I-37, PR at II-17.

⁶¹ Id.

⁶² Id.

⁶³ See Tables F-1 to F-4, CR at F-3 - F-4, PR at F-3 - F-4.

⁶⁴ Tables F-1 to F-4, CR at F-3 - F-4, PR at F-3 - F-4.

⁶⁵ CR at Appendix F, Table F-3. The Commission has previously determined that the fact that an exporting country is a new entrant to the U.S. market part way through the period of investigation does not preclude a finding of simultaneous presence. Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-14 and n.74 (Nov. 1993) (imports from India began after beginning of period of investigation). And the record indicates that imports from Ukraine were present in the U.S. market in the form of shipments or inventories from December of 1992 through the end of the period of investigation. Table 16, CR at I-65, PR at II-27; Table 23, CR at I-91, PR at II-39.

⁶⁶ Although Commissioner Newquist does not disagree with the following discussion of fungibility and channels of distribution, for the reasons expressed in footnote 59, he finds the discussion generally unnecessary.

⁶⁷ CR at I-8, PR at II-5.

⁶⁸ CR at I-88, PR at II-37.

⁶⁹ CR at I-86, I-103 - I-104 (***), I-106 - I-107 (***), and I-106 (***); PR at II-37, II-42 - II-43; Hearing Tr. at 112, 115 (Messrs. Collins, Unfried and Meier of the SMA) (purchasers do not generally know the source of the material purchased).

do not find the differences between silicomanganese from the subject countries and the domestic industry sufficient to preclude cumulation. We also decline to accept the argument put forth by the Ukrainian respondents that their product not be cumulated because it is sold through different channels of distribution.⁷¹ We note that the most prevalent pattern of "distribution" runs through importers directly to domestic purchasers. Most of Ukrainian respondents' arguments with respect to channels of distribution concern problems importers face obtaining product from Ukrainian suppliers and reprocessing them before sale in the United States. Such concerns fail to negate the fact that sales within the United States are made through the same channels of distribution as the domestic product and imports from other sources.

Finally, we address the position taken by the Venezuelan respondents that their imports are negligible.⁷²

Section 771(7)(C)(v) of the Tariff Act of 1930 provides that the Commission is not required to cumulate those imports of the merchandise subject to investigation if they "are negligible and have no discernible adverse impact on the domestic industry."⁷³ In determining whether imports are negligible, the statute directs the Commission to consider all relevant economic factors including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.⁷⁴

Venezuelan respondents argue that imports from Venezuela are negligible because, during the last six months of 1993 and the first six months of 1994, they constituted less than three percent of total imports. They base this argument on the 3 percent threshold for negligible imports established in the Uruguay Round agreement.⁷⁵ At the hearing, they conceded that the 3 percent threshold is not presently binding on the Commission, but argued that it should be guidance and that the Commission should conclude that Venezuelan imports alone are too small to have a discernible effect on the market.⁷⁶

⁷⁰ (...continued)

⁷⁰ Silicomanganese from Ukraine, because of the local inputs used to produce it, contains both more manganese and more phosphorus than is provided for in ASTM grade B specifications. Manganese, however, is not an impurity, either in silicomanganese or in steel, so that the additional manganese in Ukrainian silicomanganese does not preclude its use in any particular application. CR at I-86 - I-87, PR at II-37 - II-38. The high phosphorus level of Ukrainian silicomanganese also does not preclude its use by steel producers. Thus, we are satisfied that the phosphorus content of Ukrainian material does not definitively distinguish the uses to which it can be put from those to which other silicomanganese can be put.

⁷¹ Ukrainian Prehearing Brief at 31-34.

⁷² Venezuelan Posthearing Brief at 7-9.

⁷³ 19 U.S.C. § 1677(7)(C)(v).

⁷⁴ Id.

⁷⁵ Venezuelan Prehearing Brief at 10-11.

⁷⁶ Hearing Tr. at 203-204; Venezuelan Posthearing Brief at 7.

The U.S. market share of silicomanganese imports from Venezuela rose from *** percent in 1991 to *** percent in 1992 and *** percent in 1993, and was *** percent in interim 1994 compared with *** percent in interim 1993.⁷⁷ The level of imports which may be defined as negligible varies from industry to industry. But, in a price-sensitive, commodity industry such as this, these levels correspond to similar levels which the Commission has previously found not to be negligible.⁷⁸ We find that silicomanganese imports from Venezuela are not negligible.

Based on all of these factors, the overall fungibility and interchangeable use of silicomanganese, the geographic overlap, and the simultaneous presence of all subject imports and the domestic product in the U.S. market during the period of investigation, we find a reasonable overlap of competition and cumulate imports from all subject countries.

IV. CAUSATION

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

(I) the volume of imports of the merchandise which is the subject of the investigation,

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.⁷⁹

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination . . ."⁸⁰ Although we may consider information that indicates that injury to the industry is caused by factors other than the cumulated LTFV imports, we do not weigh causes.⁸¹ We emphasize that we need not determine that the cumulated imports are the principal or a substantial cause of material injury. Rather, we are required to determine whether the cumulated imports are a cause of, that is, contribute to, material injury.⁸²

Cumulated imports have increased steadily and significantly over the period of the investigation, from 60,260 tons in 1991 to 184,741 tons in 1993.⁸³ Imports in interim 1994

⁷⁷ Table 22, CR at I-81, PR at II-34. Of course, it is quite likely that the more recent import trends were affected by the filing of the petition in this case.

⁷⁸ See, e.g., Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 40.

⁷⁹ 19 U.S.C. § 1677(7)(B)(i).

⁸⁰ 19 U.S.C. § 1677(7)(B)(ii).

⁸¹ E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). See also S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁸² See S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979). See e.g., Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (Ct. Int'l Trade 1991).

⁸³ Table 21, CR at I-76, PR at II-31.

(January-June) totalled 64,313 tons compared to 61,315 tons in interim 1993.⁸⁴ Significantly, the unit value of these imports declined during each full year of the investigation, from \$476.36 per ton in 1991 to \$397.46 per ton in 1993.⁸⁵ Only in the interim 1994 period, and likely as a result of the filing of the petition in this investigation,⁸⁶ were unit values higher than for the preceding comparable period.⁸⁷

Cumulated imports have also substantially increased their share of domestic consumption during the period of investigation, from *** percent in 1991 to *** percent in 1993.⁸⁸ The interim 1994 share was *** than for the same period in 1993.⁸⁹

Prices for silicomanganese declined significantly throughout most of the period, with some recovery in late 1993 and a substantial rise in 1994 -- the latter likely a result of the pendency of this investigation.⁹⁰ The decline in prices between 1991 and 1993 occurred simultaneously with the substantial surge in imports from the subject countries.⁹¹ The record reveals a mixed pattern of underselling and overselling. Data obtained by Commission staff on domestic and subject import contract sales show 21 instances of underselling and 19 instances of overselling by the imports.⁹² The data on spot market sales show 8 instances of underselling and 5 instances of overselling.⁹³

The negative effects of the price and the volume of the imports is clear. For example, between 1991 and 1992, notwithstanding an increase in consumption and sales of domestic product, operating income ***, as the industry incurred losses and the operating income margin *** percent to *** percent.⁹⁴ At the same time, the unit value of the cumulated imports dropped from \$476.36 per ton to \$429.28 per ton,⁹⁵ and the unit value of the domestic product fell from ***,⁹⁶ while nonsubject imports only declined from \$499.89 to \$472.06 per ton.⁹⁷

The impact of the unfairly traded cumulated imports is further demonstrated by an examination of the lost sales and lost revenue allegations. First, end users seldom know or care to know the source of the silicomanganese they buy. They purchase the product

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ See Hearing Tr. at 29-30.

⁸⁷ Id.

⁸⁸ Table 22, CR at I-80, PR at II-34.

⁸⁹ Id.

⁹⁰ Figure H-1, CR at H-3, PR at H-3.

⁹¹ Id.

⁹² Table 23, CR at I-91, PR at II-34.

⁹³ Table 24, CR at I-92, PR at II-34.

⁹⁴ Table 12, CR at I-52, PR at II-23. Commissioner Rohr notes that ***.

⁹⁵ Table 21, CR at I-76, PR at II-31.

⁹⁶ Table 2, CR at I-30, PR at II-15.

⁹⁷ Table 2, CR at I-30, PR at II-15. In Commissioner Rohr's view, basic economic analysis further supports the conclusion that the price and volume of the imports have had significant negative effects on the domestic industry. See EC-R-120. In 1993, the unfairly traded cumulated imports occupied *** percent of the domestic market, compared to *** percent of the market occupied by the domestic industry. Using the economic assumptions contained in the Commission's economic memoranda, the unfair traded portion of the market represents a loss of domestic revenue of between *** percent. Elimination of the unfair imports would result in an increase in domestic prices of between *** percent and of domestic output of over *** percent.

principally on the basis of the manganese content of the product; any differences in quality between sources, as long as the seller has been qualified, does not appear to be a significant issue for purchasers.⁹⁸ Most importantly, the only thing purchasers consistently agree on is that price is a very important factor.⁹⁹ We know that price does not significantly affect the total quantity sold of silicomanganese because this is a price inelastic product.¹⁰⁰ The effect of lower prices is to shift sales from fairly priced domestic product and non-subject imports to unfair Brazilian, Chinese, Ukrainian and Venezuelan imports.

For the foregoing reasons, we conclude that the domestic industry is being materially injured by reason of cumulated imports from Brazil, China, Ukraine and Venezuela, which have been found by the Department of Commerce to be sold at less than fair value in the United States market.

V. CRITICAL CIRCUMSTANCES

Commerce made final determinations that critical circumstances exist with respect to imports from China and Ukraine.¹⁰¹ When Commerce makes an affirmative critical circumstances determination, the Commission is required to determine, for each domestic industry for which it makes an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."¹⁰² The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed.¹⁰³

An affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order, the surge of imports that occurred after the case was filed, but within the 90 day period prior to suspension of liquidation, will prolong or cause a recurrence of material injury to the domestic industry.¹⁰⁴ The purpose of the provision is to provide relief from the effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.¹⁰⁵

In applying the critical circumstances criteria to this investigation, we note that the petition in these investigations was filed on November 12, 1993. The Commission's preliminary affirmative determination was issued in December of 1993. The suspension of liquidation, however, did not take place until June of 1994.¹⁰⁶ Imports from China fell from a peak of 29,820 short tons in November of 1993 to 9,714 tons in December 1993, 18,649 tons in January of 1994, 1,102 tons in February 1994 and zero thereafter.¹⁰⁷ Thus, the 90-

⁹⁸ CR at I-88 - I-89, PR at II-37.

⁹⁹ Id.

¹⁰⁰ See supra note 35 and accompanying text.

¹⁰¹ 59 Fed. Reg. 55435 (1994) (attached to the Report at Appendix A).

¹⁰² 19 U.S.C. § 1673d(b)(4)(A)(i).

¹⁰³ 19 U.S.C. § 1673d(b)(4)(A)(ii).

¹⁰⁴ 19 U.S.C. § 1673d(c)(4). The Commission need not find a separate causal link between the massive imports and material injury. ICC Industries, Inc. v. United States, 632 F. Supp. 36, 40 (Ct. Int'l Trade 1986), aff'd, 812 F.2d 694 (Fed. Cir. 1987).

¹⁰⁵ See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

¹⁰⁶ 59 Fed. Reg. 31199, 31200 (June 17, 1994).

¹⁰⁷ Table F-1, CR at F-3, PR at F-3.

day period for which retroactive suspension would occur would include the months of March, April and May of 1994, during which time there were no Chinese imports.¹⁰⁸

As in the case of China, the petition with respect to Ukraine was filed on November 12, 1993, and liquidation was suspended with respect to Ukrainian imports on June 17, 1994.¹⁰⁹ According to official statistics, imports from Ukraine fell from an all-time high monthly shipment of 17,445 tons in November 1993 to 1,875 tons in January 1994, 11,311 tons in March 1994, 2,274 tons in April 1994, and zero thereafter.¹¹⁰

As discussed at the Commission's briefing and vote on December 6, 1994, the actual dates of entry for these March shipments of silicomanganese from Ukraine were March 15, 1994 and March 17, 1994.¹¹¹ If these shipments were entered during the 90 period covered by Commerce's critical circumstances finding, over 13,000 tons, would be affected by our finding. At the briefing and vote, we were informed that the critical circumstances finding included all entries made on and after March 17, 1994. Upon further recalculation it now appears that the operative date going back 90 days from the June 1994 suspension of liquidation is March 19, 1994. As a result, none of the March imports would be covered by an affirmative critical circumstances finding.

We therefore make negative findings under section 735 (b)(4)(A) with respect to imports from China and Ukraine.

¹⁰⁸ At the hearing, petitioner conceded that, in its view, there is no basis under existing Commission practice for an affirmative critical circumstances determination absent any imports during the 90-day period, and stated that it was not offering any argument that existing practice should be changed. Hearing Tr. at 78.

¹⁰⁹ 59 Fed. Reg. 31201, 31203 (June 17, 1994).

¹¹⁰ Table F-3, CR at F-4, PR at F-4. Imports in all intervening months not specifically mentioned were zero.

¹¹¹ Vote Transcript (Dec. 6, 1994) at 6.

**VIEWS OF CHAIRMAN PETER S. WATSON, VICE CHAIRMAN JANET A. NUZUM,
COMMISSIONER CAROL T. CRAWFORD AND COMMISSIONER
LYNN M. BRAGG**

Based on the record in these final investigations,¹ we determine that the industry in the United States producing silicomanganese is threatened with material injury by reason of imports of silicomanganese from the People's Republic of China ("China") that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").² We further determine that the industry in the United States producing silicomanganese is neither materially injured nor threatened with material injury by reason of imports of silicomanganese from Brazil,³ Ukraine,⁴ and Venezuela that have been found by Commerce to be sold in the United States at LTFV.⁵

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Background and Product Description

In determining whether an industry in the United States is materially injured or 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 a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."⁶ In turn, the Act defines "like product" as a

¹ During the course of these investigations, allegations were made that petitioner may have failed to serve certain documents, including its audited financial statements, on other parties at the time those documents were provided to the Commission. Commission rule 207.3(b) provides that "[a]ny party submitting a document for inclusion in the record of the investigation shall . . . serve a copy of each such document on all other parties to the investigation . . ." This rule appears to have resulted in some confusion where, as in this instance, documents are provided directly to Commission staff on an ad hoc basis. Under the rules, while such information has not been formally filed with the Secretary, it does constitute part of the record of the investigation and therefore must be served when it is provided to the Commission. See 19 C.F.R. § 207.2(f)(1). Based on explanations provided by petitioner at our request, we have determined not to take adverse inferences against petitioner for any of the service irregularities that occurred in these investigations. We caution the parties and the public, however, that breaches of the Commission's service rules may result in sanctions against either the party or counsel found to be responsible. See 19 C.F.R. § 207.3(b); 19 C.F.R. § 207.3(c); 19 U.S.C. § 1677e(c) and 19 C.F.R. § 207.8; 19 C.F.R. § 201.15(a).

² Commissioner Crawford dissenting. See Dissenting Views of Commissioner Crawford on No Threat of Material Injury By Reason of Imports from Brazil and China.

³ Chairman Watson determines that the domestic industry producing silicomanganese is threatened with material injury by reason of LTFV imports from Brazil. See Separate Views of Chairman Watson on Threat of Material Injury By Reason of Imports from Brazil.

⁴ Vice Chairman Nuzum determines that the domestic industry producing silicomanganese is threatened with material injury by reason of LTFV imports from Ukraine. See Additional and Dissenting Views of Vice Chairman Nuzum.

⁵ Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

⁶ 19 U.S.C. § 1677(4)(A).

"product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."⁷

Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁸ No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally, we require "clear dividing lines among possible like products" and disregard minor variations.⁹

Commerce has identified the imported merchandise subject to these investigations as:

silicomanganese, which is sometimes called ferrosilicon manganese, . . . 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorus. All compositions, forms and sizes of silicomanganese are included within the scope of [these] investigation[s], including silicomanganese slag, fines and briquettes. . . . [These] investigation[s] 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 (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040.¹⁰

Silicomanganese is a metallic, silvery ferroalloy used primarily as an additive in the production of steel because of its desulfurization, deoxidation, and alloying properties. Silicomanganese provides a source of both manganese and silicon. In 1993, the steel industry accounted for 96 percent of U.S. silicomanganese consumption. Additionally, cast iron producers use silicomanganese as an alloying agent as do producers of medium-carbon ferromanganese.¹¹

Silicomanganese is generally produced in a electric arc furnace by smelting together sources of silicon, manganese, iron and a carbonaceous reducing agent, usually coke, with other minor elements. Following smelting, molten metal and slag are tapped from the furnace. Once separated from the slag, molten silicomanganese is poured into molds to cool and harden, then crushed into lumps of the desired size for sale.¹²

Most silicomanganese is sold in three grades, ASTM grades A, B, and C, which are distinguished by their silicon and carbon contents. Grade B silicomanganese accounts for the

⁷ 19 U.S.C. § 1677(10).

⁸ In analyzing like product issues, the Commission generally considers six factors, including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and (6) where appropriate, price.

⁹ Torrington Co. v. United States, 747 F. Supp. 744, 748-749 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

¹⁰ 59 Fed. Reg. 55432, 554333 (Brazil), 55435 (China), 55436 (Venezuela) (Nov. 7, 1994); 59 Fed. Reg. 62711 (Dec. 6, 1994) (Ukraine).

¹¹ Confidential Report ("CR") at I-5-I-6, I-8-I-12; Public Report ("PR") at II-5, II-7-II-9.

¹² CR at I-12-I-15; PR at II-7-II-9.

majority of sales in the United States. 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.¹³ Silicomanganese containing more or less than the ASTM specified content of particular elements is still considered silicomanganese. Producers and purchasers do not universally follow the ASTM standard either outside or within the United States.¹⁴

B. Analysis

In our preliminary investigations, we found a single like product consisting of all silicomanganese.¹⁵ In these final investigations, Ukrainian respondents argue for the first time that Ukrainian off-specification silicomanganese is a separate like product.¹⁶ Petitioner contends, as it did in the preliminary investigations, that there is a single like product.¹⁷

Under the statute, we must identify the domestic product that is "like, or in the absence of like, most similar in characteristics and uses with" the product subject to investigation.¹⁸ The Ukrainian off-specification product is clearly within the scope of these investigations.¹⁹ The domestic industry does not produce a product that shares the exact chemistry of the Ukrainian product.²⁰ In such circumstances, we must identify the domestic product that is most similar to the Ukrainian product in characteristics and uses. Ukrainian respondents offer no alternative to finding that domestic silicomanganese (principally grade B)

¹³ CR at I-5-I-6; PR at II-4. 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 percent to 16.0 percent silicon and a maximum of 3.0 percent carbon.

¹⁴ CR at I-5-I-6 and n.5, I-85-I-86, PR at II-4 and n.5, II-36; Transcript of Commission Hearing (Nov. 3, 1994) at 108, 112 ("Hearing Tr."); Ukrainian Posthearing Brief, Exhibit 5 at 1-3; Letter dated Oct. 31, 1994, from Kent Baumgardner, Director of Purchasing, Georgetown Steel Corp., to the Commission (attached to the hearing Statement of James F. Collins, President, Steel Manufacturers Ass'n, Nov. 3, 1994).

¹⁵ Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Inv. Nos. 671-674 (Preliminary), USITC Pub. 2714 at I-7-I-8 (Dec. 1993) ("Prelim. Det.").

¹⁶ Prehearing Brief on Behalf of Zaporozhye Ferroalloys Plant, Nikopol Ferroalloys Plant, AIOC Corp., and Minerais, U.S. Inc. (Oct. 28, 1994) at 23 and Exhibit 17 ("Ukrainian Prehearing Brief"). Venezuelan and Brazilian respondents do not address the issue of like product. No Chinese party entered an appearance in these investigations.

¹⁷ Petitioner's Prehearing Brief (Oct. 28, 1994) at 4-11; Petitioner's Posthearing Brief (Nov. 14, 1994) at 3. There are two petitioners in these investigations: Elkem, the sole domestic producer of silicomanganese, and the labor union that represents its silicomanganese production employees. For convenience, we refer to Elkem as "petitioner" in the singular.

¹⁸ 19 U.S.C. § 1677(10).

¹⁹ See, e.g., 59 Fed. Reg. 55432, 55433 (1994) ("All compositions, forms and sizes of silicomanganese are included within the scope of this investigation . . ."). Moreover, Commerce did not find Ukrainian silicomanganese to be a separate class or kind of imported merchandise.

²⁰ CR at I-6-I-7, I-86-I-87, PR at II-4-II-5, II-36-II-37.

is the product most like the Ukrainian imports, and, in the absence of contrary evidence, we so find.²¹

In conclusion, we reaffirm our preliminary determination that there is a single like product in these investigations consisting of all silicomanganese. Consequently, we determine that the domestic industry consists of petitioner Elkem, the sole domestic producer of silicomanganese.

II. RELATED PARTIES

The related parties provision, 19 U.S.C. § 1677(4)(B), allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. Applying the provision involves two steps. First, the Commission must determine whether a domestic producer satisfies the definition of a related party. The statute defines a related party as a domestic producer who is either related to exporters or importers of the product under investigation, or is itself an importer of that product. If a producer is "related" under section 771(4)(B), the Commission then determines whether "appropriate circumstances" exist for excluding the producer in question from the definition of the domestic industry.²² Exclusion of a related party is within the Commission's discretion based upon the facts presented in each investigation.²³

In our preliminary determination, we found that Elkem was not a related party, but indicated that we would investigate this issue further in any final investigations.²⁴ In these final investigations, Ukrainian and Brazilian respondents offer multiple reasons why Elkem should be considered a related party.²⁵ Petitioner responds that the related parties provision

²¹ Similarly, petitioner initially failed to provide data on its imports of low-carbon silicomanganese, apparently believing that it is either outside the scope of investigation or otherwise not a like product. See Prehearing Staff Report (Oct. 21, 1994) at I-28 n.44. Low-carbon silicomanganese is not presently produced in the United States. CR at I-6, PR at II-4. It is, however, within the scope of these investigations. See, e.g., 59 Fed. Reg. 55432, 55433 (1994). In the absence of evidence or argument to the contrary, we find that domestic silicomanganese is the product most similar to imported low-carbon silicomanganese.

We also find that the like product includes both lumps and fines. Silicomanganese fines are within the scope of these investigations. 59 Fed. Reg. 55432, 55433 (1994). The Commission does not generally define separate like products on the basis of size alone. See, e.g., Certain Seamless Carbon and Alloy Standard, Line and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Preliminary), USITC Pub. 2801 at I-9 & n.26 (Aug. 1994). Silicomanganese fines, although smaller in size than lumps, have the same chemistry. Contrary to petitioner's assertions, fines are sold on the open market to the same end users that purchase lump silicomanganese (steel makers), albeit at lower prices. CR at I-7-I-8, I-87 n.99; PR at II-5, II-37 n.99. Moreover, fines are produced through the same production process as lump silicomanganese. CR at I-7; PR at II-5.

²² 19 U.S.C. § 1677(4)(B).

²³ See Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993).

²⁴ Prelim. Det. at I-8-I-9.

²⁵ Specifically, respondents argue that: (1) Elkem imports and purchases significant quantities of non-subject imports and has corporate and/or commercial ties with foreign producers of non-subject imports; (2) Elkem has purchased subject imports, although it was not the importer of record; (3) Elkem "takes title to" or is the "consignee" of subject imports and is therefore itself an "importer" as defined in the Commission's importer's questionnaire; (4) Elkem has swapped domestic product for

(continued...)

is intended to reach only relationships that affect the condition of the domestic industry and that none of the asserted relationships has such an effect.²⁶

We find that neither Elkem's complex web of corporate and commercial relationships with foreign producers and importers of non-subject imports nor its own importation of significant quantities of non-subject imports makes Elkem a related party. Under the statute, the pertinent questions are whether Elkem is related to foreign producers or importers of the subject merchandise or has itself imported subject merchandise.²⁷

Elkem purchased subject imports during the period of investigation, but was never the importer of record. Elkem's purchases of subject imports were small both in absolute terms and as a share of the volume of total subject imports throughout the period of investigation.²⁸ We disagree with respondents' argument that because Elkem eventually took title to this merchandise, Elkem by definition qualifies as an "importer." Any person who eventually purchases an imported product takes title to it, but not all of them are the "importer" for purposes of the related party provision. The statute's concern is with the party that controls the importation or on whose account the product is originally imported, not later entities in the chain of title.

In these investigations, there is no record evidence that Elkem is the first U.S. party to take title to the subject imports it purchases; rather, Elkem purchases these imports, duty paid, from other domestic entities on the open market. Nor is there any evidence that the importers from which Elkem makes its purchases are operating pursuant to contractual arrangements with or advance orders from Elkem.²⁹ Indeed, there is no evidence that Elkem has any "special relationship with [any] importer of record or otherwise controls the purchase

²⁵ (...continued)

subject imports; and (5) Elkem has a corporate relationship with an importer of the subject merchandise. See Prehearing Brief on Behalf of Companhia Paulista de Ferro-Ligas and Sibra Electro-Siderurgica Brasileira S/A (Oct. 28, 1994) at 9-13 ("Brazilian Prehearing Brief"); Ukrainian Prehearing Brief at 59-66; Brazilian Posthearing Brief at 24-26; Ukrainian Posthearing Brief, Exhibit 4 at 1-4.

²⁶ Petitioner's Posthearing Brief, Exhibit 2 at 1-2. Petitioner argues that: (1) relationships with producers or importers of non-subject imports are irrelevant for purposes of the related parties provision; (2) Elkem has no corporate affiliation with any producer of merchandise subject to investigation and "is neither an importer of subject merchandise nor related to any importers of subject merchandise"; (3) swaps are ad hoc, post-sale events by nature and therefore cannot be the basis for a finding of any relationship between Elkem and a swap partner; and (4) the mere fact that Elkem benefits from its purchases of subject imports is not enough to create a related status where it has no special relationship with any importer and is no importer's principal customer. Petitioner's Prehearing Brief at 12-15; Petitioner's Posthearing Brief, Exhibit 2 at 1-7.

²⁷ 19 U.S.C. § 1677(4)(B).

²⁸ Elkem's purchases of subject imports were *** short tons or *** percent of total U.S. shipments of subject imports in 1991, *** short tons or *** percent of U.S. shipments of subject imports in 1992, *** short tons or *** percent of U.S. shipments of subject imports in 1993, and *** short tons in interim 1994 compared with *** short tons and *** percent of U.S. shipments of subject imports in interim 1993. Table G-2, CR at G-4, PR at G-3; Table 2, CR at I-30, PR at II-15. Elkem's purchases included imports from ***.

²⁹ Petitioner's Posthearing Brief, Exhibit 2 at 4.

of large volumes of imports by the importers of record."³⁰ Accordingly, we do not find Elkem to be a related party by virtue of its non-import purchases of subject merchandise.³¹

The final ground proposed for finding Elkem to be a related party is its corporate relationship with Broken Hill Proprietary ("BHP U.S.A."), an importer of the subject merchandise that accounted for *** percent of subject imports in 1993.³² The corporate relationship is indirect, based on the existence of a joint venture between their respective parent corporations.³³ Elkem and BHP U.S.A. have no common ownership. BHP U.S.A. has never supplied subject imports to Elkem.³⁴ There is no evidence on the record in these investigations that either Elkem or Elkem A/S can exercise control over the importing activities of BHP U.S.A. as a result of their corporate affiliation.³⁵ Therefore, in light of the attenuated nature of the corporate affiliation between Elkem and BHP U.S.A., the absence of any evidence that Elkem or its parent can in fact exercise any control over BHP U.S.A.'s importing operations, the minor nature of BHP U.S.A.'s dealings in subject imports, and the absence of any dealings between Elkem and BHP with respect to the subject imports, we determine that this affiliation does not constitute a "relationship" under the statute. Consequently, we find that Elkem is not a related party.³⁶

³⁰ CR at G-5 and n.1, PR at G-3 and n.1; Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. Nos. 731-TA-520-521 (Final), USITC Pub. 2528 at 12 (June 1992) (relying on facts that domestic producer had a contractual relationship with several importers, was their principal customer, and controlled their purchases in finding the producer to be a related party).

³¹ We also agree with petitioner that Elkem is not a related party by virtue of its swap transactions. Elkem's swap transactions are ***. Table 8, CR at I-45, PR at II-20 (swaps of Marietta material), and CR at G-6, PR at G-3 (swaps of non-Marietta material). Moreover, swaps are ad hoc transactions that are not arranged until after a sale is made, and there is no evidence that Elkem has any kind of "special relationship" with any importer with whom it engaged in swaps or controlled any importer's purchases for purposes of regular swap dealings of any magnitude. Hearing Tr. at 35-36.

³² Table 1, CR at I-22, PR at II-13; Petitioner's Posthearing Brief, Exhibit 2 at 5-6. Although BHP U.S.A. is ***, CR at I-23, PR at II-13.

³³ Elkem is a wholly-owned subsidiary of the Norwegian corporation Elkem A/S. BHP U.S.A. is a subsidiary of Broken Hill Proprietary Co. ("BHP"), an Australian silicomanganese producer. Elkem A/S and BHP are joint venture partners in ***. CR at D-4 n.1, PR at D-3 n.1; Petitioner's Posthearing Brief, Exhibit 2 at 5-6.

³⁴ Although BHP U.S.A. has sold *** silicomanganese to Elkem, it has never sold Elkem any subject imports. CR at I-23, PR at II-13.

³⁵ While BHP U.S.A.'s shipments of subject imports have been to ***, this is just as likely to be due to *** as to a concerted effort by joint venture partners Elkem A/S and BHP to avoid competing in the U.S. market. Compare CR at I-23 and n.47, PR at II-13 n.47, with Table 5, CR at I-36, PR at II-17.

³⁶ The Commission has previously stated that, to establish a "relationship" for purposes of the related parties provision, a corporate affiliation between an exporter or importer and a domestic producer must pertain to the unfairly traded articles under investigation. Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664 at 97 (Aug. 1993); Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529 at 14 n.45 (July 1992). Compare Wheel Inserts from Taiwan, Inv. No. 731-TA-721 (Preliminary), USITC Pub. 2824 at I-7 (Oct. 1994) (petitioner is related party where sister company was substantial importer of subject merchandise and petitioner marketed all those imports for its sister company).

Because we have found that Elkem is not a related party, we do not reach the issue of whether appropriate circumstances exist to exclude Elkem from the domestic industry.³⁷

III. CONDITION OF THE DOMESTIC INDUSTRY³⁸

In assessing whether the domestic industry is materially injured by reason of 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, 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."³⁹

A significant condition of competition distinctive to this industry is the market's dependence on imports of subject and non-subject silicomanganese. It is clear that Elkem, even operating at full capacity, cannot supply much more than *** percent of domestic demand with U.S.-produced silicomanganese.⁴⁰ Aside from Elkem, the only domestic sources of silicomanganese are the Defense National Stockpile Center, which retains only *** short tons in its strategic reserve of silicomanganese, and limited remaining inventories of former domestic producer SKW.⁴¹ Therefore imported silicomanganese is needed to meet a

³⁷ In the preliminary determination for these investigations, Commissioner Crawford noted that 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. The record demonstrates that 1) petitioner is affiliated with a number of producers in non-subject countries, 2) petitioner filed cases against imports from countries whose producers are not affiliated with petitioner, and 3) petitioner sells a large volume of both subject and non-subject imports to its customers. However, the statute authorizes the Commission to exclude a domestic producer as a related party only if the producer is related to exporters or importers of or is itself an importer of subject merchandise. The most probative evidence in this regard is the fact that petitioner accounted for *** percent of one importer's shipments of subject imports. While it is a close call, Commissioner Crawford finds that this fact alone, without evidence of petitioner's "relatedness" to the importers of subject imports, such as formal or informal control over the importer, is not sufficient to justify a finding that petitioner is a related party. Therefore, she does not reach the issue of appropriate circumstances. Commissioner Crawford notes, however, that the record suggests two strategies by petitioner in this market. First, petitioner sells large volumes of imported silicomanganese, both subject and non-subject imports, as well as its own production. Second, petitioner has targeted its legal actions against producers with whom it is not affiliated. Although the law currently does not reach this conduct because petitioner is not an importer or related to an importer, such targeting might otherwise support a finding that appropriate circumstances exist to exclude a related party. However, the potential for manipulation of prices and the price effects on downstream industries appears to be beyond the reach of the statute.

³⁸ Vice Chairman Nuzum does not join the remainder of these joint views. See the Additional and Dissenting Views of Vice Chairman Nuzum, *infra*.

³⁹ 19 U.S.C. § 1677(7)(C)(iii). No arguments addressing the business cycle were raised by any of the parties to these investigations, nor did we receive any information relevant to such a consideration.

⁴⁰ Table 2, CR at I-30, PR at II-15 (apparent consumption); Table 6, CR at I-41, PR at II-19 (capacity); see also Figure C-1, CR at C-6, PR at C-4.

⁴¹ The stockpile was largely liquidated in 1992 and 1993 through payments in kind to Elkem in exchange for the conversion of stockpiled manganese metal to ferromanganese. CR at I-20 & n.38, I-28; PR at II-12 & n.38, II-14.

large portion of domestic demand. Over the period of investigation, non-subject imports, among which the largest sources were South Africa, Australia, and Mexico, accounted for the largest share of domestic silicomanganese consumption, although that share decreased.⁴² Moreover, as discussed above, Elkem itself had a significant role in the direct importation of and swaps for non-subject imports and has also purchased and swapped for subject imports.⁴³

A second condition of competition is the competitive nature of the U.S. silicomanganese market. A large number of importers participate in the U.S. silicomanganese market.⁴⁴ More than a dozen non-subject countries, in addition to the four subject countries, export silicomanganese to the United States.⁴⁵ Many industry participants use an industry publication, *Metals Week*, as a guide when negotiating sales prices,⁴⁶ and most end users reported seeking bids from an average of 6 or 7 suppliers for each purchase of silicomanganese.⁴⁷

An additional condition of competition distinctive to this industry is the derived nature of demand. Demand is driven largely by the level of steel production of producers using electric arc furnaces (minimills).⁴⁸ Moreover, silicomanganese accounts for only a small percentage of the cost of the finished steel product, generally less than 3 percent. Thus, demand for silicomanganese tends to be inelastic.⁴⁹

A final condition of competition is the domestic industry's ability to use its silicomanganese production capacity to produce a second product, ferromanganese.⁵⁰ Elkem has reported that switching its silicomanganese furnace to the production of ferromanganese is a relatively simple procedure, and Elkem did, in fact, switch back and forth from silicomanganese to ferromanganese production in that furnace on several occasions during the period of investigation.⁵¹

Apparent U.S. consumption by quantity of silicomanganese rose significantly from 1991 to 1993 and was higher in interim 1994 than in interim 1993.⁵² Apparent U.S. consumption by value of silicomanganese followed the same trend.⁵³

During the period of investigation, domestic production of silicomanganese increased from 1991 to 1992, fell slightly between 1992 and 1993, and was higher in interim 1994 than in interim 1993.⁵⁴ Reported production capacity, measured as end-of-period capacity, fell

⁴² Table 22, CR at I-80, PR at II-34; Figure 5, CR at I-81, PR at II-34; Figure C-1, CR at C-5, PR at C-4; Table F-5, CR at F-5, PR at F-5.

⁴³ CR at I-24, I-38, G-5-G-6, PR at II-13, II-17, G-3; Table 13, CR at I-57-I-58, PR at II-24; Tables G-1 and G-2, CR at G-3-G-5, PR at G-3.

⁴⁴ CR at I-22, PR at II-13.

⁴⁵ Table F-5, CR at F-5, PR at F-5.

⁴⁶ CR at I-83, PR at II-35.

⁴⁷ CR at I-88, PR at II-37.

⁴⁸ Memorandum EC-R-116 (Dec. 2, 1994) at 12.

⁴⁹ Memorandum EC-R-116 at 13, 32-33.

⁵⁰ This ability is not unique to the domestic industry. Brazilian producers appear to have the same ability. Table 17 n.2, CR at I-67, PR at II-28; CR at I-73, PR at II-28; Hearing Tr. at 164.

⁵¹ CR at I-40 and n.61, I-42; PR at II-19 and n.61; Hearing Tr. at 29, 79.

⁵² Apparent consumption rose from ***. In interim 1994, apparent consumption was ***. Table 2, CR at I-30, PR at II-15; Table C-1, CR at C-3, PR at C-3.

⁵³ Apparent consumption by value rose from ***. Table 2, CR at I-30, PR at II-15; Table C-1, CR at C-3, PR at C-3.

⁵⁴ Production rose from ***. Table 6, CR at I-41, PR at II-19.

from 1991 to 1992, then rose from 1992 to 1993 and between the interim periods. Reported average-of-period capacity rose consistently over the period of investigation.^{55 56} Reported end-of-period capacity utilization rose from 1991 to 1992, fell in 1993, remaining above its 1991 level, and was higher in interim 1994 than in interim 1993. End-of-period capacity utilization reflects the Elkem's total production of silicomanganese, divided by the total production capacity of Elkem's silicomanganese furnace. Reported average-of-period capacity utilization followed the same trend from 1991 to 1993, but was lower in interim 1994 than in interim 1993, and remained at all times at *** levels. Average-of-period capacity utilization reflects Elkem's total capacity to produce silicomanganese during those times when the furnace was dedicated to the production of silicomanganese rather than ferromanganese.⁵⁷

U.S. shipments of silicomanganese, including internal transfers,⁵⁸ rose from 1991 to 1993 and were higher in interim 1994 than in interim 1993.⁵⁹ Domestic end-of-period inventories of silicomanganese also rose from 1991 to 1993 and were higher in interim 1994 than in interim 1993.⁶⁰ The ratio of inventories to total shipments (including exports) fell from 1991 to 1992, rose in 1993 to greater than its 1991 level, and was higher in interim 1994 than in interim 1993.⁶¹

The average number of production and related workers producing silicomanganese rose from 1991 to 1992, declined from 1992 to 1993, remaining above its 1991 level, and was higher in interim 1994 than in interim 1993.⁶² Hours worked, total wages, and total compensation followed the same trend, while hourly wages and productivity rose consistently over the period of investigation.⁶³

⁵⁵ End-of-period capacity ***. End-of-period capacity reflects Elkem's capacity if its furnace is dedicated full-time to the production of silicomanganese. The rise in Elkem's end-of-period capacity ***. CR at I-42, PR at II-19; Table 6, CR at I-41, PR at II-19. Average-of-period capacity ***. Average-of-period capacity reflects Elkem's capacity to produce silicomanganese during those periods of time that the furnace was not dedicated to the production of ferromanganese. Id.

⁵⁶ Commissioner Crawford finds that end-of-period capacity is the more appropriate measure of petitioner's ability to produce silicomanganese. It takes only 8 to 24 hours to switch from producing silicomanganese to producing ferromanganese. Thus, petitioner can easily change its product mix in response to a change in the relative prices of the products. Petitioner has in fact done so: in 1993, petitioner switched to produce ferromanganese because of low silicomanganese prices. Thus, the total capacity of the furnace, as measured by end-of-period capacity, represents the actual capacity available to produce silicomanganese.

⁵⁷ Reported end-of-period capacity utilization ***. Table 6, CR at I-41, PR at II-19. Reported average-of-period capacity utilization ***. Id.

⁵⁸ Elkem's internal transfers consist of fines generated by its production process that are recycled in the furnace. Elkem does not captively consume fines in the production of downstream products. Both Elkem and various importers also make commercial shipments of fines. CR at I-41 n.62, PR at II-19 n.62; Table 4 and n.1., CR at I-33, PR at II-16; Hearing Tr. at 42.

⁵⁹ Shipments rose from ***. Table 8, CR at I-45, PR at II-20. U.S. open market shipments (excluding recycled fines) followed the same trend, ***. Id. ("all domestic shipments").

⁶⁰ Inventories rose from ***. Table 9, CR at I-47, PR at II-21.

⁶¹ The ratio of inventories to total shipments ***. Table 9, CR at I-47, PR at II-21.

⁶² The number of PRWs ***. Table 10, CR at I-48, PR at II-21.

⁶³ Table 10, CR at I-48, PR at II-21.

Because there is only one domestic producer of silicomanganese, we can only discuss financial performance in general terms in our public views. Elkem earned a net profit in 1991 in its domestic silicomanganese production operations. Over the period 1991 to 1993, Elkem's profits declined, as did the company's gross, operating and net income. In 1992 Elkem suffered a loss at the operating level, and in 1993 it suffered losses at all levels. Although these trends began to reverse in interim 1994, Elkem's silicomanganese operation remained unprofitable.⁶⁴

Capital expenditures on silicomanganese *** over the period of investigation, but ***.⁶⁵ The value of total assets employed in Elkem's silicomanganese operations ***.⁶⁶ Elkem reported that investment plans to *** were cancelled or postponed due to the effects of the subject imports.⁶⁷

⁶⁴ Hearing Tr. at 23, 28-29, 39-40. Domestic producers' net sales of silicomanganese produced in its U.S. establishment by value ***. Table 12, CR at I-53, PR at II-23. The industry's operating income ***. Table 12, CR at I-53, PR at II-23. The industry's operating income as a percentage of net sales ***. Table 12, CR at I-53, PR at II-23.

⁶⁵ Table 15, CR at I-61, PR at II-24.

⁶⁶ Table 14, CR at I-60, PR at II-24.

⁶⁷ CR at E-3, PR at E-3. Elkem's assertions with respect to the temporary conversion of its silicomanganese furnace to the production of ferromanganese in March through July of 1993 are discussed infra.

VIEWS OF CHAIRMAN PETER S. WATSON, COMMISSIONER CAROL T. CRAWFORD AND COMMISSIONER LYNN M. BRAGG ON CUMULATION

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and effects of imports from two or more countries of like products subject to investigation if such imports compete with each other and with the domestic like product in the United States market.¹ However, the Commission has discretion not to cumulate imports from a particular country that are "negligible" and have no discernible adverse impact on the domestic industry.²

In assessing whether imports compete with each other and with the domestic like product, the Commission generally considers 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.³

While no single factor is determinative, and the list of factors is not exclusive, these factors provide the Commission with a framework for analysis. The framework involves two tests: (1) whether the subject imports compete with each other; and (2) whether the subject imports compete with the domestic like product. Both tests must be met. However, only a "reasonable overlap" of competition is required.⁴

¹ 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990). Imports from Ukraine are subject to a suspension agreement signed October 31, 1994. In general, the Commission considers that imports subject to suspension agreements are not "subject to investigation". See Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. Nos. 701-TA-275-278 and 731-TA-327-331 (Final), USITC Pub. 1956 at 19 (Mar. 1987). However, the Commission has determined that imports subject to a suspension agreement but as to which the investigation has been continued pursuant to 19 U.S.C. § 1673c(g) are "subject to investigation" for purposes of cumulation. See Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Inv. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 at 12 (Sept. 1987). Commerce notified the Commission on December 2, 1994, that it had granted the parties' requests to continue the Ukrainian investigation. See 59 Fed. Reg. 62711 (Dec. 6, 1994). Accordingly, on our vote date, imports from Ukraine were subject to investigation and therefore must be cumulated if the statutory requirements are satisfied.

² 19 U.S.C. § 1677(7)(C)(v).

³ 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 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁴ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (Ct. Int'l Trade 1989) ("Completely overlapping markets are not required.").

Based on the discussion below, we determine that there is no reasonable overlap of competition between imports from Ukraine and the domestic like product. We also find that there is no reasonable overlap of competition between imports from Venezuela and the domestic like product. Therefore, we do not cumulate imports from Ukraine or Venezuela. We also determine that there is a reasonable overlap of competition between subject imports from Brazil and China and the domestic like product. Therefore, we cumulate imports from Brazil and China.⁵

A. Reasonable Overlap of Competition

1. Fungibility

In the preliminary investigations, we found that imports from each of the subject countries and the domestic like product are fungible, but stated that we would revisit this issue in any final investigation.⁶

In these final investigations, Ukrainian respondents argue that Ukrainian imports are not fungible with the domestic product or other imports because the Ukrainian product is off-specification merchandise with a distinct metallurgy that precludes its use in many applications and is sized differently than other silicomanganese.⁷ Brazilian respondents argue that imports from Brazil are not interchangeable with off-specification Ukrainian silicomanganese or with the Chinese product, which is of inferior quality.⁸ Petitioner argues that silicomanganese imports from all four subject countries compete with each other and with the domestic product in the U.S. market.⁹

The vast majority of both subject imports and domestic silicomanganese serves a single end use -- the production of steel.¹⁰ The record in these final investigations indicates that most silicomanganese purchasers do not know or care about the source of the product, so

⁵ Commissioner Crawford notes that the statute requires cumulation of imports from two or more countries "subject to investigation if such imports compete with each other and with like products of the domestic industry". (Emphasis added.) Thus, a literal reading of the statute would preclude cumulation where imports from one country (e.g. Brazil) do not compete with imports from another country (e.g. Venezuela) even though both compete individually with imports from a third country (e.g. China). Because imports from all three countries are subject to investigation, they must all compete with each other to satisfy the statute's literal requirement. In the instant investigations, the geographic overlap in competition between Brazilian and Venezuelan imports is just as limited as the geographic overlap in competition between Venezuelan imports and the domestic product. The limited geographical competition with the domestic product is the factual basis for not cumulating Venezuelan imports. The same factual basis of limited geographic competition exists for not cumulating Brazilian imports with Venezuelan imports. Thus, as a factual matter, Brazilian and Venezuelan imports do not compete with each other, and therefore should not be cumulated with Chinese imports because imports from each of the countries do not compete with each other. While Commissioner Crawford believes that such a result is a reasonable reading of the literal language of the statute, she has given petitioner the benefit of the doubt by cumulating imports from Brazil and China in her determinations.

⁶ Prelim. Det. at I-13.

⁷ Ukrainian Prehearing Brief at 31-34 and Exhibit 17; Ukrainian Posthearing Brief, Exhibit 5.

⁸ Brazilian Prehearing Brief at 33-34.

⁹ Petitioner's Prehearing Brief at 27-28; Petitioner's Posthearing Brief at 7.

¹⁰ CR at I-8, PR at II-5.

long as it meets their chemical requirements.¹¹ All responding end users indicated that silicomanganese from Brazil and Venezuela is equal in quality to the domestic product, as did 5 out of 7 end users with regard to the Chinese product. Of purchasers that had actually used the Ukrainian product, 3 judged it equal in quality to the domestic product, 2 superior and 2 inferior.¹² Most purchasers routinely buy from multiple sources.¹³ In addition, a number of importers, as well as Elkem, engage in silicomanganese "swaps" in which rather than shipping product which it has imported or produced to a distant customer, the supplier trades its product to another supplier that has product located closer to the customer.¹⁴ Suppliers have reported swaps of domestic, Brazilian, Chinese, and non-subject material.¹⁵ Thus, silicomanganese from various sources generally is fungible.

An exception to this rule is Ukrainian silicomanganese. Ukrainian silicomanganese, because of the local inputs used to produce it, contains both more manganese and more phosphorus than is provided for in ASTM grade B specifications.¹⁶ The high phosphorus level of Ukrainian silicomanganese precludes its use by some steel producers.¹⁷ By contrast, other customers, that can tolerate the high phosphorus content of the Ukrainian product, will specifically ask suppliers for Ukrainian product because of its higher manganese content, or may even be willing to pay a modest premium for it.¹⁸ These differences in purchaser requirements and preferences reduce the degree of substitutability between Ukrainian imports and the domestic product. The absence of any swaps involving the Ukrainian product is further evidence of the limited substitutability, and thus competition, between the Ukrainian product and domestic silicomanganese.¹⁹

Substitutability of the Venezuelan product is also limited. We note, in particular, that *** percent of Venezuelan imports (by value) in 1993 consisted of grade C lumps and fines.²⁰ These varieties of silicomanganese are not produced in the United States.²¹

¹¹ CR at I-88, I-103-I-104 (***), I-104-I-105 (***), and I-105-I-106 (***), PR at II-37, II-42-II-43; Hearing Tr. at 112, 115 (Messrs. Collins, Unfried and Meier of the Steel Manufacturers Ass'n) (purchasers generally do not know the source of the material purchased).

¹² CR at I-89, PR at II-38. The questionnaire responses thus do not bear out Brazilian respondents' claim that the Chinese product is generally considered inferior in quality to the Brazilian product. Brazilian Prehearing Brief at 34.

¹³ CR at I-88, PR at II-37.

¹⁴ CR at I-38-I-39, PR at II-17-II-18. While some swaps involve exchanges of silicomanganese for other products, most swaps in this industry are for "geographic" reasons. Hearing Tr. at 35. The Commission has previously found that a producer selling imported material as its own is evidence of a reasonable overlap of competition. Silicon Metal from the People's Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 at 24 (June 1991).

¹⁵ Figure 3, CR at I-35, PR at II-17; CR at I-23-I-27, PR at II-13-II-14.

¹⁶ CR at I-6-I-7, I-86-I-87, PR at II-5, II-36-II-37.

¹⁷ CR at I-8, I-86-I-87, PR at II-5, II-36-II-37. Manganese is not an impurity, either in silicomanganese or in steel, so that the additional manganese in Ukrainian silicomanganese does not preclude its use in any particular application. CR at I-9-I-10, I-86-I-87, PR at II-6, II-37.

¹⁸ Hearing Tr. at 92-93, 97 (Mr. Zagaz); CR at I-88 n.100 (purchaser requests Ukrainian product if priced same as product from other sources), I-102 (*** will pay small premium for Ukrainian product due to higher manganese content), PR at II-37 n.100, II-42; Ukrainian Posthearing Brief, Exhibit 11 (***).

¹⁹ Figure 3, CR at I-35, PR at II-17; CR at I-23-I-27, PR at II-13-II-14. We also note that importers do not ship silicomanganese from Ukraine ***. Id.

²⁰ Memorandum EC-R-116 at 24.

²¹ CR at I-6, PR at II-4.

Moreover, some end users stated that they would only purchase grade B silicomanganese.²² As a result, none of the domestic product competes directly with *** percent of Venezuelan imports. Moreover, even in states where both Venezuelan imports and the domestic product are sold, they are generally not sold to the same kinds of customers.²³ Finally, as with the Ukrainian product, there were no reported swaps involving Venezuelan silicomanganese in the U.S. market during the period of investigation. For these reasons, we find there is limited substitutability, and thus competition in the U.S. market, between Venezuelan imports and the domestic product. We find, however, that both Brazilian and Chinese silicomanganese are relatively substitutable with each other and with the domestic like product.

2. Geographic Overlap

In the preliminary investigations, we found that the subject imports and the domestic product "appear to compete in the same geographic regions," but indicated that we would seek further information in any final investigation as to whether Elkem's sales in the Southwest involved imported products.²⁴

In these final investigations, Ukrainian respondents argue that Elkem markets its products to customers located near its production facility in Marietta, Ohio, while sales of the Ukrainian product tend to be to minimills in the Texas/Gulf region that produce lower value products for which the Ukrainian product is a suitable input.²⁵ Similarly, Brazilian respondents argue that imports from Brazil are marketed largely in the Southeast United States, overlapping neither with Elkem's sales of domestic product around its Marietta plant, nor with Venezuelan sales concentrated in the Southwest.²⁶ Venezuelan respondents argue that Mannesmann, the exclusive U.S. distributor of the Venezuelan product, makes most of its sales efforts in Texas, while Elkem concentrates its sales in the Midwest and Mid-Atlantic regions, near its plant.²⁷ They also argue that, even to the extent Elkem and Mannesmann both serve the Texas market, they do not serve the same kind of customers there.²⁸ Petitioner argues that Elkem markets and sells its product nationally.²⁹

In these final investigations, we were able to obtain data which identifies the volume of commercial shipments of domestically produced silicomanganese and subject imports by state for 1993, the year subject imports reached their greatest level.³⁰

In 1993, importers shipped Ukrainian product to *** states, ***. In the same year, Elkem shipped only *** percent of its domestically-produced silicomanganese to *** of those

²² Memorandum EC-R-116 at 33; CR at I-86, PR at II-36.

²³ In particular, Elkem's sales in Texas are largely to ***. Venezuelan Posthearing Brief, Appendix 5 at 1-2.

²⁴ Prelim. Det. at I-12.

²⁵ Ukrainian Prehearing Brief at 34-37 and Exhibit 17; Ukrainian Posthearing Brief, Exhibit 5.

²⁶ Brazilian Prehearing Brief at 33-34.

²⁷ Venezuelan Prehearing Brief at 5-10; Venezuelan Posthearing Brief at 5-6 and Appendix 1. They contend that this marketing approach makes sense, since demand in the immediate vicinity of the Marietta plant *** and transportation costs would make Elkem's product less competitive at further distances. Venezuelan Posthearing Brief at 6 and Appendix 1 at 1-3.

²⁸ Venezuelan Posthearing Brief, Appendix 1 at 10-11 and Appendix 5.

²⁹ Petitioner's Prehearing Brief at 29-31; Petitioner's Posthearing Brief at 7-8.

³⁰ Table 5, CR at I-36, PR at II-17.

states, ***, and shipped *** domestic product to the other *** states.³¹ Consequently, only *** percent of Elkem's shipments competed in the same geographic region as Ukrainian imports.

In 1993, Venezuelan product was shipped to *** states, ***.³² In the same year, Elkem shipped only *** percent of its domestically-produced silicomanganese to *** of those states, ***, and shipped *** domestic product to the other *** states.³³ Consequently, only *** percent of Elkem's shipments competed in the same geographic region as Venezuelan imports.

In 1993, Chinese product was shipped to *** states. These states accounted for *** percent of Elkem's domestic shipments. In the same year, Brazilian imports were shipped to *** states that accounted for *** percent of Elkem's commercial shipments.³⁴ As a result, the vast majority of domestic shipments competed in the same geographic regions to which Chinese and Brazilian imports were shipped.

In considering geographic overlap, we considered not only actual sales but also offers to sell.³⁵ We note that Elkem employs a full-time salesman located in Houston, Texas. This salesman is actively engaged in marketing imported silicomanganese and other Elkem products, as well as Elkem's domestically-produced silicomanganese, in the Southeast/Southwest region.³⁶ Although Elkem asserts that it is actively bidding on new accounts in these regions, evidence suggests that its major efforts to expand business in this region ***.³⁷ Moreover, despite Elkem's assertion that it makes every bid on the assumption that it will supply domestic product, the fact that *** makes clear that it cannot reasonably expect to supply domestic product to every purchaser that accepts a bid. Under these circumstances, it makes economic sense for Elkem to send its domestic product to customers near Marietta and to save transportation costs by servicing more distant customers with imports, purchases or swaps. For these reasons, we give little weight to the evidence with

³¹ Id.

³² Venezuelan respondents contend that the shipments to *** were made from 1992 imports in the inventory of an importer other than Mannesmann, predating Mannesmann's agreement to become the exclusive distributor for Hevensa in October 1992. They argue that these states are not in Mannesmann's marketing area. Venezuelan Posthearing Brief at 7 & n.8.

³³ We also note that Venezuelan silicomanganese does not meet the technical requirements of ***, Elkem's largest customer in ***; that Elkem's other sales to *** were made after the petition was filed to a customer ***; and that Elkem's sales in Texas are largely to ***. Venezuelan Posthearing Brief, Appendix 5 at 1-2.

³⁴ Table 5, CR at I-36, PR at II-17.

³⁵ The Commission has previously stated that "offers or advertisements to sell in the same market segments . . . provides [sic] support for a finding of a reasonable overlap of competition." Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458-459 (Final), USITC Pub. 2383 at 25 n.95 (May 1991). The Federal Circuit has affirmed this approach. Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 900 (Ct. Int'l Trade 1988), aff'd and adopted, 859 F.2d 915 (Fed. Cir. 1988) (affirming Certain Cast Iron Pipe Fittings from Brazil, Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986)).

³⁶ Hearing Tr. at 32-33, 262-63 (sales territory includes Texas, Arkansas, Oklahoma, Louisiana, Alabama, Florida, South Carolina, Tennessee and Mississippi). CR at I-84 n.93, PR at II-36 n.93 (Elkem's Houston salesman indicates that his territory covers ***).

³⁷ CR at I-84 n.93, PR at II-36 n.93 (Elkem's Houston salesman indicates that ***). See also CR at I-107 and n.106, PR at II-43 and n.106 (***); Venezuelan Prehearing Brief, Appendix 1 (Affidavit of Ross Baker) (***).

respect to offers for sale in Texas and the surrounding region, and particularly to the post-petition offers for sale.

In summary, we find that Brazilian and Chinese imports are sold in the same geographic areas as each other and the domestic product. We find, however, that only a small portion of the domestic product is sold in the same geographic areas as Ukrainian and Venezuelan imports. Moreover, differences between the Venezuelan product and the domestic product and between the Ukrainian product and the domestic product reduce the significance of even the limited areas of geographic overlap.

3. Channels of Distribution

In the preliminary investigations, the Commission found that subject imports and the domestic product are sold through similar channels of distribution, inasmuch as most silicomanganese is sold directly to end users.³⁸ The record in these final investigations contains no contrary evidence.³⁹

4. Simultaneous Presence

In the preliminary investigations, the Commission found that all subject imports and the domestic product were simultaneously present in the market.⁴⁰ In these final investigations, Ukrainian respondents argue that Ukrainian imports were not simultaneously present in the market, since they were imported only after December 1992 and in only 9 out of 42 total months during the period of investigation.⁴¹ Petitioner contends that all imports and the domestic product were simultaneously present in the market.⁴²

Imports from Ukraine entered the U.S. market in December of 1992, 5 months in 1993, and 3 months in interim 1994.⁴³ However, the record indicates that such imports were present in the U.S. market in the form of shipments or inventories from December of 1992 through the end of the period of investigation.⁴⁴

5. Conclusion

We do not find a reasonable overlap of competition between subject imports from Ukraine and the domestic like product. We base this finding principally on the limited

³⁸ Prelim. Det. at I-13.

³⁹ Figure 3, CR at I-35, PR at II-17. Ukrainian respondents argue that Ukrainian imports are sold through different channels of distribution, because the product cannot be "swapped," must be further processed by the importer prior to sale, is often purchased from Ukraine through *** and other risky financial arrangements, and because the sales process includes educating potential customers as to how they can use the product. Ukrainian Prehearing Brief at 31-34 and Exhibit 17; Ukrainian Posthearing Brief, Exhibit 5. We note that the relevant "distribution" is that by importers to domestic purchasers. Most of Ukrainian respondents' arguments with respect to channels of distribution concern problems importers face obtaining product from Ukrainian suppliers and reprocessing them before sale in the United States.

⁴⁰ Prelim. Det. at I-13.

⁴¹ Ukrainian Prehearing Brief at 37.

⁴² Petitioner's Prehearing Brief at 29-31; Petitioner's Posthearing Brief at 7-8.

⁴³ Table F-3, CR at F-4, PR at F-4.

⁴⁴ Table 16, CR at I-65, PR at II-27 (inventories); Table 23, CR at I-91, PR at II-39 (prices reported in ***).

geographic overlap between sales of the domestic and Ukrainian products. The limited substitutability between Ukrainian and domestic silicomanganese further attenuates competition between the two. Consequently, we do not cumulate imports from Ukraine.

We also do not find a reasonable overlap of competition between subject imports from Venezuela and the domestic like product. We base this finding principally on the limited geographic overlap between sales of the domestic and Venezuelan products. The limited substitutability between Venezuelan and domestic silicomanganese further attenuates competition between the two. Consequently, we do not cumulate imports from Venezuela.

We do find a reasonable overlap of competition between subject imports from Brazil and China and the domestic like product. We base this finding principally on purchasers' interchangeable use of silicomanganese from Brazil, China, and domestic sources, the presence of sales or offers to sell in the same geographic marketing areas, sales of the majority of domestic product and Brazilian and Chinese imports to the same kinds of end users, and the simultaneous presence of Brazilian and Chinese imports and the domestic product in the U.S. market throughout the period of investigation. We therefore determine that cumulation is required with respect to imports from Brazil and China.

B. Negligible Imports

Section 771 of the Act provides that the Commission is not required to cumulate imports of merchandise subject to investigation from a particular country in any case in which it determines that imports of the merchandise subject to investigation from that country "are negligible and have no discernable adverse impact on the domestic industry."⁴⁵ In determining whether imports are negligible, the Commission considers all relevant economic factors, including whether:

- (I) the volume and market share of the imports are negligible,
- (II) sales transactions involving the imports are isolated and sporadic, and
- (III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.⁴⁶

In addition to the three enumerated statutory factors concerning the negligible imports exception, the Commission has considered additional factors, such as: whether imports have been increasing;⁴⁷ whether the domestic industry is "already suffering considerable injury and has long been battered by import price competition"; trends in market penetration; the degree of competition between the imported product and the domestic product; and any relationships of foreign producers to one another and to common importers.⁴⁸

The legislative history indicates that the negligible imports exception is to be applied narrowly and that it is not to be used to subvert the purpose and general applicability of the

⁴⁵ 19 U.S.C. § 1677(7)(C)(v).

⁴⁶ Id.

⁴⁷ See, e.g., Certain Steel Wire Rod from Brazil and Japan, Inv. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 at I-17 (Mar. 1994).

⁴⁸ See, e.g., Certain Steel Wire Rod from Brazil and Japan, USITC Pub. 2761 at I-17-18; Certain Flat-Rolled Steel Products, USITC Pub. 2664 at 49.

mandatory cumulation provision of the statute.⁴⁹ Moreover, the Court of International Trade has directed the Commission "to interpret the negligible import provision in a manner that makes sense in light of the market."⁵⁰

Venezuelan respondents argue that imports from Venezuela are negligible because, during the last six months of 1993 and the first six months of 1994, they constituted less than the three percent threshold for negligible imports established in the Uruguay Round.⁵¹ They also argue that Venezuelan imports are negligible because sales are isolated geographically in a few states, were sporadic in time, and were small relative to subject and non-subject imports from other countries.⁵² Petitioner contends that the *** volume and market share of Venezuelan imports are inconsistent with a finding of negligibility and that sales of the Venezuelan imports cannot be considered isolated and sporadic.⁵³

We note first that our negligibility determination is not premised on a separate causation finding for each individual country, as Venezuelan respondents appear to suggest. While imports that are negligible are by definition not causing any discernible adverse impact, it is not true that imports must first be found separately to cause material injury before they can be cumulated.⁵⁴

The U.S. market share by volume of imports from Venezuela rose from *** percent in 1991 to *** percent in 1992 and *** percent in 1993, and was *** percent in interim 1994 compared with *** percent in interim 1993.⁵⁵ We do not find these levels to be negligible. Imports from Venezuela entered the U.S. market in one month in 1991, 5 months in 1992, 6 months in 1993, and 3 out of 6 months in both interim 1993 and interim 1994.⁵⁶ Domestic sales of Venezuelan grade B lump silicomanganese were reported in *** quarters in 1991, *** quarters in 1992, *** quarters in 1993, and *** quarters in interim 1994.⁵⁷

Based on all of these factors, we find that the volume and market share of imports from Venezuela were not negligible and that Venezuelan imports were not isolated or sporadic. Accordingly, we determine that Venezuelan imports do not satisfy the negligibility exception to cumulation.

⁴⁹ See H.R. Rep. No. 40, 100th Cong., 1st Sess., pt. 1, at 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

⁵⁰ Torrington Co. v. United States, 790 F. Supp. 1161, 1171 (Ct. Int'l Trade 1992).

⁵¹ Venezuelan Prehearing Brief at 10-11. At the hearing, they conceded that the 3 percent threshold is not presently binding on the Commission, but argued that it should provide guidance and that the Commission should conclude that Venezuelan imports alone are too small to have a discernible effect on the market. Hearing Tr. at 203-204; Venezuelan Posthearing Brief at 7.

⁵² Venezuelan Prehearing Brief at 7-9.

⁵³ Petitioner's Prehearing Brief at 31.

⁵⁴ See generally H.R. Rep. No. 40 at 131 ("The Committee does not intend for this narrow, limited exception to subvert the purpose and general application of the cumulation requirement."); H.R. Rep. No. 576 at 621 (same).

⁵⁵ Table 22, CR at I-80, PR at II-34.

⁵⁶ Table F-4, CR at F-4, PR at F-4.

⁵⁷ Table 23, CR at I-91, PR at II-39.

**VIEWS OF CHAIRMAN PETER S. WATSON, COMMISSIONER CAROL T.
CRAWFORD AND COMMISSIONER LYNN M. BRAGG REGARDING
NO MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM
BRAZIL, CHINA, AND UKRAINE**

**NO MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL AND
CHINA**

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.¹ The Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.²

Although the Commission may consider alternative causes of injury to the industry other than the LTFV imports, it is not to weigh causes.^{3 4 5} For the reasons discussed below, we find that the domestic industry producing silicomanganese is not materially injured by reason of LTFV imports from Brazil, China, Venezuela or Ukraine.

¹ 19 U.S.C. § 1673d(b).

² 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." *Id.*

³ See, e.g., *Citrosuco Paulista, S.A. v. United States*, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:
[T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

⁴ For Chairman Watson's interpretation of the statutory requirement regarding causation, see *Certain Calcium Aluminate Cement and Cement Clinker from France*, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

⁵ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of LTFV imports, not by reason of LTFV imports 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. at 46-47 (1979). The Commission is not to determine if the 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 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 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).

A. Volume of the Subject Imports

As discussed in our views on cumulation, we cumulated imports from China and Brazil in determining whether the domestic silicomanganese industry is materially injured by reason of subject imports from those countries.

The volume of imports from Brazil and China by quantity rose from 57,504 tons in 1991, to 74,103 tons in 1992, to 127,830 tons in 1993, and was 38,973 tons in interim 1993 compared with 43,311 tons in interim 1994.⁶ The volume of U.S. shipments of Brazilian and Chinese imports followed trends similar to those described above, except that the rate of increase over the period was considerably lower for shipments of these imports than for total imports, and the trends diverged in the interim period.⁷ These differences are attributable to exports (which are not included in U.S. shipments) and increases in ending inventories, which are discussed in our determinations regarding threat of material injury.⁸

The increases in Brazilian and Chinese imports that occurred during the period examined did not, however, result in significant increases in the market share held by these imports. Rather, the growth in these subject imports served largely to satisfy increases in U.S. demand, which rose steadily throughout the period.⁹ The market share held by U.S. shipments of imports from China and Brazil declined slightly from 1991-92, rose in 1993 to a level slightly above that of 1991, and was virtually unchanged in interim 1994 compared with full-year 1993.¹⁰ These data indicate that the market share held by these imports remained relatively steady over the period examined, particularly in the latter portion (1993-94).

Although the volume of cumulated imports is relatively large, we do not find either the volume or the increases in volume of Chinese and Brazilian imports to be significant in light of the relative stability of their cumulated market share, particularly during the latter part of the period examined, and in light of other factors discussed below, notably the absence of price effects and the presence of large quantities of non-subject imports.

B. Price Effects of the Subject Imports

Because there is only one domestic producer, much of our pricing discussion involves confidential information. Pricing data collected by the Commission show that prices for

⁶ Table 21, CR at I-76, PR at II-31.

⁷ Shipments of cumulated Brazilian and Chinese imports increased in absolute terms throughout most of the period of investigation, rising from *** tons in 1991 to *** in 1992, to *** in 1993, before declining to *** in interim 1994 (from *** tons in the comparable prior year period). Table 2, CR at I-30, PR at II-15.

⁸ Part of the difference between imports and U.S. shipments of silicomanganese from China may also be due to underreporting by ***. See CR at I-29, n. 54, PR at II-16.

⁹ U.S. apparent consumption increased by *** on a quantity basis, and by *** on a value basis, between 1991 and 1993, and by *** by quantity and *** by value between interim periods. Table 2, CR at I-30, PR at II-15. As previously noted, Elkem lacks the production capacity to meet a substantial portion of domestic demand, and imports are therefore necessary to satisfy demand in this market.

¹⁰ U.S. shipments of imports from Brazil and China accounted for a combined share of U.S. apparent consumption, by quantity, of *** percent in 1991, *** percent in 1992, *** percent in 1993, and *** percent in interim 1994 (compared to *** percent in interim 1993). Table 2, CR at I-30, PR at II-15.

Brazilian, Chinese and U.S. silicomanganese generally moved in close harmony throughout the period of investigation.¹¹ Prices for Brazilian and U.S. product ***.^{12 13} ***.

The fact that price trends for these imports and for the domestic product tracked one another closely is not surprising, given the commodity nature of these products. The mere fact that price trends were similar, however, is not sufficient, in our view, to warrant a conclusion that the Brazilian and Chinese silicomanganese caused the price of domestic silicomanganese ***.

The record in these investigations does not support petitioner's assertion that subject imports, including Brazilian and Chinese imports, depressed prices for the domestic product during the period of investigation.¹⁴ In particular, most purchasers indicated that there is no clear price leader in this market and that the lowest priced source varies from purchase to purchase.¹⁵ We have placed little weight on the allegations of lost sales and revenues, in light both of this factor and of the fact that purchasers generally do not know the country of origin of any specific purchase of silicomanganese.¹⁶

Contract sales of Brazilian and Chinese imports undersold the domestic product in *** comparisons and oversold the domestic product in *** comparisons.¹⁷ The margins of underselling ranged from *** percent to *** percent, and the margins of overselling ranged from *** percent to *** percent. We find this evidence to be mixed, as one would expect in a commodity market, and thus inconclusive. We further note that petitioners themselves have acknowledged that evidence of underselling is inconclusive.¹⁸ Further, there is no consistent correlation between trends in the volume of Brazilian and Chinese imports and the price of U.S. silicomanganese. From ***, imports from Brazil and China fluctuated.¹⁹ ***, imports from Brazil and China doubled.²⁰ In the first half of 1993, when domestic prices ***, Brazilian and Chinese imports decreased by 11.4 percent.²¹ In the second half of 1993, as domestic prices ***, the volume of imports from Brazil and China more than doubled.²²

¹¹ We have focused our pricing analysis on the data reported by U.S. producers and importers for quarterly contract sales, because most sales are made under quarterly requirements contracts. CR at I-96, PR at II-39.

¹² ***. See Table 23 and Figure 6, CR at I-91 and I-93, PR at II-39.

¹³ ***. See Table 23 and Figure 6, CR at I-91 and I-93, PR at II-39.

¹⁴ Petitioner's Prehearing Brief at 36-37.

¹⁵ Hearing Tr. at 115; CR at I-88-I-89, PR at II-37-II-38. In the purchasers' questionnaires, 19 of 26 end users did not identify a price leader. Among the six largest responding purchasers, ***, ***, Purchasers' Questionnaire Responses, Question VII.2.

¹⁶ CR at I-101-I-108, PR at II-42-II-43.

¹⁷ Table 23, CR at I-91, PR at II-39. Much lower volumes of spot sales of silicomanganese from Brazil and China undersold the domestic product in *** comparisons, oversold the domestic product in ***, and were priced the same in ***. Table 24, CR at I-92, PR at II-39.

¹⁸ Hearing Tr. at 45; Petitioner's Prehearing Brief at 38.

¹⁹ Tables F-1 and F-2, CR at F-3, PR at F-3. Brazilian and Chinese imports fell from 18,836 tons in third quarter 1991 to 5,627 tons in fourth quarter 1991, then rose to 23,008 tons in first quarter 1992, fell to 7,112 tons in second quarter 1992, and rose to 14,060 tons in third quarter 1992.

²⁰ Id. Brazilian and Chinese imports rose from 14,060 tons in the third quarter of 1992 to 29,923 tons in the fourth quarter of 1992.

²¹ Id. Brazilian and Chinese imports in the first half of 1993 totalled 38,973 tons, down from 43,983 tons in the second half of 1992.

²² Id. Brazilian and Chinese imports in the second half of 1993 totalled 88,857 tons, up from 38,973 in the first half of 1993.

The volume of Brazilian and Chinese imports then declined in the first half of 1994, but remained higher in absolute terms than in the first half of 1993, the period when prices ***.²³ Accordingly, we do not find that silicomanganese imports from Brazil and China have depressed prices to a significant degree.

Finally, we do not find that Brazilian and Chinese imports suppressed domestic silicomanganese prices to a significant degree. Petitioner argued that it was unable to raise its prices sufficiently to cover its costs, even in late 1993 and early 1994 when prices and consumption were rising.²⁴ We find, however, that the very large presence of nonsubject imports in the U.S. market would have significantly limited any further price increases by petitioner, even in the absence of Brazilian and Chinese imports.²⁵ Accordingly, while petitioner may be experiencing a cost/price squeeze, market conditions preclude us from concluding that Elkem could have raised its prices sufficiently to cover its costs even in the absence of LTFV imports from Brazil and China.²⁶

The evidence of record therefore does not support the conclusion that Brazilian and Chinese imports have had significant adverse effects on the prices of the domestic product.

²³ *Id.* Brazilian and Chinese imports totalled 43,311 tons during the first half of 1994, compared to 38,973 tons during the first half of 1993.

²⁴ Petitioner's Prehearing Brief at 20-21; Petitioner's Posthearing Brief at 11-12 and Exhibit 2 at 23-24, 28-29.

²⁵ Hearing Tr. at 58-59 (petitioner's testimony regarding price competition by nonsubject imports). The record shows that nonsubject imports, from South Africa, Norway, Canada and elsewhere, accounted for the largest share of both imports and U.S. market share over the entire period of investigation. Table F-5, CR at F-5, PR at F-5.

²⁶ Commissioner Crawford concurs in the conclusion that cumulated LTFV imports from Brazil and China have had no effect on domestic prices. She evaluates the effects of the dumping on domestic prices by comparing domestic prices that existed when the imports were dumped with what domestic prices would have been without the dumping, that is, had imports been fairly traded. In these investigations, the size of the dumping margins suggests that substantially fewer and perhaps none of the Brazilian or Chinese imports would have been sold had they been fairly traded. Silicomanganese accounts for a small percentage, generally less than 3 percent, of the cost of the finished steel product in which it is used. Therefore, demand is relatively inelastic, that is, purchasers would not reduce their purchases of silicomanganese in response to higher prices. The low demand elasticity suggests that if the supply of subject imports had been reduced, petitioner would have been able to increase its prices. However, certain market conditions act as constraints on the ability to raise prices, and therefore must be considered. Two considerations in this case are the ability of petitioner to increase its output (i.e. the elasticity of domestic supply) and the availability of competing nonsubject imports. Petitioner produces silicomanganese in one furnace, and can readily switch production in that furnace between silicomanganese and ferromanganese. In 1993, the furnace was used to produce silicomanganese in quantities that accounted for *** percent of capacity. Thus, nearly *** percent of the furnace's capacity in 1993 was used to produce ferromanganese or was available to supply a portion of the market share held by Brazilian and Chinese imports. The availability of domestic capacity indicates that petitioner would have attempted to increase its output and sales, rather than its prices, if Brazilian and Chinese imports had been priced fairly. In addition, as discussed above, the very large presence of nonsubject imports in the market would have significantly constrained the ability of petitioner to increase prices. Absent collusion/coordination of prices among suppliers of nonsubject imports, including those affiliated with petitioner, competition for sales from nonsubject imports would have beaten back any attempted price increase. Petitioner has produced no evidence of such coordination/collusion. Consequently, LTFV imports from Brazil and China cannot be found to have had any adverse effect on domestic prices.

C. Impact of the Subject Imports on the Domestic Industry

We find that LTFV imports from Brazil and China have had no significant impact on the domestic industry. As noted above, cumulated imports from Brazil and China, while increasing through most of the period of investigation, maintained a relatively steady market share, particularly during the latter part of the period, and had no significant adverse price effects. In addition, virtually all indicators of the condition of the domestic industry, with the exception of financial indicators, were strongly positive throughout the period of investigation and particularly in January-June 1994.²⁷ Moreover, as discussed below, the record does not support a finding that any financial injury to Elkem was by reason of dumped Brazilian and Chinese imports.

During the period when its profitability was falling, Elkem experienced *** cost increases.²⁸ We have already determined that any failure of Elkem's prices to rise sufficiently to cover these cost increases was not by reason of dumped Brazilian and Chinese imports. We therefore conclude that any financial injury to Elkem grounded in these cost increases was not by reason of LTFV imports from Brazil and China.

Elkem attributed some of its cost increases to its decision to halt domestic silicomanganese production between March and July of 1993.²⁹ The Commission's data do not support this claim;³⁰ accordingly, we disagree with petitioner that either this temporary cessation of production or any cost increases attributable to it constitute material injury by reason of the subject imports. Elkem concedes that it has converted its silicomanganese furnace on several occasions to the production of ferromanganese, as it did during the relevant period in 1993.³¹ During the period when Elkem ceased producing silicomanganese, it met customer demand and *** by increasing its outside sourcing.³² Accordingly, even if Elkem did not, in fact, have to convert the furnace to meet contractual commitments for ferromanganese, its decision to rely on outside sources of supply rather than domestic production in the face of rising demand was a business decision that does not necessarily signify injury by reason of LTFV Brazilian and Chinese imports.^{33 34}

²⁷ See the discussion of the Condition of the Domestic Industry, *supra*. We do not agree with petitioner that data showing improvements after April of 1993 should be disregarded due to rumors of an antidumping case that began to circulate at about that time. Hearing Tr. at 29. The petition in these investigations was not filed until November of 1993 and liquidation was not suspended until June 17, 1994, at the very end of the period of investigation. Moreover, the record does not support petitioner's assertion that rumors of a petition or its pendency had any significant effect on our data.

²⁸ These cost increases ***. CR at I-52-I-56, PR at II-23.

²⁹ Hearing Tr. at 40.

³⁰ See CR at I-55-56, PR at II-23.

³¹ CR at I-40-I-42, PR at II-19; Hearing Tr. at 40-41 and 79-80.

³² Table G-2, CR at G-4, PR at G-3; Table 13, CR at I-57, PR at II-24.

³³ See Hearing Tr. at 29. For this reason, although we agree with Elkem that end-of-period capacity reflects its theoretical maximum capacity to produce silicomanganese when it chooses to do so full time, our analysis of the impact of imports relies on the average-of-period capacity data. The latter data reflects the fact that Elkem's capacity utilization was consistently *** when it was producing silicomanganese and does not count as idle silicomanganese capacity that was actually converted to another use. Table 6, CR at I-41, PR at II-19. We also note that Elkem concedes that silicomanganese prices in the U.S. market *** at the time it made its decision to convert the furnace to ferromanganese production. Petitioner's Posthearing Brief, Exhibit 2 at 26-27.

We further note that Elkem has stated that it ceased production for this period in 1993, and converted its silicomanganese furnace to ferromanganese production, due to the low price of silicomanganese.³⁵ As we have previously found, however, the presence of large quantities of nonsubject imports would have prevented Elkem from raising its prices even in the absence of Brazilian and Chinese imports. Thus, the evidence indicates that Elkem would not have switched back from ferromanganese to silicomanganese production during this period of low silicomanganese pricing, even if Brazilian and Chinese imports had been absent from the market.³⁶

The principal other adverse factor cited by petitioner is the rise in its inventories over the period of investigation. Even if we agreed that rising inventories were evidence of injury by reason of Brazilian and Chinese imports, this single statutory factor, by itself, is not sufficient to justify a determination of material injury by reason of LTFV imports from Brazil and China in this case, given all of the evidence to the contrary.

Accordingly, we conclude that the domestic industry is not materially injured by reason of LTFV imports of silicomanganese from Brazil and China.

³⁴ (...continued)

³⁴ Commissioner Crawford finds that end-of-period capacity is the more appropriate measure of petitioner's ability to produce silicomanganese. It takes only 8 to 24 hours to switch from producing silicomanganese to producing ferromanganese. Thus, petitioner can easily change its product mix in response to a change in the relative prices of the products. Petitioner has in fact done so: in 1993, petitioner switched to produce ferromanganese because of low silicomanganese prices. Thus, the total capacity of the furnace, as measured by end-of-period capacity, represents the actual capacity available to produce silicomanganese.

³⁵ Hearing Tr. at 40-41 (Testimony of Kenneth Button).

³⁶ Commissioner Crawford concurs that LTFV imports from Brazil and China have not had any significant impact on the domestic industry. She evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been without the dumping, that is, had imports been priced fairly. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development as required by 19 U.S.C. § 1677(C)(iii). These factors either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact. In these investigations, the size of the dumping margins suggests that substantially fewer and perhaps none of the imports from Brazil or China would have been sold had they been fairly traded. As discussed above, competition from the very large supply of nonsubject imports in the market would have prevented domestic price increases. Thus, any impact on the domestic industry would have been on its output and sales, rather than its prices. The impact depends on whether petitioner could have increased production (i.e. the elasticity of domestic supply) and whether petitioner would have been likely to do so. Because it can readily switch from producing ferromanganese to producing silicomanganese, nearly *** percent of the capacity of petitioner's furnace was available to supply a portion of the market share held by LTFV imports from Brazil and China. However, petitioner maintains that it stopped producing silicomanganese in 1993 because of low silicomanganese prices. As a result, petitioner would not have increased its production of silicomanganese without an increase in silicomanganese prices. Because domestic prices would not have increased if Brazilian and Chinese imports had been priced fairly, petitioner would have had no incentive to switch from producing ferromanganese to producing silicomanganese. Therefore, petitioner would not have increased its output and sales, and thus its revenues, if the imports had been priced fairly. Consequently, Commissioner Crawford concludes that subject imports have not had any significant impact on the domestic industry.

NO MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM UKRAINE

A. Volume of the Subject Imports

Ukrainian imports first entered the market at the end of 1992. The volume of imports of silicomanganese from Ukraine by quantity thus was zero in 1991, and rose to 8,810 short tons in 1992 and to 41,493 short tons in 1993. Imports were 12,436 short tons in interim 1994, compared with 15,460 short tons in interim 1993. By value, Ukrainian imports followed the same trend.³⁷ Silicomanganese from Ukraine was not present in the U.S. market in 1991 and 1992, but acquired a moderate market share in 1993.³⁸

We do not find the volume or the increase in volume of Ukrainian imports to be significant for several reasons. First, Ukrainian silicomanganese did not enter the United States until December 1992, nearly two years into the period examined. Second, as we noted above, Elkem lacks the production capacity to meet a substantial portion of domestic demand for silicomanganese, and imports are therefore necessary to satisfy demand in this market.³⁹ Third, the Ukrainian imports gained market share at the expense of nonsubject imports, not the domestic industry, over the period of investigation.⁴⁰ Fourth, the geographic concentration of shipments of the Ukrainian imports within the U.S. market makes their volume and market share even less significant. As we noted above, in 1993 only *** of the U.S. producers' commercial shipments were to the states to which the Ukrainian product was shipped.⁴¹ Thus, Ukrainian imports did not compete with *** percent of domestic shipments. Finally, significant differences in purchaser requirements and preferences reduce the degree of substitutability between Ukrainian imports and the domestic product.⁴²

B. Price Effects of the Subject Imports

We considered the price effects of Ukrainian imports in light of our findings with respect to their limited substitutability. In particular, we note that any price competition between Ukrainian imports and the domestic product is limited by the same factors that led us to find no reasonable overlap of competition between the domestic and Ukrainian products for purposes of our cumulation analysis: specifically, the extremely limited geographic overlap of their principal marketing areas, and the significant differences in the physical characteristics and uses of the Ukrainian and U.S. products.⁴³

Domestic silicomanganese prices followed a generally declining trend ***.⁴⁴ Prices for imports from Ukraine in 1993 and the interim period ***.⁴⁵

The record in these investigations does not support petitioner's assertion that subject imports, including Ukrainian imports, depressed prices for the domestic product during the

³⁷ Table 21, CR at I-76, PR at II-31.

³⁸ The market share of Ukrainian imports was ***. Table 22, CR at I-80, PR at II-34.

³⁹ Compare Table 6, CR at I-41, PR at II-19, with Table 2, CR at I-30, PR at II-15.

⁴⁰ Table 22, CR at I-80, PR at II-34.

⁴¹ Table 5, CR at I-36, PR at II-17.

⁴² CR at I-102-I-103, PR at II-42.

⁴³ See Views of Chairman Watson, Commissioner Crawford, and Commissioner Bragg on Cumulation, supra.

⁴⁴ Table 23, CR at I-91, PR at II-39.

⁴⁵ Table 23, CR at I-91, PR at II-39.

period of investigation.⁴⁶ In particular, most purchasers indicated that there is no clear price leader in this market and that the lowest priced source varies from purchase to purchase.⁴⁷ Nor is there any correlation between changes in the volume of Ukrainian imports and trends in domestic silicomanganese prices. From ***, there were no exports from Ukraine to the United States.⁴⁸ Although Ukrainian imports increased in the first half of 1993, when domestic prices ***, the volume of Ukrainian imports was higher in the second half of 1993 and the first half of 1994, when domestic prices ***.⁴⁹ Accordingly, we do not find that Ukrainian imports have depressed domestic prices to a significant degree.

Ukrainian imports undersold the domestic product in only *** possible comparisons.⁵⁰ We find this degree of underselling to be consistent with the limited substitutability of domestic and Ukrainian silicomanganese, and the limited geographic overlap between domestic and Ukrainian sales in the U.S. market.

Finally, we do not find that LTFV Ukrainian imports suppressed domestic silicomanganese prices to a significant degree. Petitioner argued that it was unable to raise its prices sufficiently to cover its costs, even in late 1993 and early 1994 when prices and consumption were rising.⁵¹ We find, however, that the very large presence of non-subject imports in the U.S. market would have significantly limited any further price increases by petitioner, even in the absence of Ukrainian imports.⁵² Accordingly, while petitioner may be experiencing a cost/price squeeze, market conditions preclude us from concluding that they could have raised their prices sufficiently to cover their costs even in the absence of LTFV imports from Ukraine.⁵³

⁴⁶ Petitioner's Prehearing Brief at 36-37.

⁴⁷ Hearing Tr. at 115; CR at I-88-I-89, PR at II-37-II-38. In the purchasers' questionnaires, 19 of 26 end users did not identify a price leader. Among the six largest responding purchasers, ***, ***, Purchasers' Questionnaire Responses, Question VII.2.

⁴⁸ Table F-3, CR at F-4, PR at F-4 (there were no Ukrainian imports until December 1992). Similarly, ***, Table 2, CR at I-30, PR at II-15.

⁴⁹ Table F-3, CR at F-4, PR at F-4 (Ukrainian imports were 12,437 tons in the first six months of 1993, compared with 29,056 tons in the second half of 1993 and 15,461 tons in the first half of 1994).

⁵⁰ Table 23, CR at I-91, PR at II-39.

⁵¹ Petitioner's Prehearing Brief at 20-21; Petitioner's Posthearing Brief at 11-12 and Exhibit 2 at 23-24, 28-29.

⁵² Hearing Tr. at 58-59 (petitioner's testimony regarding price competition by nonsubject imports).

⁵³ Commissioner Crawford concurs in the conclusion that LTFV imports from Ukraine have had no effect on domestic prices. She evaluates the effects of the dumping on domestic prices by comparing domestic prices that existed when the imports were dumped with what domestic prices would have been without the dumping, that is, had imports been fairly traded. In this investigation, the size of the dumping margin suggests that substantially fewer and perhaps none of the Ukrainian imports would have been sold had they been fairly traded. Silicomanganese accounts for a small percentage, generally less than 3 percent, of the cost of the finished steel product in which it is used. Therefore, demand is relatively inelastic, and purchasers would not reduce their purchases of silicomanganese in response to higher prices. The low demand elasticity suggests that if the supply of subject imports had been reduced, petitioner would have been able to increase its prices. However, other market conditions that may constrain the ability to raise prices must be considered. Two such constraints are the ability of petitioner to increase its output (i.e. the elasticity of domestic supply) and the availability of competing nonsubject imports. Petitioner produces silicomanganese in one furnace, and can readily switch production in that furnace between silicomanganese and ferromanganese. In
(continued...)

The evidence of record therefore does not support the conclusion that Ukrainian imports have had significant adverse effects on the prices of the domestic product.

C. Impact of the Subject Imports on the Domestic Industry

We find that LTFV imports from Ukraine have not had a significant impact on the domestic industry. As noted above, silicomanganese from Ukraine was not present in the U.S. market until December 1992, competed to only a limited extent with the domestic product, and had no significant adverse price effects. In addition, virtually all indicators of the condition of the domestic industry, with the exception of financial indicators, were strongly positive throughout the period of investigation and particularly in January-June 1994.⁵⁴ Moreover, as discussed below, the record does not support a finding that any financial injury to Elkem was by reason of Ukrainian imports.

During the period when its profitability was falling, Elkem experienced *** cost increases.⁵⁵ We have already determined that any failure of Elkem's prices to rise sufficiently to cover these cost increases was not by reason of LTFV Ukrainian imports. We therefore conclude that any financial injury to Elkem grounded in these cost increases was not by reason of LTFV imports from Ukraine.

Elkem attributed some of its cost increases to its decision to halt domestic silicomanganese production between March and July of 1993.⁵⁶ The Commission's data do not support this claim;⁵⁷ accordingly, we disagree with petitioner that either this temporary cessation of production or any cost increases attributable to it constitute material injury by reason of the subject imports. Elkem concedes that it has converted its silicomanganese furnace on several occasions to the production of ferromanganese, as it did during the relevant period in 1993.⁵⁸ During the period when Elkem ceased producing silicomanganese, it met customer demand and even *** by increasing its outside sourcing.⁵⁹ Accordingly,

⁵³ (...continued)

1993, the furnace was used to produce silicomanganese in quantities that accounted for *** percent of capacity. Thus, nearly *** percent of the furnace's capacity in 1993 was used to produce ferromanganese or was available to supply a portion of the market share held by Ukrainian imports. The availability of domestic capacity indicates that petitioner would have attempted to increase its output and sales, rather than its prices, if Ukrainian imports had been priced fairly. In addition, as discussed above, the presence of a very large volume of nonsubject imports in the market would have significantly constrained domestic price increases if imports from Ukraine had been priced fairly. That is, absent collusion/coordination of pricing among suppliers of nonsubject imports, including those affiliated with petitioner, competition for sales from nonsubject imports would have prevented price increases. Petitioner has produced no evidence of such collusion/coordination. Consequently, LTFV imports from Ukraine cannot be found to have had any adverse effect on domestic prices.

⁵⁴ See the discussion of the Condition of the Domestic Industry, supra. We do not agree with petitioner that data showing improvements after April of 1993 should be disregarded due to rumors of an antidumping case that began to circulate at about that time. Hearing Tr. at 29. The petition in these investigations was not filed until November of 1993 and liquidation was not suspended until June 17, 1994, at the very end of the period of investigation. Moreover, the record does not support petitioner's assertion that rumors of a petition or its pendency had any significant effect on our data.

⁵⁵ These cost increases included ***. CR at I-52-I-56, PR at II-23.

⁵⁶ Hearing Tr. at 40.

⁵⁷ See CR at I-55-56, PR at II-23.

⁵⁸ CR at I-40-I-42, PR at II-19; Hearing Tr. at 40-41 and 79-80.

⁵⁹ Table G-2, CR at G-4, PR at G-3; Table 13, CR at I-57, PR at II-24.

even if Elkem did not, in fact, have to convert the furnace to meet contractual commitments for ferromanganese, its decision to rely on outside sources rather than domestic production in the face of rising demand was a business decision that does not necessarily signify injury by reason of the Ukrainian imports.^{60 61 62}

The principal other adverse factor cited by petitioner is the rise in its inventories over the period of investigation. Even if we agreed that rising inventories were evidence of injury by reason of Ukrainian imports, this single statutory factor, by itself, is not sufficient to justify a determination of material injury by reason of LTFV imports from Ukraine in this case, given all the evidence to the contrary.

Accordingly, we conclude that the domestic industry is not materially injured by reason of LTFV Ukrainian imports.

⁶⁰ See Hearing Tr. at 29. For this reason, although we agree with Elkem that end-of-period capacity reflects its theoretical maximum capacity to produce silicomanganese when it chooses to do so full time, our analysis of the impact of imports relies on the average-of-period capacity data. The latter data reflects the fact that Elkem's capacity utilization was consistently *** when it was producing silicomanganese and does not count as idle silicomanganese capacity that was actually converted to another use. Table 6, CR at I-41, PR at II-19. We also note that Elkem concedes that silicomanganese prices in the U.S. market *** at the time it made its decision to convert the furnace to ferromanganese production. Petitioner's Posthearing Brief, Exhibit 2 at 26-27.

⁶¹ Commissioner Crawford finds that end-of-period capacity is the more appropriate measure of petitioner's ability to produce silicomanganese. It takes only 8 to 24 hours to switch from producing silicomanganese to producing ferromanganese. Thus, petitioner can easily change its product mix in response to a change in the relative prices of the products. Petitioner has in fact done so: in 1993, petitioner switched to produce ferromanganese because of low silicomanganese prices. Thus, the total capacity of the furnace, as measured by end-of-period capacity, represents the actual capacity available to produce silicomanganese.

⁶² Commissioner Crawford concurs that LTFV imports from Ukraine have not had any significant impact on the domestic industry. She evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been without the dumping, that is, had imports been priced fairly. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development as required by 19 U.S.C. § 1677(C)(iii). These factors either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact. In this investigation, the size of the dumping margin suggests that substantially fewer and perhaps none of the imports from Ukraine would have been sold had they been fairly traded. As discussed above, competition from the very large supply of nonsubject imports in the market would have prevented domestic price increases. Thus, any impact on the domestic industry would have been on its output and sales, rather than its prices. The extent of the impact depends on whether petitioner could have increased production (i.e. the elasticity of domestic supply) and whether petitioner would have been likely to do so. Because it can readily switch from producing ferromanganese to producing silicomanganese, nearly *** percent of the capacity of petitioner's furnace was available to supply a portion of the market share held by LTFV imports from Ukraine. However, petitioner maintains that it stopped producing silicomanganese in 1993 because of low silicomanganese prices. As a result, petitioner would not have increased its production of silicomanganese without an increase in silicomanganese prices. Because domestic prices would not have increased if imports from Ukraine had been priced fairly, petitioner would have had no incentive to switch from producing ferromanganese to producing silicomanganese. Therefore, petitioner would not have increased its output and sales, and thus its revenues, if the imports had been priced fairly. Consequently, Commissioner Crawford concludes that subject imports have not had any significant impact on the domestic industry.

**VIEWS OF CHAIRMAN PETER S. WATSON, COMMISSIONER CAROL T.
CRAWFORD AND COMMISSIONER LYNN M. BRAGG ON
NO MATERIAL INJURY BY REASON OF LTFV
IMPORTS FROM VENEZUELA**

A. Volume of the Subject Imports

The volume of imports of silicomanganese from Venezuela by quantity rose from 2,756 short tons in 1991 to 9,810 short tons in 1992 and 15,418 short tons in 1993. Imports were 5,542 short tons in interim 1994, compared with 9,906 short tons in interim 1993. By value, Venezuelan imports followed the same trend.¹ The market share in terms of quantity held by Venezuelan silicomanganese rose from 1991 to 1993, but was always small. Market share was lower in interim 1994 than in interim 1993.²

We do not find the volume or the increase in volume of Venezuelan imports to be significant for several reasons. First, the volume of Venezuelan imports was consistently small during the period of investigation both in absolute terms and in terms of market share. Second, as we noted above, Elkem lacks the production capacity to meet a substantial portion of domestic demand for silicomanganese and imports are therefore necessary to satisfy demand in this market.³ Third, the Venezuelan imports gained market share at the expense of non-subject imports, not the domestic industry, over the period of investigation.⁴ Finally, the geographic distribution of shipments of the Venezuelan imports within the U.S. market makes their volume and market share even less significant. As we noted above, in 1993 only *** percent of U.S. producers' commercial shipments were to the states to which the Venezuelan product was shipped.⁵ Thus, Venezuelan imports did not compete with *** percent of commercial shipments of U.S.-produced silicomanganese.⁶

B. Price Effects of the Subject Imports

We considered the price effects of Venezuelan imports in light of our findings with respect to their limited substitutability. In particular, we note that any price competition between Venezuelan imports and the domestic product is limited by the same factors that led us to find no reasonable overlap of competition between the domestic and Venezuelan products for purposes of our cumulation analysis: specifically, the extremely limited geographic overlap of their principal marketing areas, differences in product mix, and differences in the types of customers to which Mannesmann and Elkem market their products.⁷

¹ Table 21, CR at I-76, PR at II-31.

² The market share of Venezuelan imports was ***. Table 22, CR at I-80, PR at II-34.

³ Compare Table 6, CR at I-41, PR at II-19, with Table 2, CR at I-30, PR at II-15.

⁴ Table 22, CR at I-80, PR at II-34. Mannesmann, the exclusive importer of Venezuelan silicomanganese since October of 1992, previously serviced its customer base with other imports. Venezuelan Prehearing Brief at 6; Hearing Tr. at 183, 186-189.

⁵ Table 5, CR at I-36, PR at II-17.

⁶ We also note that during the first 6 months of 1994, ***. Table 5, CR at I-37, PR at II-17.

⁷ See Views of Chairman Watson, Commissioner Crawford, and Commissioner Bragg on Cumulation, supra.

Domestic silicomanganese prices followed a ***.⁸ Prices for imports from Venezuela likewise ***.⁹

The record in these investigations does not support petitioner's assertion that subject imports, including Venezuelan imports, depressed prices for the domestic product during the period of investigation.¹⁰ In particular, most purchasers indicated that there is no clear price leader in this market and that the lowest priced source varies from purchase to purchase.¹¹ We have placed little weight on the allegations of lost sales and revenues, in light both of this factor and of the fact that purchasers generally do not know the country of origin of any specific purchase of silicomanganese.¹²

Nor is there any correlation between changes in the volume of Venezuelan imports and trends in domestic silicomanganese prices. From the ***, imports from Venezuela were steady or declining from a low beginning level.¹³ Between ***, imports from Venezuela also rose moderately.¹⁴ In ***, Venezuelan imports rose, but were not significantly higher, in absolute terms, than they were in the second half of 1992.¹⁵ In ***, the volume of imports from Venezuela remained constant.¹⁶ Accordingly, we do not find that Venezuelan imports have depressed domestic prices to a significant degree.

Venezuelan imports undersold the domestic product in *** possible comparisons.¹⁷ Nevertheless, in light of the small volume of Venezuelan imports, the limited substitutability of domestic and Venezuelan silicomanganese, and the limited geographic overlap between domestic and Venezuelan sales in the U.S. market, we do not find this underselling to be significant.

Finally, we do not find that Venezuelan imports suppressed domestic silicomanganese prices to a significant degree. Petitioner argued that it was unable to raise its prices sufficiently to cover its costs, even in late 1993 and early 1994 when prices and consumption were rising.¹⁸ We find, however, that the very large presence of non-subject imports in the U.S. market would have significantly limited any further price increases by petitioner, even in the absence of Venezuelan imports.¹⁹ Accordingly, while petitioner may be experiencing a cost/price squeeze, market conditions preclude us from concluding that Elkem could have

⁸ Table 23, CR at I-91, PR at II-39; Figure 6, CR at I-94, PR at II-39.

⁹ Table 23, CR at I-91, PR at II-39; Figure 6, CR at I-94, PR at II-39.

¹⁰ Petitioner's Prehearing Brief at 36-37.

¹¹ Hearing Tr. at 115; CR at I-88-I-89, PR at II-37-II-38. In the purchasers' questionnaires, 19 of 26 end users did not identify a price leader. Among the six largest responding purchasers, ***, ***, Purchasers' Questionnaire Responses, Question VII.2.

¹² CR at I-101-I-108, PR at II-42-II-43.

¹³ Table F-4, CR at F-4, PR at F-4 (Venezuelan imports of 2,756 short tons in third quarter 1991, none in fourth quarter 1991 or first quarter 1992, and a total of 2,149 tons in the second and third quarters of 1992).

¹⁴ Id. (Venezuelan imports were 7,661 tons in fourth quarter 1992).

¹⁵ Id. (9,906 tons in the first six months of 1993, compared with 9,149 tons in the second half of 1992).

¹⁶ Id. (5,512 tons in the second half of 1993 and 5,542 tons in the first half of 1994).

¹⁷ CR at I-97, PR at II-39-II-40.

¹⁸ Petitioner's Prehearing Brief at 20-21; Petitioner's Posthearing Brief at 11-12 and Exhibit 2 at 23-24, 28-29.

¹⁹ Hearing Tr. at 58-59 (petitioner's testimony regarding price competition by non-subject imports).

raised its prices sufficiently to cover its costs even in the absence of LTFV imports from Venezuela.

The evidence of record therefore does not support the conclusion that Venezuelan imports have had significant adverse effects on the prices of the domestic product.²⁰

C. Impact of the Subject Imports on the Domestic Industry

We find that LTFV imports from Venezuela have had no significant impact on the domestic industry. As noted above, imports from Venezuela, while increasing, were at low levels, competed to only a limited extent with the domestic product, and had no significant adverse price effects. In addition, virtually all indicators of the condition of the domestic industry, with the exception of financial indicators, were strongly positive throughout the period of investigation and particularly in January-June 1994.²¹ Moreover, as discussed below, the record does not support a finding that any financial injury to Elkem was by reason of Venezuelan imports.

During the period when its profitability was falling, Elkem experienced *** cost increases.²² We have already determined that any failure of Elkem's prices to rise sufficiently to cover these cost increases was not by reason of dumped Venezuelan imports.

²⁰ Commissioner Crawford concurs in the conclusion that LTFV imports from Venezuela have had no effect on domestic prices. She evaluates the effects of the dumping on domestic prices by comparing domestic prices that existed when the imports were dumped with what domestic prices would have been without the dumping, that is, had imports been fairly traded. In this investigation, the dumping margin of 8.81 percent suggests that some and perhaps most of the Venezuelan imports still would have been sold had they been fairly traded. Silicomanganese accounts for a small percentage, generally less than 3 percent, of the cost of the finished steel product in which it is used. Therefore, demand is relatively inelastic, that is, purchasers would not reduce their purchases of silicomanganese in response to higher prices. The low demand elasticity suggests that if the supply of subject imports had been reduced, petitioner would have been able to increase its prices. However, certain market conditions act as constraints on the ability to raise prices, and therefore must be considered. Two considerations in this case are the ability of petitioner to increase its output (i.e. the elasticity of domestic supply) and the availability of competing nonsubject imports. Petitioner produces silicomanganese in one furnace, and can readily switch production in that furnace between silicomanganese and ferromanganese. In 1993, the furnace was used to produce silicomanganese in quantities that accounted for *** percent of capacity. Thus, nearly *** percent of the furnace's capacity in 1993 was used to produce ferromanganese or was available to supply the limited amount of Venezuelan imports that would not have entered the market. The availability of domestic capacity indicates that petitioner would have attempted to increase its output and sales, rather than its prices, if Venezuelan imports had been priced fairly. In addition, as discussed above, the very large presence of nonsubject imports in the market would have significantly constrained the ability of petitioner to increase prices. Absent collusion/coordination of prices among suppliers of nonsubject imports, including those affiliated with petitioner, competition for sales from nonsubject imports would have beaten back any attempted price increase. Petitioner has produced no evidence of such coordination/collusion. Consequently, LTFV imports from Venezuela cannot be found to have had any adverse effect on domestic prices.

²¹ See the discussion of the Condition of the Domestic Industry, *supra*. We do not agree with petitioner that data showing improvements after April of 1993 should be disregarded due to rumors of an antidumping case that began to circulate at about that time. Hearing Tr. at 29. The petition in these investigations was not filed until November 12, 1993, and liquidation was not suspended until June 17, 1994, at the very end of the period of investigation. Moreover, the record does not support petitioner's assertion that rumors of a petition or its pendency had any significant effect on our data.

²² These cost increases ***. CR at I-52-I-56, PR at II-23.

We therefore conclude that any financial injury to Elkem grounded in these cost increases was not by reason of dumped imports from Venezuela.

Elkem attributes some of its cost increases to its decision to halt domestic silicomanganese production between March and July of 1993.²³ Our data do not support this claim;²⁴ accordingly, we disagree with petitioner that either this temporary cessation of production or any cost increases attributable to it constitute material injury by reason of the subject imports.²⁵ Elkem concedes that it has converted its silicomanganese furnace on several occasions to the production of ferromanganese, as it did during the relevant period in 1993.²⁶ During the period when Elkem ceased producing silicomanganese, it met customer demand and *** by increasing its imports and purchases of subject and non-subject imports, ***.²⁷ Accordingly, even if Elkem did not, in fact, have to convert the furnace to meet contractual commitments for ferromanganese, its decision to rely on imports rather than domestic production in the face of rising demand was a business decision that does not necessarily signify injury by reason of the Venezuelan imports.^{28 29 30}

²³ Petitioner's Prehearing Brief at 20-21; Hearing Tr. at 40.

²⁴ CR at I-54, PR at II-23.

²⁵ Hearing Tr. at 41.

²⁶ CR at I-40-I-42, PR at II-19; Hearing Tr. at 79-80.

²⁷ Table G-2, CR at G-4, PR at G-3; Table 13, CR at I-57, PR at II-24.

²⁸ See Hearing Tr. at 29. For this reason, although we agree with Elkem that end-of-period capacity reflects its theoretical maximum capacity to produce silicomanganese when it chooses to do so full time, our analysis of the impact of imports relies on the average-of-period capacity data. The latter data reflects the fact that Elkem's capacity utilization was consistently *** when it was producing silicomanganese and does not count as idle silicomanganese capacity that was actually converted to another use. Table 6, CR at I-41, PR at II-19. We also note that Elkem concedes that silicomanganese prices in the U.S. market *** at the time it made its decision to convert the furnace to ferromanganese production. Petitioner's Posthearing Brief, Exhibit 2 at 26-27.

²⁹ Commissioner Crawford finds that end-of-period capacity is the more appropriate measure of petitioner's ability to produce silicomanganese. It takes only 8 to 24 hours to switch from producing silicomanganese to producing ferromanganese. Thus, petitioner can easily change its product mix in response to a change in the relative prices of the products. Petitioner has in fact done so: in 1993, petitioner switched to produce ferromanganese because of low silicomanganese prices. Thus, the total capacity of the furnace, as measured by end-of-period capacity, represents the actual capacity available to produce silicomanganese.

³⁰ Commissioner Crawford concurs that LTFV imports from Venezuela have not had any significant impact on the domestic industry. She evaluates the impact on the domestic industry by comparing the state of the industry when the imports were dumped with what the state of the industry would have been without the dumping, that is, had imports been priced fairly. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development as required by 19 U.S.C. § 1677(C)(iii). These factors either encompass or reflect the volume and price effects of the dumped imports, and so she gauges the impact of the dumping through those effects. In this regard, the impact on the domestic industry's prices and sales is critical, because the impact on other industry indicators (e.g. employment, wages, etc.) is derived from this impact. In this investigation, the dumping margin of 8.81 percent suggests that some and perhaps most of the Venezuelan imports still would have been sold had they been fairly traded. As discussed above, competition from the very large supply of nonsubject imports in the market would have prevented domestic price increases. Thus, any impact on the domestic industry would have been on its output and sales, rather than its prices. The impact

(continued...)

The principal other adverse factor cited by petitioner is the rise in its inventories over the period of investigation. Even if we agreed that rising inventories were evidence of injury by reason of Venezuelan imports, this single statutory factor, by itself, is not sufficient to justify a determination of material injury by reason of LTFV imports from Venezuela in this case, given all the evidence to the contrary.

Accordingly, we determine that the domestic industry is not materially injured by reason of LTFV imports from Venezuela.

³⁰ (...continued)
depends on whether petitioner could have increased production (i.e. the elasticity of domestic supply) and whether petitioner would have been likely to do so. Because it can readily switch from producing ferromanganese to producing silicomanganese, nearly *** percent of the capacity of petitioner's furnace was available to supply the limited amount of Venezuelan imports that would not have entered the market. However, petitioner maintains that it stopped producing silicomanganese in 1993 because of low silicomanganese prices. As a result, petitioner would not have increased its production of silicomanganese without an increase in silicomanganese prices. Because domestic prices would not have increased if Venezuelan imports had been priced fairly, petitioner would have had no incentive to switch from producing ferromanganese to producing silicomanganese. Therefore, petitioner would not have increased its output and sales, and thus its revenues, if the imports had been priced fairly. Consequently, Commissioner Crawford concludes that subject imports have not had any significant impact on the domestic industry.

**VIEWS OF CHAIRMAN PETER S. WATSON, COMMISSIONER CAROL T.
CRAWFORD AND COMMISSIONER LYNN M. BRAGG ON THREAT
OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS**

A. CUMULATION

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, the Commission has discretion to cumulate the volume and price effects of such imports if the competition requirement is met.¹ In addition, the Commission considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling or pricing patterns, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.²

Because we have found that the mandatory cumulation conditions are not satisfied in the case of Venezuela and Ukraine, we do not cumulate imports from those countries with other subject imports for purposes of our threat analysis. Moreover, although we did cumulate imports from Brazil and China for purposes of our present injury determinations, we decline to cumulate imports from those countries for purposes of our threat analysis. We base this determination on various diverging trends in the data that, in our view, make cumulation inappropriate for purposes of considering threat. In particular, we rely on the divergent pricing patterns of the Brazilian and Chinese imports.³ We also rely on the fact that imports from Brazil declined in interim 1994, while imports from China continued to rise.^{4 5}

B. THREAT OF MATERIAL INJURY

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission is not to make such a determination "on the basis of mere conjecture or supposition."⁶

¹ 19 U.S.C. § 1677(7)(F)(iv).

² See Torrington v. United States, 790 F.Supp. 1161, 1172 (Ct. Int'l Trade 1992), aff'd, 991 F.2d 809 (Fed. Cir. 1993); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asocoflores, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

³ There is a pattern of *** by Brazilian imports but sustained *** by Chinese imports. Table 23, CR at I-91, PR at II-39.

⁴ Table 21, CR at I-77, PR at II-31.

⁵ Commissioner Crawford acknowledges that the preceding discussion constitutes sufficient justification for not cumulating LTFV imports from Brazil with LTFV imports from China. Nonetheless, she has exercised her discretion to cumulate imports from these two countries in her determination of no threat of material injury by reason of LTFV imports from Brazil and China. See Dissenting Views of Commissioner Crawford, infra.

⁶ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F.Supp. 1273, 1280 (Ct. Int'l Trade 1984), aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).

We have considered all the statutory factors that are relevant to these investigations.⁷ The presence or absence of any single factor is not dispositive.⁸

1. No Threat of Material Injury by Reason of LTFV Imports from Ukraine

As discussed previously, we find that subject imports from Ukraine do not compete with the domestic product. Consequently, we do not cumulate subject imports from Ukraine in our determination that there is no material injury by reason of LTFV imports from Ukraine. For the same reasons, we decline to exercise our discretion to cumulate subject imports from Ukraine in our determination that there is no threat of material injury by reason of LTFV imports from Ukraine.

There has been *** in production capacity in Ukraine during the period of investigation.⁹ In addition, we do not find that the presence of underutilized capacity or any increase in unused capacity in Ukraine is likely to result in a significant increase in imports of silicomanganese into the United States. Although capacity utilization *** during the period of investigation, the *** resulted from ***.¹⁰ Even though this *** creates the possibility of increasing exports to the United States, it would be speculative to conclude that Ukrainian imports would be shipped to the U.S. market instead of to the other large and geographically closer export markets. In addition, the vast majority of Ukrainian production is shipped to customers in the home market or export markets other than the U.S. market, so Ukrainian producers are not primarily reliant on the U.S. market.¹¹ Indeed, exports to the United States never reached *** percent of total Ukrainian shipments during the period of investigation.¹² There is no evidence that this mix of markets will change in the immediate future. For these reasons, we find no likelihood of a significant increase in Ukrainian imports into the United States due to underutilized or existing unused capacity.

There has been a rapid increase in market penetration of subject imports from Ukraine, from 0 percent in 1991 and 1992 to *** percent in 1993. However, the rapid increase was a function of a base of zero imports. Moreover, we find that import penetration will not increase to an injurious level. The rapid increase in market penetration coincided with the point at which Ukrainian exports to the United States, as a percentage of total shipments, reached its ***.¹³ In light of our finding that this market mix will not change in the immediate future and the base of zero from which imports increased, we do not find the rapid increase in market share to be persuasive evidence that market penetration will increase to an injurious level.

⁷ 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Since this investigation does not involve a subsidy or an agricultural product, Factors I and IX are not applicable. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I).

⁸ See, e.g., *Rhone Poulenc, S.A. v. United States*, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁹ Table 19, CR at I-72, PR at II-30.

¹⁰ CR at I-71, PR at II-29.

¹¹ Hearing Tr. at 131-134.

¹² Table 19, CR at I-72, PR at II-30.

¹³ We note that exports to the United States accounted for only *** percent of total Ukrainian shipments in the first half of 1994.

We find that Ukrainian imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices. We have found that Ukrainian imports are not currently having a depressing or suppressing effect on domestic prices. As discussed previously, the substitutability between subject imports from Ukraine and the domestic product is limited, and there is limited geographical competition between the two. In addition, petitioner has acknowledged that nonsubject imports limit price increases. There is no evidence that these market conditions will change in the immediate future, and therefore that subject imports from Ukraine will be any more likely to affect prices adversely in the immediate future than they have during the period of investigation.

There was a *** increase in Ukrainian inventories in the United States from 1992 to 1993. In the 1994 interim period, however, the level of inventories was *** the level in the 1993 interim period. Thus, the level of inventories at the end of the period of investigation was ***.¹⁴ Having not found material injury by reason of LTFV imports when inventories were at ***, we do not find that the *** in the interim 1994 period demonstrates persuasive evidence that "the threat of material injury is real and that actual injury is imminent". In any event, we do not find that the level of inventories, by itself, is sufficient to justify a determination of threat of material injury by reason of LTFV imports from Ukraine, in light of the other factors considered.

There is no evidence of any potential for product-shifting within the meaning of 19 U.S.C. §1677(7)(F)(i)(VIII). We also find no actual or potential negative effects on existing development and production efforts of the domestic industry. Representatives of Elkem testified at the hearing that Elkem has been investing in improvements to its silicomanganese operations and making additional commitments to further development of its silicomanganese business, despite the *** capital expenditures it reported.¹⁵

We find no "other demonstrable adverse trends" to indicate that subject imports from Ukraine will be the cause of actual injury. Finally, there are no third country antidumping findings or remedies against Ukrainian silicomanganese.¹⁶

We therefore find that the domestic industry producing silicomanganese is not threatened with material injury by reason of LTFV imports from Ukraine.

2. No Threat of Material Injury by Reason of LTFV Imports from Venezuela

We do not find that any increase in production capacity or unused capacity in Venezuela is likely to result in a significant increase in imports of silicomanganese into the United States. The Venezuelan industry's capacity to produce silicomanganese ***.¹⁷ Nevertheless, its ***, and its capacity utilization level ***.¹⁸ Moreover, *** of Venezuelan output is consumed in the home market, and third country exports ***.¹⁹ In light of the

¹⁴ Table 16, CR at I-65, PR at II-27.

¹⁵ Hearing Tr. at 53; Petitioner's Posthearing Brief, Exhibit 2 at 14-15, 25-26; Table 15, CR at I-61, PR at II-24.

¹⁶ The European Commission has initiated antidumping investigations on imports of silicomanganese from Ukraine and certain other countries. However, no findings have been published, and therefore the requirements of 19 U.S.C. § 1677(7)(F)(iii) have not been met. CR at I-75, PR at II-30.

¹⁷ CR at I-73, PR at II-30; Table 20, CR at I-74, PR at II-30.

¹⁸ Table 20, CR at I-74, PR at II-30.

¹⁹ Table 20, CR at I-74, PR at II-30.

Venezuelan producer's *** capacity utilization and *** home and third country markets, we find no likelihood of a significant increase in Venezuelan imports into the United States due to increased or existing unused capacity.

Although there has been an increase in United States market penetration of silicomanganese from Venezuela, Venezuelan imports were small both in absolute terms and in terms of their U.S. market share. Having found the increase in Venezuelan imports during the period of investigation not to be significant, and based on the Venezuelan capacity data discussed above, we find no likelihood that import penetration will rise to injurious levels.

We find that Venezuelan imports will not enter the United States at prices that will have a depressing or suppressing effect on domestic prices. We have found that Venezuelan imports are not currently having a depressing or suppressing effect on domestic prices. As discussed previously, the substitutability between subject imports from Venezuela and the domestic product is limited, and there is limited geographic competition between the two. In addition, petitioner has acknowledged that nonsubject imports limit price increases. There is no evidence that these market conditions will change in the immediate future, and therefore that subject imports from Venezuela will be any more likely to affect prices adversely in the immediate future than they have during the period of investigation.

The record does not support a finding that importers' U.S. inventories will have an injurious effect on the U.S. industry. There has been no substantial increase in inventories of the merchandise in the United States. In fact, U.S. inventories of Venezuelan silicomanganese fell between 1992 and 1993 and were lower in interim 1994 than in interim 1993.²⁰ Moreover, 1993 and interim 1994 inventories were extremely low in absolute terms. Petitioner argued that a large overhang of subject imports would suppress future price increases in the U.S. market.²¹ No such overhang of Venezuelan imports exists.²²

We do not find any potential for product-shifting within the meaning of 19 U.S.C. §1677(7)(F)(i)(VIII). Ferromanganese, which some producers can manufacture in the same production facilities as silicomanganese, is not subject to any antidumping order or investigation, nor is there any evidence of record that Hevensa can produce additional products in its silicomanganese furnaces.²³

We also find no actual or potential negative effects on existing development and production efforts of the domestic industry. Representatives of Elkem testified at the hearing that Elkem has been investing in improvements to its silicomanganese operations and making additional commitments to further development of its silicomanganese business, despite the *** capital expenditures it reported.²⁴

There are no "other demonstrable adverse trends" that indicate that Venezuelan imports will be the cause of actual injury. Finally, there are no third country antidumping determinations or remedies against Venezuelan silicomanganese.²⁵

We therefore find that the domestic industry producing silicomanganese is not threatened with material injury by reason of LTFV imports from Venezuela.

²⁰ Table 16, CR at I-65, PR at II-27.

²¹ Petitioner's Prehearing Brief at 40; Petitioner's Posthearing Brief at 9.

²² Moreover, Hevensa's exclusive U.S. distributor ***. Venezuelan Posthearing Brief at 11.

²³ Hevensa indicated that it is considering ***. CR at I-73, PR at II-30.

²⁴ Hearing Tr. at 53; Petitioner's Posthearing Brief, Exhibit 2 at 14-15, 25-26; Table 15, CR at I-61, PR at II-24.

²⁵ CR at I-75, PR at II-30.

3. Threat of Material Injury by Reason of LTFV Imports from China²⁶

Based on the record in these final investigations, we determine that an industry in the United States is threatened with material injury by reason of LTFV imports of silicomanganese from China. Commission data on Chinese silicomanganese production, capacity, and shipments, although limited, show increases in production over the period of investigation as well as the existence of underutilized capacity throughout the 1991 to 1993 period.²⁷ Chinese silicomanganese production increased from *** short tons in 1991 to *** short tons in 1993, an increase of *** percent, and is projected to increase to *** short tons in 1994.²⁸ Over the 1991 to 1993 period, the average capacity utilization rate for the Chinese silicomanganese industry was only *** percent.²⁹ We note, moreover, that the Commission's data for China is significantly understated because we only received production, capacity, and shipments data for four Chinese producers of silicomanganese, including only one of eight identified by petitioners.³⁰ Even at reported capacity levels, China accounts for a significant amount of worldwide silicomanganese productive capacity.³¹

Moreover, the Chinese silicomanganese industry is heavily dependent on export markets. In 1993, *** percent of Chinese silicomanganese production was shipped to export markets, a large portion of which appears to have been shipped to the United States.³² China's domestic requirements for silicomanganese have not increased at the same rate as its production of silicomanganese over the period of investigation.³³ As a result of the existence of substantial unused capacity in China and the Chinese industry's heavy reliance on export markets, we find that there is likely to be a significant increase in exports of Chinese silicomanganese to the United States in the near future.

The likelihood of further significant increases in Chinese imports also is supported by the data on imports during the period of investigation. Both the volume and U.S. market share of Chinese silicomanganese imports surged over the period of investigation. Chinese imports of silicomanganese grew from 5,848 short tons in 1991 to 56,430 short tons in 1993, an increase of 865 percent.³⁴ The increase in Chinese imports continued during the interim period.³⁵ Over the 1991 to 1993 period, Chinese silicomanganese imports accounted for an increasing percentage of total U.S. silicomanganese imports.³⁶ China's share of U.S. silicomanganese consumption also grew noticeably from 1991 to 1993, and over the interim

²⁶ Commissioner Crawford found no threat of material injury by reason of cumulated imports from Brazil and China. See Dissenting Views of Commissioner Crawford, *infra*.

²⁷ Table 18, CR at I-70, PR at II-29.

²⁸ Table 18, CR at I-70, PR at II-29.

²⁹ Table 18, CR at I-70, PR at II-29.

³⁰ CR at I-69, PR at II-29.

³¹ Petitioner's Posthearing Brief, Exhibit 2 at 33-34 and Exhibit 13.

³² Table 18, CR at I-70, PR at II-29 and Table F-2, CR at F-3, PR at F-3.

³³ Table 18, CR at I-70, PR at II-29.

³⁴ Table 21, CR at I-76, PR at II-31.

³⁵ Chinese imports increased from 5,644 short tons in interim 1993 to 19,751 short tons in interim 1994, an increase of 250 percent (Table 21, CR at I-76, PR at II-31).

³⁶ Between 1991 and 1993, the share of U.S. imports accounted for by silicomanganese from China rose from 2.1 to 16.2 percent (Table 21, CR at I-76, PR at II-31). The share of silicomanganese imports accounted for by Chinese product rose from 3.8 percent to 10.3 percent during the interim periods *Ibid*.

period.³⁷ Although we find no present material injury by reason of imports from China, we find that Chinese imports are likely to continue to rise at a rapid rate and to reach a level injurious to the domestic industry in the near future.

In our determination that there is no material injury by reason of subject imports, we found that LTFV imports from each of the four subject countries have had no significant adverse effect on domestic prices over the period of investigation, due in part to the presence of substantial quantities of nonsubject imports. We believe that nonsubject imports will continue to have a restraining influence on domestic price increases. Chinese and domestic silicomanganese are good substitutes, however.³⁸ In addition, unlike Ukrainian and Venezuelan silicomanganese, shipments of Chinese silicomanganese were distributed widely throughout the United States in 1993 and the interim period.³⁹ We find, therefore, that Chinese and domestic silicomanganese compete in the United States. This finding, in conjunction with our finding that import volumes are likely to rise rapidly and other factors, such as the large inventory overhang of Chinese imports in the United States, leads us to conclude that Chinese imports are likely to enter the United States at prices that will have a depressing or suppressing effect on domestic prices. We also note that Chinese silicomanganese ***.⁴⁰ Further, we note that ***.⁴¹

End-of-period inventories of Chinese silicomanganese imports also surged over the period of investigation. Chinese ending inventory quantities increased by *** percent from 1992 to 1993 and by *** percent between the interim periods.⁴² In addition, U.S. importers' end-of-period inventories of Chinese silicomanganese increased both absolutely, and in relative terms as a ratio to imports, ratio to U.S. shipments of imports, and ratio to total shipments of imports in 1993 compared to 1991.⁴³ We find that the substantial increase in Chinese silicomanganese inventories in the United States and in the importer's levels of inventories in 1993 compared to 1991 provide further support for an affirmative determination of threat of material injury by reason of LTFV imports from China.

We have also considered whether dumping findings or antidumping remedies in foreign countries against silicomanganese suggest a threat of material injury to the domestic industry. On February 3, 1993, Japan imposed antidumping duties of 5 to 27 percent on imports of silicomanganese from China.⁴⁴ We note that U.S. imports of silicomanganese from China increased from 12,591 short tons in 1992 to 56,430 short tons in 1993 and that all of the 1993 imports from China arrived in the United States after February, when the Japanese duties on Chinese silicomanganese took effect.⁴⁵ Thus, we find it likely that the imposition of antidumping duties by Japan against Chinese imports of silicomanganese contributed to the rapid increase in Chinese imports to the United States, and we find no evidence that this trend will diminish. Accordingly, we conclude that the Japanese

³⁷ Table 22, CR at I-80, PR at II-34. ***

³⁸ Most silicomanganese purchasers do not know or care about the source of the product, so long as it meets their chemical requirements (CR at I-88, PR at II-37). In addition, five out of seven end users indicated that silicomanganese from China is equal in quality to the domestic product (CR at I-89, PR at II-37).

³⁹ Table 5, CR at I-36; PR at II-17.

⁴⁰ Table 23, CR at I-91, PR at II-39.

⁴¹ CR at I-25, PR at II-13.

⁴² Table 16, CR at I-65, PR at II-27.

⁴³ Table 16, CR at I-65, PR at II-27.

⁴⁴ CR at I-75, PR at II-30 and Petitioner's Prehearing Brief at Exhibit 6.

⁴⁵ Table F-2, CR at F-3, PR at F-3.

antidumping remedy against Chinese imports further supports the existence of material injury to the domestic industry.

Although we find no present negative effects on the existing development and production efforts of the domestic industry, we cannot rule out the possibility that a continued surge in the volume and market penetration of Chinese imports will adversely affect the domestic industry. Nevertheless, this factor is not necessary to support our affirmative threat determination.

In considering the potential for product shifting within the meaning of 19 U.S.C. § 1677(7)(F)(i)(VIII), we note that there is no information on the record regarding the ability of Chinese producers to manufacture different products in the same production facilities as silicomanganese.

In summary, based on the evidence of competition between Chinese and the domestic product, the rapid increase in Chinese imports and United States market penetration over the period of investigation, recent increases in ending inventory levels of Chinese silicomanganese held by U.S. importers, and the antidumping remedy imposed by Japan on Chinese silicomanganese imports, we conclude that the domestic industry is threatened with material injury by reason of Chinese imports.

We have also considered whether, but for the suspension of liquidation, we would have made an affirmative material injury determination.⁴⁶ Given that the suspension of liquidation in this investigation occurred in June 1994, the end of our period of investigation, it did not affect our findings with respect to China. Therefore, we would not have made an affirmative material injury determination with respect to China but for the suspension of liquidation.

⁴⁶ 19 U.S.C. § 1673d(b)(4)(B).

VIEWS OF CHAIRMAN PETER S. WATSON ON THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL

Based on the record in these final investigations, I determine that an industry in the United States is threatened with material injury by reason of imports of silicomanganese from Brazil that have been found to have been sold at less than fair value (LTFV).¹ As discussed supra, I decline to cumulate the subject imports from Brazil for the purposes of my threat analysis.

The Commission obtained data from two Brazilian silicomanganese producers accounting for *** percent of total Brazilian silicomanganese production and nearly all exports of silicomanganese to the United States. Brazilian silicomanganese production capacity *** between 1991 and 1993, from *** short tons in 1991 to *** short tons in 1993. Brazil's production of silicomanganese, *** from 1991 to 1993, resulting in *** in Brazil's silicomanganese capacity utilization from *** in 1991 to *** in 1993.²

The *** in production capacity from 1991 to 1993, along with *** unused capacity during the same period, permitted Brazilian producers to increase significantly their exports to the United States. Although Brazil exports silicomanganese to *** in addition to the United States, shipments to the United States accounted for *** percent of Brazil's total export shipments in 1993.³ The United States is an important silicomanganese export market for Brazil and is likely to remain so. Indeed, ***; further, ***.⁴ Moreover, *** in Brazilian production capacity from 1991 to 1993 ***. Shipments of silicomanganese in Brazil ***.⁵ These factors lead me to conclude that Brazil's *** production capacity and existing unused capacity are likely to result in a significant increase in imports of silicomanganese to the United States in the near future.

Counsel for Brazilian respondents argue that the Paulista Group has curtailed its silicomanganese capacity, is undergoing a massive reorganization of its ferroalloy operations, and is in the process of transferring its ownership to two Brazilian companies which will result in the redirection of most of its silicomanganese production toward captive consumption.⁶ They argue that these changes will result in the dedication of most of Paulista's production capacity to the home market in the future and a corresponding decrease in exports to other countries. I view such claims as speculative given that the transfer of ownership has not yet occurred and that factual evidence of the events that respondents claim will result from the transfer has not been presented to the Commission.⁷

The record also indicates that there has been an increase in Brazilian import volume over the period of investigation. Imports of silicomanganese from Brazil increased from

¹ Two of the statutory threat factors under 19 U.S.C. § 1677(7)(F)(i) have no relevance to these investigations and need not be discussed. Because there are no subsidy allegations, factor I is not applicable. Moreover, factor IX regarding raw and unprocessed agriculture products also is not applicable to this case.

² Table 17, CR at I-67, PR at II-28.

³ Table 17, CR at I-67, PR at II-28.

⁴ Table 17, CR at I-67, PR at II-28.

⁵ Table 17, CR at I-67, PR at II-28.

⁶ Brazilian Respondents' Posthearing Brief at 11-14.

⁷ Furthermore, *** (CR at I-68, PR at II-28). According to information submitted to the Commission by Petitioners, Sibra is expected to increase silicomanganese output from 49,000 MT in 1993 to 91,000 MT in 1994 due to a full year's operation of a new plant. See Petitioner's Posthearing Brief at 15 and Exhibit 7.

51,656 short tons in 1991 to 71,400 short tons in 1993, an increase of 38.2 percent.⁸ Although Brazil's U.S. market penetration declined slightly overall from 1991 to 1993, in this instance I place more weight on absolute volume changes as a predictor of future Brazilian presence in the United States market, since growing demand over the period of investigation attenuated significant redistribution of market shares during the period of investigation.⁹ Accordingly, based on the growth in the absolute volume of Brazilian imports during the period of investigation, I find it likely that Brazilian import penetration will rise to an injurious level in the near future.¹⁰

I also note, as a demonstrable adverse trend, that from 1991 to 1993 Brazil was one of the largest suppliers of silicomanganese imports to the United States. Brazil became the single largest source of imported silicomanganese to the United States in 1993, surpassing the Republic of South Africa, with 20.5 percent of total imports.¹¹ Given its large role as a supplier of silicomanganese to the United States, the *** in production capacity in Brazil over the 1991 to 1993 period, and *** underutilized capacity, I find that there is sufficient basis to conclude that an increase in LTFV imports of silicomanganese from Brazil to the United States is likely to occur in the near future and that the penetration of Brazilian imports are likely to rise to an injurious level.

In my determination that there is no material injury by reason of LTFV imports I concluded that LTFV imports from each of the four subject countries have had no material adverse effect on domestic prices over the period of investigation, due, in part, to the presence of substantial quantities of nonsubject imports in the United States market.¹² Given, however, Brazil's role as the single largest source of silicomanganese to the United States in 1993,¹³ the significant increases in volume of Brazilian imports over the period of investigation,¹⁴ and the high degree of substitutability between the Brazilian and domestic like products,¹⁵ I believe that further increases in Brazilian import volumes are likely to have adverse price effects on the domestic industry in the near future.¹⁶ Thus, I find that imports

⁸ Table 21, CR at I-76, PR at II-31.

⁹ Table 22, CR at I-80, PR at II-34.

¹⁰ Although the volume of imports of silicomanganese from Brazil declined between interim 1993 and interim 1994, I have placed less reliance on the 1994 figures in this instance because they are inconsistent with Brazil's record of steady participation in the United States silicomanganese market over the period of investigation, the increases in Brazil's absolute volume of exports to the United States over the period of investigation, and Brazil's *** silicomanganese production and production capacity over the period of investigation.

¹¹ Table F-5, CR at F-5, PR at F-5.

¹² See Views of Chairman Watson, Commissioner Crawford and Commissioner Bragg on No Material Injury by Reason of LTFV Imports from Brazil and China, *supra*.

¹³ Table F-5, CR at F-5, PR at F-5.

¹⁴ Table 21, CR at I-76, PR at II-31.

¹⁵ I find that Brazilian and domestic silicomanganese are good substitutes for several reasons. First, all responding end users indicated that silicomanganese from Brazil is equal in quality to the domestic product (CR at I-89, PR at II-38). Second, most silicomanganese purchasers do not know or care about the source of the product, so long as it meets their chemical requirements (CR at I-89, PR at II-38). Finally, unlike Ukrainian and Venezuelan silicomanganese imports, shipments of Brazilian silicomanganese were distributed widely throughout the U.S. in 1993 and the interim period and in numerous states in which Petitioner sold silicomanganese (Table 5, CR at I-36-I-37, PR at II-17). I find, therefore, that Brazilian and domestic silicomanganese compete in the United States.

¹⁶ In further support of this point, I note that *** (Table 23, CR at I-91, PR at II-39).

of silicomanganese from Brazil are likely to enter the United States at prices that will have a depressing or suppressing effect on domestic prices of silicomanganese.

Importers' end-of-period inventories of Brazilian silicomanganese rose significantly from 1991 to 1993 and between the 1993-94 interim periods.¹⁷ Moreover, inventories of Brazilian silicomanganese increased both absolutely and as a ratio to imports, U.S. shipments, and total shipments throughout the period of investigation.¹⁸ I find that these facts related to inventories further support my affirmative threat determination.

I have also considered whether the potential for product-shifting poses a threat. I do not find any potential for product-shifting within the meaning of 19 U.S.C. § 1677(7)(F)(i)(VIII). Ferromanganese, which some producers can manufacture in the same facilities as silicomanganese, is not subject to any antidumping order or investigation, nor is there any evidence of record that the Brazilian manufacturers intend to shift production capacity from a product subject to an antidumping order or investigation to silicomanganese. This finding, however, does not detract from my overall conclusion that the domestic industry is threatened with material injury by reason of imports of silicomanganese from Brazil.

Although I do not find present actual negative effects on the existing development and production efforts of the domestic industry, I am not required to find such effects to support my affirmative determination on threat of material injury by reason of imports from Brazil.

In sum, I find that the significant share of total United States silicomanganese imports accounted for by Brazilian imports, the *** in Brazilian production capacity and underutilized capacity from 1991 to 1993, the increase in Brazilian imports from 1991 to 1993, the likelihood that Brazilian silicomanganese imports will have adverse domestic price effects in the near future, the steady increases in ending inventory quantities of Brazilian silicomanganese existing in the United States, and the absolute and relative increases in Brazilian inventories over the period of investigation demonstrate that Brazilian imports pose a real and imminent threat of material injury to the domestic industry.

I have also considered whether, but for the suspension of liquidation, I would have made an affirmative material injury determination.¹⁹ Given that the suspension of liquidation occurred in June 1994, the end of the 1994 interim period, it did not affect my findings with respect to Brazil. Therefore, I would not have made an affirmative material injury determination with respect to Brazil but for the suspension of liquidation.

¹⁷ Brazilian ending inventory quantities ***, Table 16, CR at I-65, PR at II-27.

¹⁸ Table 16, CR at I-65, PR at II-27.

¹⁹ 19 U.S.C. § 1673 d(b)(4)(B).

VIEWS OF COMMISSIONER LYNN M. BRAGG REGARDING NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The Commission is not to make such a determination "on the basis of mere conjecture or supposition."¹

I have considered all the statutory factors that are relevant to this investigation.² The presence or absence of any single factor is not dispositive.³

I find no threat of material injury to the domestic industry as a result of imports of silicomanganese from Brazil, for the following reasons. As discussed previously, I decline to cumulate any of the subject imports for purposes of my threat analysis.

First, I do not find that there is any increase in production capacity or existing unused capacity in Brazil likely to result in a significant increase in imports of Brazilian silicomanganese to the United States. Data collected from the two Brazilian producers accounting for "virtually all exports of silicomanganese to the United States"⁴ show that production capacity *** by *** percent between 1991 and 1993, but was *** in the first half of 1994 than in the first half of 1993. In addition, the rate of capacity utilization *** from *** percent in 1991 to *** percent in 1993, but then *** to *** percent in interim 1994 as compared with *** percent in interim 1993.

Although Brazilian production capacity did ***, and capacity utilization ***, from 1991 to 1993, I do not find that those indicators are likely to result in significant increases of silicomanganese imports from Brazil into the United States. I believe that any significant increases in Brazilian imports would likely have occurred already. In 1993, when Brazilian capacity was ***, capacity utilization was ***, and prices in the U.S. market were beginning to increase, Brazilian imports did increase in both quantity and value, but domestic consumption also increased, resulting in insignificant changes in Brazilian market shares, by both quantity and value, from the previous year. Also, as noted above, in interim 1994 capacity was *** and capacity utilization was *** than during the same period the previous year, thus further reducing the possibility of significant increases in imports from Brazil.

Brazilian silicomanganese capacity for full years 1994 and 1995 also is projected to *** capacity for 1991. This reported *** is the result of ***.⁵ Finally, at the Commission's hearing, one Brazilian respondent noted that "the figures reported by Paulista Group (Paulista and Sibra) to the Commission refer to the installed equipment as if it would be solely used

¹ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F.Supp. 1273, 1280 (Ct. Int'l Trade 1984), aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).

² 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Since this investigation does not involve a subsidy or an agricultural product, Factors I and IX are not applicable. In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I).

³ See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

⁴ CR at I-67, PR at II-28.

⁵ CR at I-68, PR at II-28.

for the production of silicomanganese. However, this theoretical capacity is never achieved because the same furnaces produce other ferroalloys that are not silicomanganese."⁶ The Brazilian respondents also assert that the Paulista Group is operating ***.⁷

Second, the trends in U.S. market penetration by Brazilian imports over the period examined do not support an affirmative threat finding. By quantity, the market penetration of silicomanganese from Brazil decreased from *** percent in 1991 to *** percent in 1993, and was *** percent in the first half of 1994 as compared with *** percent in the first half of 1993. By value, Brazilian market share was *** percent between 1991 and 1993, with *** in 1992. Market share was also *** percent in the first half of 1994, compared to *** percent in the first half of 1993. With flat or slightly declining trends during the full three-year period, and significantly declining trends during the interim 1993-94 periods, I do not find a rapid increase in market penetration, and further cannot find any likelihood that import penetration will increase to an injurious level in the future.

Third, I do not find any evidence that silicomanganese imports from Brazil are likely to enter the United States at prices that will have a depressing or suppressing effect on domestic silicomanganese prices. As discussed in the determinations of Chairman Watson, Commissioner Crawford and myself that there is no material injury by reason of subject imports, I found that LTFV imports from each of the four subject countries had no significant adverse effect on domestic prices over the period examined, due in part to the presence of large quantities of nonsubject imports. I find no evidence that Brazilian imports will have such effects in the near future. Prices of Brazilian Grade B silicomanganese sold under quarterly contracts in the United States were higher than prices for the domestic product in *** of a possible *** quarterly price comparisons. *** of the *** instances of Brazilian underselling did occur in ***. These margins, however, were ***, they occurred during a period of generally increasing domestic prices, and the volumes associated with these reported prices were *** the volumes associated with the comparable domestic prices. This evidence thus minimizes the potential for any future price depression or price suppression as a result of Brazilian imports.

Fourth, inventories of Brazilian material in the United States did show a *** increase between 1991 and 1993. I give less weight to this evidence, however, since the inventories were accumulated during a period of growing demand and may have been imported in order to meet perceived further growth in demand. Furthermore, between 1991-92 and 1992-93, when importers' U.S. inventories of Brazilian silicomanganese grew ***, the Brazilian share of apparent consumption decreased in terms of quantity and *** in terms of value. This disparity indicates that there is little correlation in this case between ending inventories and actual import penetration, which along with import prices, and the ability of foreign producers to generate exports are more fundamental to my analysis of threat.

There is no evidence on the record of any potential for product-shifting within the meaning of 19 U.S.C. § 1677(7)(F)(i)(VIII). I also find no actual or potential negative effects on existing development or production efforts of the domestic industry. Elkem representatives testified at the hearing that Elkem has been investing in improvements to its silicomanganese operations and making additional commitments to further development of its silicomanganese business, despite the *** capital expenditures it reported.⁸ Further, I find no

⁶ Hearing Tr. at 164.

⁷ Brazilian Respondents' Posthearing Brief at 13.

⁸ Hearing Tr. at 53; Petitioner's Posthearing Brief, Exhibit 2 at 14-15, 25-26; Table 15, CR at I-61, PR at II-24.

"other demonstrable adverse trends" that indicate that Brazilian silicomanganese imports are likely to be the cause of actual injury.

Finally, I note that an antidumping investigation against Brazil and several other countries is currently pending in the European Union (EU) which could, conceivably cause a diversion of exports from the EU to the United States. However, no determination has yet been issued in that investigation, and Brazilian producers continue to export silicomanganese to the EU. Consequently, this factor does not support a threat determination based on the potential for export diversion from the EU to the United States. Furthermore, the Brazilian respondents noted in their posthearing brief that ***.⁹ This further limits the possibility for export diversion even in the event of an affirmative EU finding against the Brazilian producers.

In conclusion, based on all of the above factors, I find that the domestic industry producing silicomanganese is not threatened with material injury by reason of LTFV imports from Brazil.

⁹ Brazilian Respondents' Posthearing Brief at 14.

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

Based on the record in these investigations, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of silicomanganese from Brazil, China, Ukraine and Venezuela that the Department of Commerce has found to be sold at less than fair value ("LTFV"). I have joined Chairman Watson, Vice Chairman Nuzum and Commissioner Bragg in our joint views with respect to like product, domestic industry, related parties, and the condition of the domestic industry.¹ In addition, I have joined Chairman Watson and Commissioner Bragg in our joint views that the domestic industry is not materially injured by reason of LTFV imports from Brazil, China, Ukraine and Venezuela, and in our joint views that the domestic industry is not threatened with material injury by reason of LTFV imports from Ukraine or Venezuela.² However, I determine that the domestic industry is not threatened with material injury by reason of LTFV imports from Brazil and China. My analysis follows.

NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL AND CHINA

As discussed previously, I joined Chairman Watson and Commissioner Bragg in the decision to cumulate imports from Brazil and China in our joint determination that the domestic industry is not materially injured by reason of LTFV imports from Brazil and China.³ However, I do not join in their decision not to cumulate these imports for purposes of this determination of no threat of material injury by reason of LTFV imports from these two countries. For the same reasons that we cumulated LTFV imports from Brazil and China in our joint determination of no material injury by reason of these imports, I exercise my discretion to cumulate imports from these two countries in this analysis. I note that cumulation in this analysis favors petitioner.

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.⁴ A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."⁵

I do not find that any increase in production capacity or in existing unused capacity or the presence of underutilized capacity in Brazil and China is likely to result in a significant increase in imports of silicomanganese into the United States. Although capacity was available during the period of investigation, there are significant export and home markets for both Brazilian and Chinese silicomanganese, and there is no evidence that this market mix will change significantly in the immediate future.⁶ Given the large demand for silicomanganese in export markets and the respective home markets, I do not find that there

¹ See Views of Chairman Watson, Vice Chairman Nuzum, Commissioner Crawford and Commissioner Bragg supra at pages I-19-I-28.

² See Views of Chairman Watson, Commissioner Crawford and Commissioner Bragg supra at pages I-37-I-59.

³ See Views of Chairman Watson, Commissioner Crawford and Commissioner Bragg, supra at pages I-29-I-42.

⁴ 19 U.S.C. § 1677(F)(i).

⁵ 19 U.S.C. § 1677(7)(F)(ii).

⁶ CR at I-67, Table 17, PR at II-28, and CR at I-70, Table 18, PR at II-29.

is a likelihood of a significant increase in subject imports from Brazil and China due to available capacity in those countries. It would be mere conjecture to conclude that exports from Brazil or China are likely to increase. There has not been a rapid increase in market penetration of subject imports. The cumulated market share was *** percent in 1991, *** percent in 1992, and *** percent in 1993.⁷ This stable market share does not indicate that import penetration will increase to an injurious level. For this reason, as well as my finding that the market mix of exports of subject imports will not change significantly in the immediate future, I do not find the slight increase in market share from 1991 to 1993 to be persuasive evidence that market penetration will increase to an injurious level.

I do not find that subject imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. In my joint views with Chairman Watson and Bragg, we found that subject imports are not currently having a depressing or suppressing effect on domestic prices. Even though subject imports and the domestic product are good substitutes, domestic prices will not increase if subject imports are fairly traded. As petitioner has acknowledged, the very large presence of nonsubject imports limits price increases in the market. There is no evidence that these market conditions will change in the immediate future, and therefore that subject imports will be any more likely to affect prices adversely in the immediate future than they have during the period of investigation.

There was a substantial increase in inventories of subject imports in the United States, from *** short tons in 1992 to *** short tons in 1993. In the 1994 interim period the level of inventories was *** short tons.⁸ Thus, the level of inventories at the end of the period of investigation was *** the highest level in 1993. Having not found material injury by reason of LTFV imports when inventories were at ***, I do not find that the level in the interim 1994 period demonstrates persuasive evidence that "the threat of material injury is real and that actual injury is imminent". In any event, I do not find that the level of inventories, by itself, is sufficient to justify a determination of threat of material injury by reason of LTFV imports from Brazil and China, in light of all the other evidence that justifies a negative determination.

I have analyzed the potential for product-shifting within the meaning of 19 U.S.C. §1677(7)(F)(i)(VIII). The record indicates that both of the major Brazilian producers produce ferrosilicon as well as silicomanganese. In addition, ***.⁹ While there is little evidence on the record concerning the ability of Chinese producers to shift production from ferrosilicon to silicomanganese, I have given petitioner the benefit of the doubt and assumed that the potential exists in China. Imports of ferrosilicon from both Brazil and China are subject to antidumping orders issued in January 1994 and March 1993, respectively.¹⁰ Thus, the potential for product-shifting within the meaning of the statute exists. However, I do not find that the potential for product-shifting constitutes persuasive evidence that any threat of material injury is real or that actual injury is imminent. ***. In addition, both Brazilian producers recently filed for bankruptcy, and negotiations are in progress to transfer ownership to a Brazilian manganese ore producer and a Brazilian steel producer.¹¹ As a result of this transfer, it is likely that the new owners will internally consume a large amount

⁷ Calculated from Table 2, CR at I-30, PR at II-15.

⁸ Table 16, CR at I-65, PR at II-27.

⁹ CR at I-68, PR at II-28.

¹⁰ Ferrosilicon from Brazil, Inv. No. 731-TA-641 (Final), USITC Pub. 2722 (January 1994) and Ferrosilicon from the People's Republic of China, Inv. No. 731-TA-566 (Final), USITC Pub. 2607 (March 1993).

¹¹ CR at I-68, PR at II-28.

of silicomanganese from the two Brazilian producers. In addition, imports of Brazilian silicomanganese have not increased significantly since the ferrosilicon order was issued in January 1994. Rather, subject imports from Brazil were considerably lower in the first six months of 1994 compared to the first six months of 1993.¹² With respect to China, the antidumping order went into effect over 20 months ago, so it would seem likely that product-shifting would have occurred well over a year ago. The fact that subject imports from China increased significantly, from 12,591 short tons in 1992 to 56,430 short tons in 1993, and the fact that the vast majority of imports in 1993 entered after the ferrosilicon order was issued,¹³ could support a conclusion that product-shifting has occurred. However, there is no evidence on the record that any additional product-shifting will occur in the immediate future. For the above reasons, I find that the potential for product-shifting does not constitute persuasive evidence that any threat of material injury is real or that actual injury is imminent.

I also find no actual or potential negative effects on existing development and production efforts of the domestic industry. Representatives of Elkem testified at the hearing that Elkem has been investing in improvements to its silicomanganese operations and making additional commitments to further development of its silicomanganese business, despite the *** capital expenditures it reported.¹⁴

I find no "other demonstrable adverse trends" to indicate that subject imports from Brazil and China will be the cause of actual injury. On February 3, 1993, the Government of Japan imposed antidumping duties ranging from 5 percent to 27 percent on Chinese silicomanganese.¹⁵ However, the large home market in China represents demand for Chinese silicomanganese that would likely limit any diversion of exports from Europe to the United States. In addition, these duties were imposed nearly two years ago, so any diversion of Chinese exports to the U.S. market likely would have already occurred. For these reasons, I do not find that the existence of this antidumping remedy constitutes persuasive evidence that any threat of material injury is real or that actual injury is imminent.

Finally, there are no third country antidumping findings or remedies against Brazilian silicomanganese.¹⁶

For the reasons discussed above, I find that the domestic industry producing silicomanganese is not threatened with material injury by reason of LTFV imports from Brazil and China.

¹² Table 21, CR at I-76, PR at II-31. Subject imports from Brazil were *** short tons in the first six months of 1994 compared to *** short tons in the first six months of 1993.

¹³ CR at F-3, Table F-2, PR at F-3.

¹⁴ Hearing Tr. at 53; Petitioner's Posthearing Brief, Exhibit 2 at 14-15, 25-26; Table 15, CR at I-61, PR at II-24.

¹⁵ CR at I-75, PR at II-30.

¹⁶ The European Commission has initiated antidumping investigations on imports of silicomanganese from Brazil and certain other countries. However, no findings have been published, and therefore the requirements of 19 U.S.C. §1677(7)(F)(iii) have not been met. CR at I-75, PR at II-30.

**ADDITIONAL AND DISSENTING VIEWS OF
VICE CHAIRMAN JANET A. NUZUM**

These investigations involve imports of silicomanganese from four countries. With respect to imports from the People's Republic of China ("China") and Ukraine, I make affirmative determinations that a domestic industry is threatened with material injury by reason of less than fair value ("LTFV") imports. With respect to LTFV imports from Brazil and Venezuela, I make negative determinations, that a domestic industry is neither materially injured nor threatened with material injury by reason of such imports.¹

I concur with and join the views of my colleagues on the issues of like product and domestic industry. These views set forth my analysis with respect to cumulation, present material injury and threat of material injury in each of these four investigations.

I. CUMULATION

In assessing the impact of subject imports on the domestic industry, the Commission is required to assess cumulatively 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 like product of the domestic industry in the U.S. market.²

I find that there is a reasonable overlap of competition between the subject imports from each of the four countries and between the subject imports and domestically-produced silicomanganese. I base this conclusion on the interchangeability of the subject imports and the domestic like product, and on the evidence of sufficient geographic overlap of commercial shipments from each of the subject countries and from the domestic industry. I also conclude, in response to Venezuelan respondents' arguments, that imports from Venezuela are not negligible. I address these three issues in turn.

Interchangeability. In the preliminary determination, we found that "imports from each of the countries and the domestic like product are fungible."³ I find no basis to alter this finding. The vast bulk of subject imports and domestically-produced silicomanganese serves a single end use -- the production of steel.⁴ Most end-users surveyed by the Commission considered U.S.-produced silicomanganese and that imported from subject countries to be of comparable quality. This is especially true when comparing Brazilian, Venezuelan, Chinese, and domestic product.⁵ Most telling is the fact that many purchasers of silicomanganese neither know nor care about the source of the product as long as it meets their chemical requirements.⁶

¹ The determination and valuation of less-than-fair-value imports is a legal determination by the U.S. Department of Commerce. See 59 Fed. Reg. 55432 - 55441 (Nov. 7, 1994).

² See, 19 U.S.C. § 1677(7)(C)(iv).

³ Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Inv. Nos. 671-674 (Preliminary), USITC Pub. 2714 at I-13 (Dec. 1993).

⁴ CR at I-8, PR at II-5. The steel industry accounted for 96% of domestic consumption of silicomanganese in 1993. Id.

⁵ CR at I-89, PR at II-38. All responding end-users reported that subject product from Brazil and Venezuela was comparable to domestic product as did 5 of the 7 end users with regard to the Chinese product. Id.

⁶ Hearing Tr. at 112, 115. CR at I-88, PR at II-37.

Even the Ukrainian product, with its different chemical composition, is interchangeable with other subject imports and domestic silicomanganese. The Ukrainian product's higher manganese content does not prevent its use in any particular application. Although its higher phosphorous content acts as a disincentive to some users, the phosphorus content can be overcome.⁷ In any event, some users found the Ukrainian product to be comparable to domestic silicomanganese.⁸ The rapid increase in shipments of silicomanganese from Ukraine in 1993 and interim 1994 does not appear to have been directed at new purchasers of the Ukrainian product who previously had not used silicomanganese.⁹ Indeed, the record shows that purchasers of Ukrainian product also purchase silicomanganese from other sources.¹⁰ In sum, although customers' preferences may vary, Ukrainian product appears to be fairly interchangeable with domestic silicomanganese and subject imports.

Geographic Overlap. The record shows sufficient overlap of geographic markets to indicate that the subject imports and domestic like product compete with each other. For 1993, the year that subject imports reached their highest level, the Commission's state-by-state break-down of shipments show overlapping sales by the domestic producer and the subject countries in the same states and regions.¹¹ For example, in 1993, the states into which Ukrainian product was shipped accounted for more than 10 percent of commercial shipments from Elkem and more than 10 percent of the commercial shipments of silicomanganese from each of the other subject countries.¹² Likewise, the states into which Venezuelan product was shipped in 1993 also accounted for more than 10 percent of the commercial shipments of Elkem and each of the other subject countries for that year. The same is true for the states into which Brazilian product was shipped and those states that received shipments of the Chinese product.¹³

The Venezuelan and Ukrainian respondents urged the Commission not to cumulate their subject imports because their sales were concentrated largely in Texas, where Elkem had relatively few sales. In assessing whether there is a reasonable overlap of competition, however, the Commission considers not only sales, but also offers to sell. Elkem has a sales representative located in Texas who serves the southern United States.¹⁴ This indicates that Elkem is making efforts to sell its product in this region of the United States, even if it may not be succeeding.

⁷ CR at I-9, PR at II-6.

⁸ CR at I-89, PR at II-38. Three of the 7 end-users surveyed by the Commission who actually used Ukrainian product considered it of comparable quality to the U.S. product; two end users found it to be of superior quality and two found it to be of inferior quality. Id.

⁹ See Table 2, CR at I-30, PR at II-15.

¹⁰ Hearing Tr. at 92-93, 97 (Mr. Zagaz testified that he prefers Ukrainian product if he can get it); CR at I-102-I-103, PR at II-42, (***).

¹¹ Table 5, CR at I-36, PR at II-17.

¹² For reasons of confidentiality, I discuss the levels of commercial shipments by the domestic industry and each of the subject countries to the geographic areas in general terms. The fact that the levels of commercial shipments for Elkem and each of the subject countries in the various geographic areas exceeded 10 percent of their total commercial shipments is not confidential. I note, however, that in several instances, the proportion of Elkem's shipments or one of the subject countries' shipments to a particular geographic area greatly exceeded 10 percent.

¹³ Table 5, CR at I-36, PR at II-17.

¹⁴ CR at I-46, PR at II-20; Hearing Tr. at 32-33, 262-263.

Finally, I note that most sales of domestic silicomanganese and subject imports are directly to end-users.¹⁵ Although Ukrainian product was a late entrant into the U.S. market, it was present either in the form of inventory or shipments from December 1992 through the end of the period of investigation.¹⁶ Based on the interchangeability of silicomanganese from different sources, the geographic overlap in sales and offers to sell, similar channels of distribution and the simultaneous presence of subject imports and the domestic product in the U.S. market, I find a reasonable overlap of competition among the domestic and imported products subject to this investigation.

Negligible Imports. The Venezuelan respondent argued that the Commission should find imports from Venezuela to be negligible because, during the last 6 months of 1993 and the first 6 months of 1994, they constituted less than 3 percent of total imports.¹⁷ This argument is based on the 3-percent threshold for negligible imports established in the Uruguay Round agreements. At the hearing, however, the Venezuelan respondents conceded that the new Uruguay Round standard is not yet binding on the Commission.¹⁸

I note that until the Uruguay Round negligibility standard becomes effective as part of U.S. law, I am bound to follow the current negligibility standard under U.S. law. Accordingly, I examined the market share held by subject imports from Venezuela throughout the period of investigation, as well as the trends in market share, and whether the imports were isolated or sporadic. I also considered the degree to which the U.S. market for silicomanganese is price sensitive.

The market share held by imports from Venezuela in 1993 and the interim period exceeded levels the Commission previously has found to be negligible.¹⁹ Imports from Venezuela entered the U.S. market in one month in 1991, 5 months in 1992, 6 months in 1993, and 3 out of 6 months in both interim 1993 and interim 1994.²⁰ Domestic sales of Venezuelan grade B lump silicomanganese were reported in *** quarters in 1991, *** quarters in 1992, *** quarters in 1993 and *** quarters of interim 1994.²¹

Further, I find this market is relatively price sensitive. As discussed below in the pricing analysis, most purchasers who have identified qualified suppliers of silicomanganese consider price the most important factor in their purchasing decisions. Considering all these factors, I find that circumstances do not justify applying the negligibility exception to cumulation to imports from Venezuela. Accordingly, I cumulated those subject imports with the other subject imports.

¹⁵ CR at I-34, I-35, PR at II-16, II-17.

¹⁶ Table 16, CR at I-65, PR at II-27 (inventories); Table 23, CR at I-91, PR at II-39 (prices reported in ***).

¹⁷ Venezuelan Prehearing Br. at 10-11.

¹⁸ Hearing Tr. at 203-204.

¹⁹ Market share held by silicomanganese from Venezuela rose from *** percent in 1991 to *** percent in 1992 and *** percent in 1993. Market share held by the silicomanganese from Venezuela was *** percent in interim 1994, as compared to *** percent in interim 1993. Table 22, CR at I-80, PR at II-34.

²⁰ Table F-4, CR at F-4, PR at F-4.

²¹ Table 23, CR at I-91, PR at II-39.

II. CONDITIONS OF COMPETITION

Before proceeding to address the relationship between the subject imports and the domestic industry, I believe it is useful to identify certain conditions of competition that are distinctive to this industry.²² These conditions of competition provide a context for my analysis of the volume and price effects of the subject imports and their impact on the domestic industry.

I note first that the U.S. market for silicomanganese is served primarily by imports from both subject and non-subject countries. Elkem, which is the sole remaining domestic producer, does not have sufficient capacity to meet *** of domestic demand for silicomanganese.²³ The only other domestic sources of silicomanganese are the Defense Logistics Agency ("DLA"), which retains a small amount of silicomanganese in its strategic reserve, and limited remaining inventories of former domestic producer SKW.²⁴ The small market share served by Elkem (as compared to subject imports) is relevant to assessing the significance of the volume of subject imports, particularly when subject import volumes are examined relative to domestic production.

A second competitive condition worth noting is Elkem's ability to switch fairly easily from producing silicomanganese to ferromanganese. The record indicates that Elkem in fact switched back and forth from silicomanganese to ferromanganese production in the same furnace on several occasions during the period of investigation.²⁵ The ability to switch production from the like product to another product ameliorates the extent to which Elkem may be vulnerable to any adverse effects of the subject imports. Elkem imports and purchases *** silicomanganese from countries not currently subject to investigation. It also purchases some amounts of subject imports, and has corporate ties to foreign suppliers of silicomanganese in non-subject countries. Elkem's access to alternative sources of silicomanganese was taken into account in assessing Elkem's vulnerability to the effects of the dumped imports.

Finally, I note that the trends in domestic consumption of silicomanganese were marked by significant increases during the full three years of the period of investigation, but a much smaller increase in interim 1994 as compared to interim 1993.²⁶ Domestic consumption was about *** in interim 1994 as compared to interim 1993. These trends in domestic consumption are relevant to my analysis of the significance of subject import volumes.

III. ANALYSIS OF PRESENT MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Imports of silicomanganese from the four subject countries increased throughout the period of investigation, although the rates of increase varied. Cumulated subject imports increased from 60,260 tons in 1991 to 92,724 tons in 1992. They approximately doubled the

²² 19 U.S.C. §1677(7)(C)(iii).

²³ Compare, Table 2, CR at I-30, PR at II-15, with Table 6, CR at I-41, PR at II-19.

²⁴ CR at I-20 & n. 38, I-28, PR at II-12, II-14. I note that the DLA stockpile was largely liquidated in 1992 and 1993 through payments in kind to Elkem in exchange for the conversion of stockpiled manganese to ferromanganese. *Id.*

²⁵ CR at I-40 and n.61, I-42, PR at II-19, II-20.

²⁶ Specifically, U.S. consumption rose by *** between 1991 and 1992, and by *** between 1992 and 1993. This growth slowed to *** between the interim periods. Table 2, CR at I-30, PR at II-15.

following year, increasing to 184,741 tons in 1993. Cumulated imports of subject silicomanganese continued to increase in interim 1994, reaching 64,313 tons as compared to 61,315 tons in interim 1993.²⁷

Shipments of cumulated subject imports demonstrated trends similar to those of imports. Shipments of subject imports increased from 56,433 tons in 1991 to 64,101 tons in 1992, an increase of approximately 13 percent. From 1992 to 1993, shipments of subject imports increased more than 113 percent, rising to 136,923 tons. Shipments of imports during the interim periods showed a slight increase, from 69,909 tons in interim 1993 to 70,464 tons in interim 1994.²⁸

The market share held by cumulated subject imports decreased slightly from *** percent in 1991 to *** percent in 1992.²⁹ It then increased *** the following year, reaching *** percent. Cumulated subject import market share declined between the interim periods, from *** percent in interim 1993 to *** percent in interim 1994.³⁰

I assessed the significance of the volumes of subject imports taking into account trends in U.S. consumption of silicomanganese, and the trends in domestic market shares. U.S. consumption of silicomanganese showed large increases (annual increases of nearly ***) during the full three years of the period of investigation.³¹ Between the interim periods, consumption continued to increase, although at a much smaller rate of approximately *** percent.³²

The domestic industry's market share was *** than either that of *** throughout the period. Domestic market share increased from *** percent in 1991 to *** percent in 1992. It declined the following year to *** percent. Domestic market share peaked for the period in interim 1994 at *** percent, as compared to *** percent in interim 1993.³³ Domestic market share was thus consistently *** than cumulated imports' market share.

Given the small market share held by the domestic industry relative to subject imports, I conclude that the volume of subject imports is significant. I note, however, that the large increase in subject imports that occurred from 1992 to 1993 did not appear to displace the domestic industry's market share to a significant degree. Rather, subject imports of silicomanganese appear to have principally displaced non-subject imports during that portion of the period of investigation.³⁴

With respect to examining the price effects of the subject imports on domestic prices, I note at the outset that most of the silicomanganese sold in the United States is interchangeable, regardless of its source of origin. About half of the 26 end users responding to the Commission's purchaser questionnaire indicated they do not know the

²⁷ Table 21, CR at I-76, PR at II-31.

²⁸ Table 2, CR at I-30, PR at II-15.

²⁹ Market shares of subject imports are based on U.S. shipments of subject imports. CR at I-79, PR at II-34.

³⁰ Table 22, CR at I-80, PR at II-34.

³¹ Consumption increased from *** tons in 1991 to *** tons in 1992. Consumption again increased from 1992 to 1993, reaching *** tons. Table 22, CR at I-80, PR at II-34.

³² Consumption increased from *** tons in interim 1993 to *** tons in interim 1994. Table 22, CR at I-80, PR at II-34.

³³ *Id.*

³⁴ Market share held by non-subject imports fell from *** percent in 1991 to *** percent in 1992, and then fell *** in 1993 to *** percent. Non-subject import market share was *** percent in interim 1994, *** lower than the *** percent level in interim 1993. Table 22, CR at I-80, PR at II-34.

country of origin of the silicomanganese they purchase.³⁵ Generally, both suppliers and purchasers view all silicomanganese meeting the requirements of a particular ASTM grade as being interchangeable.³⁶

Prices for domestically-produced silicomanganese ***.³⁷ Following a ***.³⁸ Prices then *** during the next four quarters of the period.³⁹ Prices for imports from each of the subject countries showed very similar trends to prices of U.S.-produced silicomanganese during the periods in which sales occurred.⁴⁰ Of the subject imports, only the Brazilian product was consistently present in the U.S. market throughout the period of investigation.

The pricing data reveal a number of disparate trends that complicate the analysis of price effects. First, with respect to underselling, the record showed mixed underselling and overselling by the subject imports. Brazilian product *** domestic silicomanganese in *** out of *** comparisons. Imports from China *** the domestic product in *** out of *** comparisons. Imports from Ukraine *** the domestic product in *** out of *** comparisons, and ***. Venezuelan product *** the domestic product in *** out of *** comparisons.⁴¹

A second disparity is the existence of different dumping margins for different countries. For imports from China and Ukraine, the margins were high; 150 and 163 percent, respectively. Two dumping margins apply to imports from Brazil; 64.93 percent for the Paulista Group, and 17.60 percent for all others.⁴² Venezuela had the smallest dumping margin of 8.81 percent.⁴³

Third, Elkem contends that the prices of subject imports declined in 1991, 1992 and the first half of 1993, causing U.S. silicomanganese prices to be depressed.⁴⁴ In 1991 and 1992, however, Brazil was by far the principal source of subject imports, with a market share of about *** percent as compared to *** percent for the other subject imports. Yet, Brazilian product *** domestic like product during these two years.⁴⁵ Elkem does not explain how *** Brazilian product caused domestic prices to fall during this early part of the period.

Further, Elkem contends that the gains in market share by the subject imports from 1991 to 1993 clearly indicate they are the price leaders in the U.S. silicomanganese market.⁴⁶

³⁵ CR at I-88, PR at II-37.

³⁶ CR at I-86, PR at II-36. Most of the product sold in the United States meets the specifications for ASTM Grade B. There are, however, occasional shipments that meet either Grade A or Grade C standards.

³⁷ Table 23, CR at I-91, PR at II-39; CR at I-96, PR at II-39.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Table 23, CR at I-91, PR at II-39; CR at I-97, PR at II-39. Comparisons are based on U.S. producers' and importers' contract sales.

⁴² It appears the higher margin is more useful for analyzing price effects because the Paulista Group accounted for virtually all exports of silicomanganese to the United States during the period. CR at I-18, Table 17, I-67, n. 1, PR at II-11, II-28.

⁴³ 59 Fed.Reg. 55432, 55434, Nov. 7, 1994 (Brazil); 59 Fed. Reg. 55435, 55436, Nov. 7, 1994 (China); 59 Fed. Reg. 55436, 55441 Nov. 7, 1994 (Venezuela); 59 Fed.Reg. 62711, Dec. 6, 1994 (Ukraine).

⁴⁴ Petitioners' Prehearing Br. at 36.

⁴⁵ Table 23, CR at I-91, PR at II-39.

⁴⁶ Petitioners' Pre-hearing Br. at 37.

Many purchasers, however, did not know the origin of their silicomanganese. Thus, it appears unlikely that these purchasers could identify a particular supplier as a price leader. As one purchaser at the hearing put it, "We're not sure where it comes from. So it's hard to tell if the material we're getting quoted on is from a country that would be. . . bringing down the price."⁴⁷

Finally, prices began to rise sharply in mid-1993, more than five months before the filing of the antidumping petition and nearly a year before suspension of liquidation by the Department of Commerce.⁴⁸ Elkem attributes these increases to "rumors" about the filing of the antidumping petition.⁴⁹ Elkem's theory that market share increases are indicative of price leadership, however, would lead one to expect subject import volumes to decline as prices increased. The record shows, however, that subject import volumes continued to increase during the second half of 1993 even as prices increased.⁵⁰

In short, the pricing data do not establish a clear causal relationship between subject imports and domestic prices. Accordingly, I find the record does not support the conclusion that subject imports had significant price depressing or suppressing effects on domestic prices.

Turning to the impact of subject imports, other than price effects, on the domestic industry, I note that the industry's performance exhibited improvement in several areas. For example, Elkem's production increased by *** percent from 1991 to 1992. Production declined during the first and second quarters of 1993, when Elkem stopped producing silicomanganese, but then rebounded *** in August 1993 throughout the rest of the period.⁵¹

Shipments of domestically-produced silicomanganese also showed *** increases from 1991 to 1992, and *** increases in 1993, notwithstanding the temporary shutdown in production in 1993.⁵²

Capacity utilization is not especially probative where, as here, the domestic industry is able to switch its facility between producing the like product and producing a different product. Nevertheless, the record indicates that when Elkem's furnace was producing silicomanganese, it operated ***.⁵³

Employment trends also are not especially probative in this case because the production-related workers were able to switch from producing silicomanganese to ferromanganese. Thus, shutdowns in the production of silicomanganese did not necessarily lead to lay-offs or hiring cutbacks. Insofar as employment is concerned, however, I note that productivity showed *** increases during the period.⁵⁴

With respect to domestic financial performance, net sales by value *** from 1991 to 1992, then *** from 1992 to 1993. Net sales were *** in interim 1994 as compared to interim 1993.⁵⁵ As the industry's net sales ***. Operating income *** from *** in 1991 to

⁴⁷ Hearing Tr. at 115.

⁴⁸ CR at I-96, PR at II-39 and Figure H-1, CR at H-3, PR at H-3. 59 Fed.Reg. 31195 June 17, 1994 (Notification of Commerce's Preliminary Determination, Brazil); 59 Fed.Reg. 31199, June 17, 1994 (China); 59 Fed.Reg. 31201, June 17, 1994 (Ukraine); 59 Fed.Reg. 31204, June 17, 1994 (Venezuela). Elkem filed its petition on November 12, 1993. CR at I-4, PR at II-3.

⁴⁹ See, e.g., Petitioner's Posthearing Br., Exhibit 2 at 15-16.

⁵⁰ Compare CR at Appendix F, Tables F-1 through F-4, and Appendix H, Table H-1.

⁵¹ Table 7, CR at I-43, PR at II-20.

⁵² Table 8, CR at I-45, PR at II-20.

⁵³ Table 6, CR at I-41, PR at II-19.

⁵⁴ Table 10, CR at I-48, PR at II-21.

⁵⁵ Table 12, CR at I-53, PR at II-23.

*** in 1992 and *** in 1993. Elkem contends these *** were due in large measure to the idling of its furnace.⁵⁶ Verification of Elkem's questionnaire response, however, showed the losses to be due to other factors that are unrelated to subject imports.⁵⁷ By interim 1994, Elkem's financial condition ***. Although it still had ***, they were ***.⁵⁸

In sum, I find that subject imports did not have significant adverse volume or price effects on the domestic industry, nor do I find other evidence that shows subject imports having a significant adverse impact on the domestic industry. Accordingly, I determine that the domestic industry is not materially injured by reason of the subject imports.

IV. ANALYSIS OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Having arrived at a negative determination with respect to present injury, I now turn to examine whether the domestic industry is threatened with material injury by reason of the subject imports. Section 771(7)(F) of the Act directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." The statute specifically states, "Such a determination may not be made on the basis of mere conjecture or supposition."⁵⁹ The Commission considers as many of the ten statutory factors as are relevant to the facts of the particular investigation before it, as well as any other relevant economic factors.⁶⁰ Our reviewing court has stated that the ten statutory factors serve primarily as guidelines for the Commission's analysis of the likely impact of future imports.⁶¹

A. Cumulation for Purposes of Threat Analysis

In assessing whether a domestic industry is threatened with material injury by reason of imports from two or more subject countries, the Commission has discretion to cumulate the volume and price effects of such imports to the extent practicable.⁶² In this case, I did not cumulate imports from any countries for the purposes of my threat analysis because of significant divergences in key trends among imports from the four countries. These divergences made it difficult, and I believe highly speculative, to project reasonably the cumulated impact of future subject imports on the domestic industry.

I note first that the volumes and market shares for subject imports from Brazil and Venezuela show significant declines in interim 1994 as compared to interim 1993, while the volumes and market shares for imports from China and Ukraine show significant increases.⁶³ Second, the pricing data reveal divergent patterns of underselling and overselling among the four subject countries, with product from China and Venezuela *** the domestic product,

⁵⁶ Hearing Tr. at 40.

⁵⁷ CR at I-54, PR at II-23. ***.

⁵⁸ Table 12, CR at I-53, PR at II-23.

⁵⁹ 19 U.S.C. §1677(7)(F)(ii). See *Metallwerken Nederland B.V. v. United States*, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

⁶⁰ Factor I, regarding the nature of the subsidy, and Factor XI, regarding raw agricultural products, are not relevant to this investigation.

⁶¹ *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992).

⁶² 19 U.S.C. § 1677(7)(F)(iv)

⁶³ Tables 2 and 22, CR at I-30 and I-80, PR at II-15 and II-34.

and product from Brazil and Ukraine ***.⁶⁴ Further with respect to pricing, the different chemical composition of the Ukrainian product makes it more difficult to assess the significance of the margins of *** by the Ukrainian product.⁶⁵

Finally, inventories of Venezuelan product fluctuated over the period of investigation while those for product from other subject countries generally rose.⁶⁶ In addition, Venezuela, *** production capacity *** generally showed *** capacity utilization.⁶⁷ Other subject countries in the investigation accounted for *** than did Venezuela.⁶⁸

Given the divergences in these various trends, I did not cumulate imports for my threat analysis.

B. No threat of material injury by reason of LTFV imports from Brazil

Although silicomanganese capacity and production *** in Brazil from 1991 to 1993, it does not appear *** are likely to result in increased exports to the United States. Exports of Brazilian silicomanganese to the United States, as a percentage of Brazil's total shipments, ***.⁶⁹ Brazil has had *** throughout the period of investigation, but this *** has not resulted in a surge in exports to the United States. Brazil's home market *** for its production of silicomanganese.⁷⁰ Moreover, capacity ***. Thus, the record does not indicate that Brazil has underutilized capacity that is likely to result in a significant increase in imports of silicomanganese from Brazil.

Subject imports from Brazil were lower in interim 1994 (23,560 tons) than in interim 1993 (33,329 tons).⁷¹ As noted earlier, Brazil's market share declined throughout the period of investigation; during interim 1994, it was *** percent as compared to *** percent in interim 1993.⁷² Although Brazil projects *** in 1995 as compared to 1994, those levels will ***. Thus, the record does not indicate the likelihood of a rapid increase in market penetration by the Brazilian product.

Moreover, Brazil's product generally *** domestic silicomanganese during the period, and Brazil's prices *** as those reached by other subject imports during the period.⁷³ I do not find, therefore, that the Brazilian product will enter the United States at prices that are likely to have a significant depressing or suppressing effect on domestic prices.

With respect to importers' inventories of silicomanganese from Brazil, such inventories did increase significantly in interim 1994 as compared to interim 1993.⁷⁴ I note, however, that inventories are only one of numerous factors that the Commission must consider as a whole in analyzing threat of material injury.

⁶⁴ Table 23, CR at I-91, PR at II-39.

⁶⁵ See, CR at I-102, PR at II-42 (statement by *** that it calculates costs based on per pound of manganese).

⁶⁶ Table 16, CR at I-65, PR at II-27.

⁶⁷ Table 20, CR at I-74, PR at II-30.

⁶⁸ Tables 17, 18, and 19, CR at I-67, I-70, I-72, PR at II-28, II-29, II-30.

⁶⁹ Further ***. Table 17, CR at I-67, PR at II-28.

⁷⁰ Id.

⁷¹ Table 21, CR at I-76, PR at II-31.

⁷² Table 22, CR at I-80, PR at II-34.

⁷³ Table 23, CR at I-91, PR at II-39.

⁷⁴ Table 16, CR at I-65, PR at II-27.

I also do not find any other demonstrable adverse trend indicating the probability that imports from Brazil will be the cause of actual injury. Petitioners urge the Commission to take into account the fact that the European Union ("EU") instituted an antidumping investigation of silicomanganese from Brazil in April 1993; however, the EU has not yet made any findings in that investigation, and no antidumping duties have yet been imposed.⁷⁵ There also is no evidence that the mere initiation of the EU investigation resulted in a diversion of Brazilian shipments to the United States.

Accordingly, after considering all the evidence, I find that a domestic industry is not threatened with material injury by reason of subject imports from Brazil.

C. Threat of Material Injury by reason of LTFV imports from China

The record with respect to China's capacity and production of silicomanganese is incomplete. Limited data representing less than 20 percent of the Chinese industry was obtained by the Commission.⁷⁶ Those data reveal *** underutilized capacity throughout the period 1991 through 1993. Export markets accounted for a *** share of total Chinese shipments, *** the home market in 1992.⁷⁷ The data do not, however, indicate the proportion of total shipments that were exported specifically to the United States.

Most of the other factors relevant to a threat analysis support the conclusion that subject imports from China are a threat of material injury. First, imports of Chinese silicomanganese increased throughout the period of investigation. Imports of silicomanganese from China doubled from 5,848 tons in 1991 to 12,591 tons in 1992 and then jumped more than fourfold to 56,430 tons in 1993. Imports from China continued to surge in interim 1994, reaching 19,751 tons as compared to 5,644 tons in interim 1993.⁷⁸ In terms of market share, imports from China initially declined from a low level in 1991 to a slightly lower level in 1992. In 1993, however, imports from China jumped sharply, from *** percent to *** percent. In interim 1994, imports from China continued to surge to *** percent market share, as compared to *** percent in interim 1993.⁷⁹

Second, the pricing data indicate that Chinese product consistently *** domestic product from the first quarter of 1993 through the end of the period. The largest margin of *** is found in ***.⁸⁰ The substantial dumping margin of 150 percent for China, in conjunction with the rapid increase in import volume and market share, further supports the likelihood that the Chinese product will have adverse price depressing or suppressing effects.

Third, importers' inventories of Chinese product showed rapid increases from 1992 to 1993, and in interim 1994 as compared to interim 1993.⁸¹ Unlike Brazil, these inventories were increasing at the same time as imports and shipments of Chinese product.

⁷⁵ CR at I-75, PR at II-30. The statute directs the Commission to consider whether dumping of the subject merchandise in third countries, as evidenced by findings or duties, suggests a threat of material injury. See 19 U.S.C. §1677(7)(F)(ii)(1).

⁷⁶ The Commission made several attempts to obtain more complete information about the Chinese silicomanganese industry. Information from one source had several deficiencies that were not resolved. The Commission's other requests for information went unanswered. CR at I-69, PR at II-29.

⁷⁷ Table 18, CR at I-70, PR at I-29.

⁷⁸ Table 21, CR at I-76, PR at II-31.

⁷⁹ Table 22, CR at I-80, PR at II-34.

⁸⁰ Table 23, CR at I-91, PR at II-39.

⁸¹ Table 16, CR at I-65, PR at II-27.

Finally, the Government of Japan imposed an antidumping duty order on Chinese silicomanganese in February 1993, with duties ranging from 5 to 27 percent.⁸² The surge in U.S. imports of silicomanganese from China in 1993 and interim 1994 suggests that the Chinese product is being diverted to the U.S. market in response to the imposition of the Japanese antidumping order.

On the basis of this record, I conclude that LTFV imports of silicomanganese from China are a threat of material injury to the domestic industry.

D. Threat of material injury by reason of LTFV imports from Ukraine

As is the case with China, several threat factors indicate that imports from Ukraine pose a threat of material injury to the domestic industry. One important factor is the *** capacity that exists in Ukraine, which is about ***.⁸³ Capacity utilization in Ukraine *** from 1992 to 1993, when ***.⁸⁴ The Ukrainian producers indicated they have ***.⁸⁵ Hence, Ukraine is likely to have *** for the foreseeable future.

The *** coincided with a sharp increase in exports to the United States in 1993.⁸⁶ While it is true that exports to the United States are not a large proportion of Ukraine's total shipments, this is in part simply a reflection of Ukraine's capacity and production levels.

The record makes clear Ukraine's ability to increase rapidly its shipments of silicomanganese to the United States. Imports from Ukraine increased from zero in 1991 to 8,810 tons in 1992 to 41,493 tons in 1993.⁸⁷ Ukraine's market share jumped from *** in 1992 to *** in 1993. Ukraine's market share continued to surge in interim 1994, reaching *** as compared to *** in interim 1993.⁸⁸

The pricing data showed mixed underselling and overselling by the Ukrainian product. Ukrainian prices, however, are affected by the higher manganese content in the product, which some purchasers find to be a desirable quality. For example, one end-user reported that the higher manganese content reduces the total amount of the product needed, and thus is worth more than other sources of silicomanganese.⁸⁹ This indicates that some purchasers are willing to pay a premium for the Ukrainian product because it is actually more economical for them to use than is silicomanganese from other sources. This tends to explain the evidence of overselling. On the other hand, ***. I also note that imports from Ukraine have a very high dumping margin. The high margin, combined with the rapid increases in import volumes and market penetration, and evidence of *** in the most recent period, supports the likelihood that Ukrainian product will have price depressing or suppressing effects on domestic prices.

Importers' inventories of silicomanganese from Ukraine showed dramatic increases from 1992 to 1993; interim 1994 inventories were slightly higher as compared to interim

⁸² CR at I-75, PR at II-30.

⁸³ Table 19, CR at I-72, PR at II-30.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Table 18, CR at I-72, PR at II-29.

⁸⁷ Table 27, CR at I-76, PR at II-31.

⁸⁸ Table 22, CR at I-80, PR at II-34.

⁸⁹ CR at I-102, PR at II-42.

1993. As a percentage of total imports, inventories of the Ukrainian product were more than *** percent of total imports in 1993 and more than *** percent in interim 1994.⁹⁰

The evidence of *** capacity and *** rapidly increasing market penetration, increasing inventories, and *** in the most recent part of the period examined indicate that imports from Ukraine are a threat of material injury to the domestic industry. The Ukrainian respondents' argument that Ukraine cannot increase its exports to the United States because of a deepening economic crisis in Ukraine, an energy shortage and a lack of resources to modernize Ukraine's production facilities are not supported by the record. As previously discussed, both Ukrainian producers reported they have ***.⁹¹ Further, the record does not indicate that the plants require modernization to continue operating at current levels, which were sufficient to supply the rapid increase in U.S. imports of Ukrainian product in 1993 and interim 1994. Finally, contrary to respondents' assertions, the record does not indicate that an energy shortage caused any Ukrainian producer to stop production of silicomanganese during the period.⁹²

For the foregoing reasons, I find that LTFV imports of silicomanganese from Ukraine are a threat of material injury to the domestic industry.

E. No threat of material injury by reason of imports from Venezuela

Most of the threat factors support the conclusion that imports from Venezuela are not a threat of material injury. First, Venezuelan capacity and production of silicomanganese increased from 1991 to 1993, as Venezuela maintained *** levels of capacity utilization. Although capacity *** by *** during the full three years of the period, Venezuela continues to be a relatively small producer of silicomanganese, as compared to the other subject countries and to the domestic industry.⁹³ The *** in capacity in 1994 does not change this fact.⁹⁴

Second, imports from Venezuela increased from 2,756 tons in 1991 to 9,810 tons in 1992 and to 15,418 tons in 1993. Nevertheless, Venezuela was the smallest of the four subject countries in terms of both volume of imports and market share for 1993.⁹⁵ Moreover, imports from Venezuela declined significantly in the most recent part of the period examined. Imports from Venezuela were 5,542 tons in interim 1994, down from 9,906 tons in interim 1993.⁹⁶

The Venezuelan product *** domestic product. However, imports from Venezuela declined in the interim period, even as this *** continued. Thus, the *** by the Venezuelan product does not appear, in the most recent period examined, to have resulted in an adverse volume effect to the domestic industry. Moreover, given the decline in Venezuela's presence in the U.S. market in the most recent part of the period examined, *** by a smaller volume of Venezuelan product is unlikely to have a depressing or suppressing effect on domestic prices.

⁹⁰ Table 16, CR at I-65, PR at II-27.

⁹¹ CR at I-71, PR at II-29.

⁹² CR at I-71 n.82, PR at II-29.

⁹³ Table 20, CR at I-74, PR at II-30. Compare Table 20 and Tables 17-19, CR at I-67, I-70, I-72, PR at II-28, II-29, II-30 and Table 6, I-41, PR at II-19.

⁹⁴ Table 20, CR at I-74, PR at II-30.

⁹⁵ Table 21, CR at I-76, PR at II-31.

⁹⁶ Id.

Importers' inventories did not demonstrate a substantial increase during the period examined. To the contrary, importers' inventories of Venezuelan product declined sharply from 1992 to 1993, and were lower in interim 1994 as compared to interim 1993.⁹⁷

Finally, there is no other adverse trend that suggests imports from Venezuela will cause actual injury to the domestic industry. Accordingly, I conclude that subject imports from Venezuela are not a threat of material injury to the domestic industry.

VI. APPLICATION OF SECTION 1673d(b)(4)(B) TO IMPORTS FROM CHINA AND UKRAINE

When the Commission makes a final affirmative threat determination, it must make an additional finding, pursuant to 19 U.S.C. § 1673d (b)(4)(B), as to whether material injury by reason of the subject imports would have been found but for any suspension of liquidation of entries of such imports. This finding determines the date of the imposition of duties -- either the date of suspension of liquidation or the date of the publication of the final order. Suspension of liquidation in these investigations occurred on June 17, 1994, the date of publication of Commerce's preliminary affirmative determinations with respect to imports from China and Ukraine.⁹⁸

I find that the domestic industry would not have been materially injured even had there been no suspension of liquidation of imports from China and Ukraine. Suspension of liquidation occurred at the very end of the period of investigation. Thus, it does not appear that the Commission's data with respect to subject imports was affected by suspension of liquidation. Since I determined that the domestic industry was not materially injured by reason of cumulated imports during the period, I find no basis to conclude that the industry would have been materially injured in the absence of suspension of liquidation.

CONCLUSION

For the reasons discussed, I find the domestic industry is not materially injured by reason of LTFV imports of silicomanganese from Brazil, China, Ukraine and Venezuela. The record did not show significant adverse volume or price effects attributable to the subject imports during the period.

I further find, however, that the domestic industry is threatened with material injury by reason of LTFV imports of silicomanganese from China and Ukraine. Evidence of significant capacity and underutilized capacity, and rapidly increasing import volumes and market penetration, in particular, led me to my affirmative threat determinations for these two countries.

I find the domestic industry is not threatened with material injury, on the other hand, by reason of LTFV imports of silicomanganese from Brazil and Venezuela. Evidence of declining import volumes and market shares for both countries, and Venezuela's *** capacity and *** capacity utilization were important factors in my negative threat determinations for these two countries.

⁹⁷ Table 16, CR at I-65, PR at II-27.

⁹⁸ 59 Fed. Reg. 31199 (China); 31201 (Ukraine) (June 17, 1994).

PART II
INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

Institution

Following notification of preliminary determinations by the U.S. Department of Commerce (Commerce) that imports of silicomanganese¹ from Brazil, the People's Republic of China (China), Ukraine, and Venezuela are being, or are likely to be, sold in the United States at less than fair value (LTFV),² the U.S. International Trade Commission (Commission), effective June 16, 1994, instituted investigations Nos. 731-TA-671-674 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether 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. Notice of the institution of the Commission's investigations and of a hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on July 15, 1994.³

On October 31, 1994, Commerce made final affirmative LTFV determinations regarding silicomanganese from Brazil, China, and Venezuela.⁴ The applicable statute directs the Commission to make its final injury determinations within 45 days after Commerce's final determinations or, in these investigations, by December 14, 1994. In addition, on November 30, 1994, Commerce notified the Commission that it had suspended its investigation on silicomanganese from Ukraine, and on December 2, 1994, Commerce notified the Commission that it had continued its investigation on silicomanganese from Ukraine and made a final affirmative LTFV determination. Accordingly, pursuant to section 207.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 207.42), the Commission continued its investigation on silicomanganese from Ukraine.

A summary of the data collected in these investigations is presented in appendix C. The Commission has not conducted previous investigations on silicomanganese.

Background

On November 12, 1993, counsel for Elkem Metals Co. ("Elkem"), Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local 3-639, Belpre, OH, filed a petition with the Commission and Commerce, 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 from Brazil, China, Ukraine, and Venezuela that are alleged to be sold in the United States at LTFV. Accordingly, effective November 12, 1993, the Commission instituted antidumping investigations Nos. 731-TA-671-674 (Preliminary) under section 733(a) of the Act to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with

¹ For purposes of these investigations, silicomanganese (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 normally 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. All compositions, forms, and sizes are included within the scope of these investigations, including silicomanganese slag, fines, and briquettes. Silicomanganese is provided for in subheadings 7202.30.00 and 7202.99.50 of the Harmonized Tariff Schedule of the United States (HTS).

² 59 F.R. 31195, June 17, 1994.

³ 59 F.R. 36212, July 15, 1994. The Commission's institution and schedule of these investigations appears in app. A; a list of witnesses appearing at the hearing, held in Washington, DC, on Nov. 3, 1994, is presented in app. B.

⁴ 59 F.R. 55432, Nov. 7, 1994. Commerce's determinations appear in app. A.

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. On December 27, 1993, the Commission determined that there was a reasonable indication of such injury.

THE PRODUCT

Description and Uses

Silicomanganese, a metallic, silvery ferroalloy, is composed principally of manganese, silicon, and iron, and normally contains small 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 by size. Most, though not all, silicomanganese is manufactured and sold in three grades, A, B, and C, which are distinguished by their silicon and carbon contents. According to standard specifications established under the aegis of the American Society for Testing of Materials (ASTM),⁵ all three grades contain 65 to 68 percent manganese, a maximum of 0.20 percent phosphorous, 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 to 16.0 percent silicon and a maximum of 3.0 percent carbon. Additionally, the content of certain minor elements (e.g., arsenic, tin, lead, chromium, nickel, and molybdenum) is limited by ASTM specifications.⁶

Most silicomanganese produced in the United States and imported from Brazil, China, Venezuela, and many of the nonsubject countries conforms to the specification for grade B silicomanganese. A small portion of total U.S. apparent consumption of silicomanganese was accounted for by grade A silicomanganese that was sold from the U.S. Government stockpile by the Defense Logistics Agency (DLA) and unintentional production by Elkem. Imports of grade C from Venezuela and a nonsubject source accounted for another small portion of total U.S. apparent consumption.

A variant of silicomanganese, low-carbon silicomanganese (sometimes called ferromanganese-silicon), is characterized by much higher levels of silicon (28 to 32 percent), much lower levels of carbon (0.08 to 0.10 maximum), and slightly lower levels of manganese (60 to 62 percent, or 63 to 66 percent).⁷ Low-carbon silicomanganese is not produced in the United States and its small share of

⁵ ASTM standard specifications represent a consensus drawn from producers, specifiers, fabricators, and users of steel mill products in the United States, and are considered adequate for procurement purposes. They are generally oriented toward the performance of the product in the U.S. market, but are neither universally followed outside of the United States nor uniformly adhered to by purchasers within the U.S. market. For some purchasers, the precise chemical formulation of silicomanganese is less important than the presence of manganese, silicon, and other elements in sufficient quantities and in the proper proportions to allow the alloy to perform its metallurgical functions of desulfurization and deoxidization, or to act as an alloying agent. Other purchasers, however, report that they will only use the most common form of silicomanganese, grade B, the formulation of which may vary within the parameters of ASTM specifications.

⁶ ASTM Designation A 483-64 (reapproved 1988), *Standard Specification for Silicomanganese*, tables 1 and 2 (chemical requirements).

⁷ Importer's questionnaire response of *** and purchaser's questionnaire response of ***; interview with ***. See also, ASTM Designation A 701-74 (reapproved 1990), *Standard Specification for Ferromanganese-Silicon*, tables 1 and 2.

total U.S. apparent domestic consumption was accounted for by imports from ***, ***, ***, and *** during the period for which data were collected.

Ukrainian silicomanganese does not meet ASTM specifications for any grade, due to its higher manganese and phosphorus content. Reportedly, Ukrainian silicomanganese contains 72 to 73 percent manganese versus the ASTM specification of 65 to 68 percent, and is guaranteed to 0.50 percent maximum phosphorus versus an ASTM specification of 0.20 percent maximum. Also, the carbon content of Ukrainian silicomanganese is reportedly lower than that of grade B material, in a range of 1.2 to 1.7 percent, and typically less than 1.5 percent.⁸

Silicomanganese is sold primarily in sized-lump form. Generally, size expresses the maximum and minimum dimensions of lumps found in a given shipment, and is determined by a sieving or screening process. The most common sizes, based strictly on dimensions, are 4 inches (101.6 mm) by 1 inch (25.4 mm) and 3 inches (76.2 mm) by 1 inch. 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. Approximately *** percent of 1993 U.S. shipments of silicomanganese were in lump form.

Lump silicomanganese is a friable product, susceptible to appreciable reduction in size by repeated handling, which generates small lumps and fines. Small lumps are generally those for which a minimum diameter may be specified less than that for regular-sized large pieces. Such sizes might be one-half that of the minimum diameter of lumps; fines have no such minimum diameter and may range in size below small lumps down to dust-sized particles. Steelmakers generally prefer lump material because of its higher manganese recovery rate into steel compared to fines.⁹ However, nearly *** percent of U.S. shipments of silicomanganese in 1993 were accounted for by fines, including imports of grade B fines from ***, ***, ***, ***, and Venezuela, and grade C fines Venezuela.¹⁰ Ukrainian material, though sold in lump form, is reportedly smaller than most other silicomanganese, measuring 100 mm by 10 mm, necessitating screening by the importer to separate lumps, fines, and waste and to satisfy customer size requirements.¹¹

Silicomanganese is used primarily by the steel industry, which accounted for approximately 96 percent of U.S. silicomanganese consumption in 1993.¹² Within the steel industry, silicomanganese is consumed primarily by producers using electric arc furnaces (so-called "minimills") to produce long products, including bars and structurals.¹³ For these carbon and low alloy steel mill products, silicon specifications are less restrictive (e.g., 0.15 to 0.30 percent) than for similar carbon and low alloy steel grades of flat-rolled products (e.g., sheet and strip, where silicon is restricted to 0.05 percent maximum) produced by integrated steelmakers using basic oxygen

⁸ Conference transcript, p. 76 (Larry Pryor, president, AIOC-Pryor, Inc.); Ukrainian respondents' prehearing brief, app. 17, pp. 1-2.

⁹ Lump material penetrates the slag that floats on top of the molten steel in either the melt or ladle whereas fines are more likely to be absorbed into the slag or into airborne emissions.

¹⁰ Venezuelan respondent's posthearing brief, app. 2, pp. 1-2. In addition to grade C fines (measuring 6 mm by down), some grade C silicomanganese from Venezuela is sold as small lumps (measuring 30 mm by 6 mm).

¹¹ Conference transcript (Larry Pryor), p. 78; Ukrainian respondents' prehearing brief, p. 3 and app. 17, pp. 4-5.

¹² Thomas S. Jones, *Manganese in June 1994*, U.S. Department of the Interior, Bureau of Mines, June 1994, table 5, p. 10.

¹³ Low-carbon silicomanganese is also consumed by several U.S. electric arc furnace steelmakers, but these are producers of stainless steels for whom low carbon and low phosphorus content is critical. These firms regard low-carbon silicomanganese as a higher-quality product that commands a significant price premium compared with standard silicomanganese.

furnaces. The high phosphorus content reportedly makes silicomanganese from Ukraine unusable for higher quality steel applications, although it can be used for lower-end applications, such as concrete reinforcing bar (rebar) and certain other bar products.¹⁴

Depending upon the practice of a given steelmaker, silicomanganese may be introduced directly into the steelmaking furnace or used subsequently as an addition to molten steel at the ladle metallurgy station to "fine tune" the steel chemistry and to deoxidize the steel. When used in the furnace, it is introduced in lump sizes along with other steelmaking raw materials and melted simultaneously. As a ladle addition, silicomanganese is used in smaller sizes. Because it performs the same functions whether added in the furnace or the ladle, normal practice would call for the introduction of some silicomanganese into the melt and the remainder into the ladle. However, current steelmaking practice generally aims to minimize furnace time, and the tendency is to deoxidize as necessary and make chemistry adjustments at the ladle metallurgy station. Moreover, most steelmakers purchase only one size to reduce inventories and possible bottlenecks in their materials' handling systems and delays in the steel production process. Specifications for carbon and low alloy steels call for about 15 to 20 pounds of manganese contained per short ton of steel, equivalent to about 20 to 30 pounds of silicomanganese.¹⁵

Silicomanganese is a source of both manganese and silicon. Manganese, intentionally present in nearly all steels, is used as a steel desulfurizer and 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 (hardness). Manganese also increases the hardenability of heat-treatable steels. High-carbon steels (those combined with chrome) are sensitive to phosphorus, but if the phosphorus problem is overcome, then a higher manganese content, such as that found in silicomanganese from Ukraine, becomes advantageous.¹⁶

Silicon is added to steel principally as a deoxidizer and as 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.¹⁷ Chemical composition and mechanical properties of killed steels are relatively more uniform throughout the steel shape than unkilld steels. As an alloying agent, silicon increases the hardness and strength of hot-rolled steel mill products, and enhances the toughness, corrosion resistance, and magnetic and electrical properties of certain steel mill products.¹⁸

Carbon is the principal hardening element in steel; as carbon content increases, hardness and tensile strength increase, but ductility and weldability decrease. Because decarburization usually takes place in the basic electric arc furnace rather than the ladle metallurgy station, the practice is to start with a silicomanganese of the proper carbon content. Grade B silicomanganese (with a maximum carbon content of 2 percent), therefore, is preferred to grade C (with a maximum carbon content of 3 percent) for low- and medium-carbon steel, including most bar and structurals. A higher carbon silicomanganese may be preferred for high-carbon steel such as high tensile strength carbon steel wire rod or certain bearing steels.

¹⁴ Hearing transcript (Hal Kohn, vice president, Minerais U.S. Inc.), p. 126.

¹⁵ Assuming a high recovery rate of manganese. In any event, the value of silicomanganese contained in one ton of steel is very small. Telephone interview with ***.

¹⁶ Ukrainian respondents' prehearing brief, p. 3.

¹⁷ Petition, p. 8.

¹⁸ Conference transcript (Russell Craig), pp. 22-23.

Phosphorus and sulfur are considered impurities, causing brittleness and cracking in carbon steels. High-carbon or specialty steels with chromium are especially sensitive to phosphorus. Residual phosphorus content in steels is generally specified as less than 0.04 percent in normal commercial steels. Although phosphorus reportedly oxidizes readily (i.e., may be removed from steel during basic oxygen steelmaking or the basic electric furnace process),¹⁹ one industry executive emphasized the need to take precautions in charge materials to avoid steel contamination.²⁰ Although phosphorus is usually considered a contaminant, it may be added to improve strength, machinability, and resistance to atmospheric corrosion.²¹

Sulfur also causes embrittlement in steels and, like phosphorus, is considered a contaminant. However, most sulfur is burned off during melting operations. Higher phosphorus and/or sulfur levels in silicomanganese necessitate additional alloying and fluxing agents to reduce the phosphorus and/or sulfur content in the end product, resulting in higher production costs or reduced efficiency for the steelmaker.

Silicomanganese is also used as an alloying agent in cast iron production (accounting for about 2 percent of U.S. silicomanganese consumption in 1993).²² Silicomanganese can also be used in the production of medium-carbon ferromanganese.

Production Process

As shown in figure 1, most silicomanganese is produced throughout the world in electric arc furnaces by smelting together sources of silicon, manganese, iron, and a carbonaceous reducing agent, usually coke. The "charge" (the combination of sources of desired elements) may also include wood chips, which are used as a bulking agent,²³ dolomite, or a similar base element, which reduces the acidity of the mix, and a fluxing agent. As the charge is electrically heated to between 1,300 and 1,400 degrees centigrade, silicon alloys with manganese and iron, oxygen and carbon are released in gas form, and impurities form slag floating on top of the molten silicomanganese. Following smelting, molten metal and slag are removed or "tapped" from the furnace. 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 near the hearthline into a ladle. Slag, which is lighter than silicomanganese, may be skimmed from the surface or is poured off from the ladle during the tapping process.

¹⁹ Paul D. Deeley, Konrad J.A. Kundig, and Howard R. Spendelow, Jr., *Ferroalloys & Alloying Additives Handbook* (New York: Metallurg Inc., 1981), p. 81. However, the authors caution that silicomanganese additions that change pH levels within the slag may cause elemental phosphorus to return to molten steel in the steelmaking furnace.

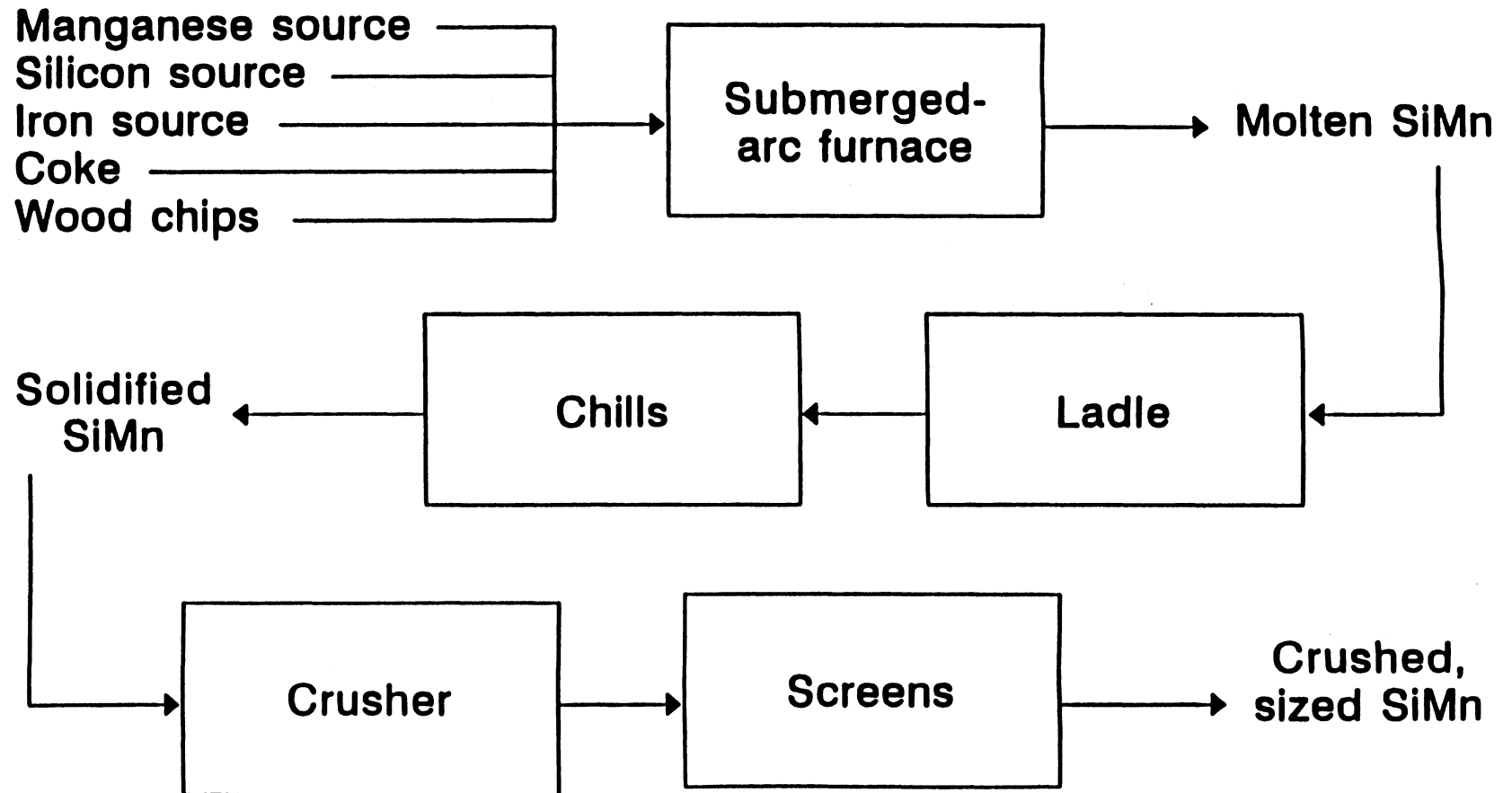
²⁰ This executive indicated that phosphorus in equals phosphorus out. Telephone interview with ***.

²¹ In rephosphorized or resulfurized steels (AISI/SAE 1100 and 1200 series) phosphorus, sulfur, and sometimes lead or bismuth have been added to enhance machinability. Also, up to 0.15 percent phosphorus can be present in some high-strength low-alloy (HSLA) steels, used in construction, for increased strength when the carbon content is less than 0.15 percent (low-carbon steels). Deeley et al., *Ferroalloys Handbook*, p. 82. However, for most applications, phosphorus is maintained below a specified maximum, usually 0.040 percent. See chemical specifications for standard steels in Iron and Steel Society, *Steel Products Manual* (Warrendale, PA: Aug. 1993), pp. 6-7.

²² *Manganese in June 1994*, p. 10.

²³ 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.

Figure 1
Silicomanganese: Simplified production flow chart



Once separated from the slag, 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.

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.²⁴ Manganese can be derived from manganese ore, ferromanganese slag, or silicomanganese fines or slag. Where manganese ore is abundant, it is the preferred manganese source. Similarly, producers with access to inexpensive ferromanganese slag or other manganese-bearing metallics typically prefer to use such material. Some producers, ***, use a combination of sources, adjusting the mix according to the availability and prices of input materials.

Silica (a compound consisting almost entirely of silicon dioxide) in the form of quartzite is the principal source of silicon. Other silicon sources include ferrosilicon slag, fines, or dross, 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; silicomanganese slag can be used in the silicomanganese production process as a source of both silicon and manganese.

The silicomanganese production process is highly energy-intensive, requiring approximately 2 kilowatt hours (kwh) per pound of silicomanganese produced. 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.²⁵

All grades of silicomanganese can be manufactured in the same facilities using the same furnaces and employees, although switchover from one grade or type of manganese ferroalloy involves a cost in terms of lost production, reduced productivity, or possible contamination of the higher grade product. According to petitioners, a product changeover (e.g., from silicomanganese to high-carbon ferromanganese) generally requires only 8 to 24 hours and does not constitute a significant cost penalty.²⁶ Low-carbon silicomanganese, a specialty variant of silicomanganese, is reportedly produced by companies that use furnaces dedicated to that product and employ different raw materials and additional refining procedures compared with ferromanganese or standard silicomanganese. The different chemistry of Ukrainian silicomanganese comes from the different raw materials used in its production (the ore has a higher manganese content and the Ukrainian producers use less other raw materials in their silicomanganese production process). Venezuelan grade C silicomanganese is reportedly recovered by a company using a proprietary process from slag that is generated as a byproduct from Hevensa's grade B production.

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. Although aluminum is also used as a deoxidizing agent in steel production, silicon and aluminum are not considered to be substitutes.²⁷

Most steel mills do not switch back and forth between silicomanganese and a mix of ferromanganese and ferrosilicon, either because they lack storage space or handling capability for

²⁴ Conference transcript (Russell Craig), p. 17.

²⁵ Conference transcript (Keith Curry, Vice President for Manganese, Chromium, and Special Metals, Elkem), p. 33.

²⁶ Conference transcript (Russell Craig), p. 64.

²⁷ Conference transcript (Russell Craig), pp. 47-48.

multiple ferroalloys, have difficulty rapidly altering their input mix, or find it more convenient and cost-effective to deal with only one alloy. As described earlier, silicomanganese apparently provides the appropriate chemistry and deoxidizing power alone for basic electric arc furnace producers of carbon and low alloy long products. Although most steelmakers today also use computers in their melt shop or at the ladle metallurgy station to adjust ingredients to achieve a desired recipe or final aim chemistry, the tendency is to utilize similar or uniform source chemistries or raw material inputs conforming to a known and tried specification. Steelmakers try to minimize switching from one grade of silicomanganese to another, due in part to customer demands for higher quality in steel mill products and in part to steelmakers' increasing acceptance of quality assurance programs, statistical process control, and traceability (including traceability of inputs throughout the steelmaking process).²⁸

U.S. Tariff Treatment

U.S. imports of silicomanganese are provided for under subheading 7202.30.00 of the HTS. The column 1-general (most-favored-nation or MFN) rate of duty, applicable to goods from Brazil, China, Ukraine,²⁹ and Venezuela, is 3.9 percent ad valorem.³⁰ Silicomanganese from Venezuela and Ukraine³¹ was eligible for duty-free entry under the Generalized System of Preferences (GSP) until the program expired on September 30, 1994.³²

Certain silicomanganese entering the United States could be imported under another HTS subheading. These products, possibly including slag and other "off-specification" silicomanganese, would be classifiable under HTS subheading 7202.99.50, which covers "other" (nonenumerated) ferroalloys. The MFN rate of duty for such imports is 5.0 percent ad valorem.³³ No company which imported silicomanganese, however, reported importing it under HTS subheading 7202.99.50. Likewise, none of the companies importing any product that is properly classifiable under HTS subheading 7202.99.50 reported importing silicomanganese under that subheading.

THE NATURE AND EXTENT OF SALES AT LTFV

Based on its investigations for the period June 1 through November 30, 1993, Commerce made final determinations that silicomanganese from Brazil, China, Ukraine, and Venezuela are being, or are likely to be, sold in the United States at LTFV.³⁴ Commerce also found that critical circumstances exist with regard to sales at LTFV of silicomanganese from China and Ukraine. The following tabulation summarizes Commerce's determinations:

²⁸ Conference transcript (Larry Pryor), pp. 98-99; hearing transcript (William Meier, purchasing manager, Structural Metals, Inc.), p. 100.

²⁹ Ukraine obtained MFN status on June 23, 1992 (57 F.R. 28771).

³⁰ There were no changes slated to be made in the tariff schedules under the U.S. schedule of concessions tabled in the General Agreement on Tariffs and Trade (GATT) Uruguay Round.

³¹ Ukraine was designated as a beneficiary developing country under the GSP effective Mar. 23, 1994.

³² Although the U.S. GSP program has not yet been extended, legislation (H.R. 5110) to implement the GATT Uruguay Round would extend it on a retroactive basis through July 30, 1995.

³³ No imports were eligible for GSP duty-free entry under this subheading. No tariff concessions were tabled in the GATT Uruguay Round by the United States for this subheading.

³⁴ ***.

<u>Producer/exporter</u>	<u>Margin</u>	<u>Methodology</u>
Brazil:		
Paulista ¹	64.93 percent	Best information available (adverse rate based on constructed value).
All others	17.60 percent	Best information available (margin which formed the basis for initiation of the investigation).
China:		
All exporters	150.00 percent	Best information available (information contained in the petition, as amended).
Ukraine:		
All exporters	163.00 percent	Best information available (comparing the U.S. price of silicomanganese, based on purchase price sales to unrelated purchasers in the United States for Zaporozhye and on exporter's sales price for Nikopol, with the foreign market value, based on factors of production reported by these two companies, valued by prices in surrogate countries).
Venezuela:		
Hevensa	8.81 percent	Price-to-price comparisons (grade B lump) and price-to-constructed value comparisons (grade C lump and fines).
All others	8.81 percent	Price-to-price comparisons (grade B lump) and price-to-constructed value comparisons (grade C lump and fines).

¹ The Paulista Group includes both Cia Paulista de Ferroligas and Sibra Electrosiderurgica Brasileira SA.

Suspension Agreement

On October 31, 1994, U.S. and Ukrainian representatives signed an agreement suspending the antidumping investigation on silicomanganese from Ukraine. According to the agreement, "in order to prevent the suppression or undercutting of price levels of United States domestic silicomanganese, the Government of Ukraine will restrict the volume of direct or indirect exports to the United States of silicomanganese products from all producers/exporters of silicomanganese products in Ukraine subject to the terms and provisions set forth (in the agreement)."³⁵

According to the agreement, export restraints will be calculated on an annual basis. Commerce will first calculate the ratio of 7,992 metric tons (8,810 short tons) to U.S. raw steel production in 1993.³⁶ Each year, Commerce will multiply this ratio by the U.S. raw steel production

³⁵ The effective date of the agreement is Oct. 31, 1994; export limits will remain in force through Oct. 31, 1999. The agreement is not an admission that any sale of silicomanganese from Ukraine has been made at LTFV or that any sale has materially injured, or threatened material injury to, an industry or industries in the United States.

³⁶ U.S. raw steel production will be estimated by Data Resources, Inc.

forecast for the coming November 1 - October 31 period to derive the annual export limit. The Government of Ukraine will administer export restraints through a licensing and certification regime. Withdrawals from inventory of Ukrainian-origin silicomanganese held by Ukraine in the United States and imported on or after March 19, 1994, will require export licenses and certificates of origin and will count toward the export limit. Further, the contracted prices of silicomanganese deliveries to the United States must be at or above the monthly "reference price" in effect on the date the contracts were signed.³⁷

THE U.S. MARKET

U.S. Producer

Elkem is the only company still producing silicomanganese in the United States.³⁸ Established in 1981, Elkem is wholly owned by Elkem A/S (Oslo, Norway) through Elkem Holdings, Inc. Elkem's headquarters and trading arm are in Pittsburgh, PA, and its U.S. plants are in Alloy, WV; Ashtabula, OH; Niagara, NY; and Marietta, OH. Only the Marietta plant produces silicomanganese (it also produces ferromanganese, manganese-aluminum, ferrochrome, chromium-aluminum, electrolytic manganese, and electrolytic chrome). Elkem's other plants produce silicon metal and, until 1994, ferrosilicon.³⁹

Elkem has a contract with the DLA to upgrade stockpile metallurgical-grade manganese ore into high-carbon ferromanganese at its Marietta works.⁴⁰ 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, 1994.⁴¹ Between January 1 and September 30, 1993, the DLA received 40,106 tons of upgraded ferromanganese.⁴²

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 sister plants. Elkem's use of these slags and fines as production inputs significantly reduces its electricity requirements.⁴³

Elkem views its role in the U.S. silicomanganese market as that of a producer.⁴⁴ In addition to this role, however, Elkem also imports directly and purchases large quantities of silicomanganese from outside sources.⁴⁵ Between January 1991 and June 1994, Elkem's production accounted for ***

³⁷ The "reference price" is based on Elkem's price (presented in its petition) adjusted by changes from historic to current market prices (calculated from *Metals Week*).

³⁸ The number of companies producing silicomanganese in the United States declined from 6 in 1980 and 1981 to 5 in 1982 and 3 in 1983. Since then, only 2 companies have produced silicomanganese in the United States: Elkem and SKW Alloys Inc. (SKW), Calvert City, KY, which produced silicomanganese intermittently through 1989. SKW ***.

³⁹ Elkem idled the ferrosilicon furnace at its Ashtabula plant on Apr. 15, 1994, "because of market conditions involving the price of ferrosilicon." Hearing transcript (Mr. Russell Craig), p. 52.

⁴⁰ ***. Petitioner's posthearing brief, exhibit 4, p. 2.

⁴¹ Thomas S. Jones, *Manganese Annual Report 1992*, p. 4.

⁴² U.S. Department of Defense, *Strategic and Critical Materials Report to the Congress*, Apr. 12, 1994, p. 6.

⁴³ 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.

⁴⁴ Hearing transcript (Russell Craig), p. 49.

⁴⁵ ***. Aug. 18, 1994, submission by the petitioner.

percent of its total silicomanganese requirements; purchases and net swap receipts (swap receipts minus swap releases) from traders for *** percent; direct imports for *** percent; and payment-in-kind receipts from the DLA for *** percent.⁴⁶ Elkem's sources of silicomanganese are presented in the following tabulation (*in short tons*):

* * * * * * *

U.S. Importers

The 21 firms that reported imports of silicomanganese are listed in table 1. These firms were responsible for the vast majority of silicomanganese imports during the period January 1991 through June 1994.

Table 1

Silicomanganese: U.S. importers, locations, and shares of the quantity of U.S. subject imports and shipments of subject imports in 1993

* * * * * * *

*** imported and sold silicomanganese from *** in ***. ***.

AIOC Corp. (AIOC) is the only company that imported silicomanganese from all four subject countries. In 1993, the company ***.

*** began importing and selling silicomanganese from *** in the second half of 1993, having previously purchased the *** product from ***. All of ***'s commercial shipments of silicomanganese are in lump form and grade B chemistry.

***. Many of the company's imports are from Australia,⁴⁷ ***.

*** is another large importer of silicomanganese, importing the product from ***. It is also one of the most active companies engaging in silicomanganese swaps. ***.

*** was active as an importer and trader of Brazilian silicomanganese in 1992, although by 1993 ***. *** also imported silicomanganese from China ***. All of ***'s commercial shipments of silicomanganese are grade B lump.

*** began importing low-carbon silicomanganese in lump form from China in ***. It sold this product to ***.

Elkem imported and sold ***. The company also imports small quantities of low-carbon silicomanganese from Norway.⁴⁸

F&S Alloys (F&S) imported silicomanganese from Brazil and ***. All of its commercial shipments were *** silicomanganese; it reportedly ***, although F&S purchased silicomanganese from a number of sources.⁴⁹ ***.

*** imported silicomanganese from China and ***. Because the Chinese material ***, ***.

*** began importing and selling silicomanganese from China in 1993, arranging ***.

⁴⁶ Elkem's purchases are discussed in greater detail in the section of this report entitled "Market Shares;" its direct imports are discussed in the section entitled "U.S. Importers;" and its payment-in-kind receipts are discussed further in the section entitled "U.S. Government."

⁴⁷ ***. Between 67 and 100 percent of silicomanganese imports from Australia enter the United States through the ports of Los Angeles and Portland. The only other imports of silicomanganese to enter the United States through those two ports in 1993 and 1994 were imports from China.

⁴⁸ Hearing transcript (Russell Craig), p. 262. Elkem recently announced plans to begin production of low-carbon silicomanganese at its Marietta facility. *American Metal Market*, May 26, 1994, p. 2.

⁴⁹ Hearing transcript (Roger Yannetti, general sales manager, F&S), p. 161.

*** imported silicomanganese from *** of Brazil and *** of South Africa, although ***.
*** imported *** silicomanganese from China in ***. The company ***.
*** imported and sold silicomanganese from Brazil in 1993. ***.

Mannesmann imported silicomanganese from ***, and from Venezuela only thereafter. Mannesmann has been the exclusive U.S. agent for Hevensa, the sole Venezuelan producer of silicomanganese, since October 1992 under a long-term contract that will remain in effect until at least 1996.⁵⁰ ***.

Minerais U.S. Inc., exclusive agent for Ukrainian producer Nikopol and ***, imports silicomanganese from Ukraine, ***. The largest portion of Minerais' silicomanganese business ***. All of Minerais' domestic silicomanganese shipments are ***.

*** began importing silicomanganese from China, ***, and *** in 1993. Although the majority of the company's shipments are grade B lump silicomanganese, it has sold ***.

*** imports and sells only low-carbon silicomanganese in lump form from ***. The company ships silicomanganese ***.

*** imported grade B lump silicomanganese from Brazil, China, South Africa, and the former Yugoslavia. The company ***.

*** imported silicomanganese ***, receiving *** from China ***. *** shipped *** grade B lump material in 1993 to ***.

*** imported silicomanganese from *** of South Africa ***. ***.

Of the 21 companies that imported silicomanganese between January 1991 and June 1994, 17 were owned in whole or in part by other companies. Of these 17 companies, 9 reported ownership by companies outside the United States and 8 by companies within the United States. However, within the latter category, three of the companies' ultimate parents are companies outside the United States. Company-specific information regarding the ownership of U.S. firms engaged in producing and/or importing silicomanganese is provided in appendix D.

U.S. Government

The U.S. Government has maintained a stockpile of silicomanganese since 1968, though it has not purchased any silicomanganese since 1970. Grade A lump silicomanganese was purchased originally from the Union Carbide Corp. in Marietta, OH,⁵¹ to provide a sufficient supply to permit the production of critical defense and essential civilian items in a national emergency. However, the DLA disposed of a large portion of its silicomanganese stockpile in 1992 and 1993 as payment-in-kind⁵² to Elkem for upgrading stockpile metallurgical-grade manganese ore into high-carbon ferromanganese. No such transaction has taken place so far in 1994, nor is any planned for the remainder of the year. The DLA stockpile currently contains only *** maintained in ***.⁵³

Apparent U.S. Consumption

Table 2 presents the quantity and value of apparent U.S. consumption of silicomanganese, while figure 2 gives a graphic presentation of the quantity of apparent U.S. consumption. The data are broken out by grade and type in tables 3 and 4. Apparent U.S. consumption consists of U.S.

⁵⁰ Hearing transcript (Ross Baker, division manager, Mannesmann), p. 179.

⁵¹ This is the same facility currently owned by Elkem.

⁵² The values assigned to these transactions were based on 4-week averages of the published prices of silicomanganese "MW 2% Carbon/Import" in *Metals Week*, less assorted transportation costs to Marietta, OH. Letter from ***.

⁵³ Letter from ***.

Table 2

Silicomanganese: U.S. shipments of domestic product, U.S. shipments of imports, by sources, and apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (short tons)</i>					
Producers' U.S. shipments	***	***	***	***	***
DLA shipments to Elkem	***	***	***	***	***
Importers' U.S. shipments:					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Subtotal	56,433	64,101	136,923	69,909	70,464
Other sources	177,821	198,618	181,537	86,716	87,676
Total	234,254	262,719	318,460	156,625	158,140
Apparent consumption	***	***	***	***	***
<i>Value (1,000 dollars)</i>					
Producers' U.S. shipments	***	***	***	***	***
DLA shipments to Elkem	***	***	***	***	***
Importers' U.S. shipments:					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Subtotal	29,508	30,529	63,087	31,447	35,739
Other sources	100,732	101,401	85,384	41,294	44,280
Total	130,240	131,930	148,471	72,741	80,019
Apparent consumption	***	***	***	***	***
<i>Unit value (per short ton)</i>					
Producers' U.S. shipments	***	***	***	***	***
DLA shipments to Elkem	***	***	***	***	***
Importers' U.S. shipments:					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Average	\$522.89	\$476.26	\$460.75	\$449.83	\$507.20
Other sources	566.48	510.53	470.34	476.20	505.04
Average	555.98	502.17	466.22	464.43	506.00
Apparent consumption	***	***	***	***	***

Note.-- Unit values are calculated from the unrounded data, using data of firms providing both quantity and value information.

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

Figure 2

Silicomanganese: Apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table 3

Silicomanganese: Apparent U.S. consumption, by grades, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table 4

Silicomanganese: Apparent U.S. consumption, by types, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

shipments by U.S. producers (Elkem and SKW); the Defense Logistics Agency (DLA); importers of silicomanganese from Brazil, China, Ukraine, and Venezuela; and importers of silicomanganese from other countries.⁵⁴ Both the volume and the value of apparent U.S. consumption rose between 1991 and 1993 and between January-June 1993 and January-June 1994, reflecting rising U.S. shipments of domestic and imported product and the liquidation of inventories by the DLA.⁵⁵ Although the vast majority of apparent U.S. consumption is grade B lump silicomanganese, the data indicate strong growth in other grades and sizes.

Channels of Distribution

Most silicomanganese marketed in the United States by both the U.S. producer and the importers is shipped directly to the end users (steel producers and iron foundries), although significant amounts are also exchanged among trading companies or shipped to distributors for subsequent resale. The following tabulation and graph (figure 3) present the disposition of 1993 U.S. shipments according to their country of origin (*in percent*):

* * * * *

⁵⁴ U.S. shipment data for domestically produced silicomanganese is complete and such data for imported silicomanganese is nearly so. U.S. shipments of silicomanganese from China in 1993 or January-June 1994 may be understated by ***, the amount reported by *** in its preliminary questionnaire as "imported, or arranged for the importation of" for delivery ***. ***'s final questionnaire does not appear to include this shipment, although according to ***, *** imported product provided for under HTS subheading 7202.30.00, ***. The company has not been able to provide details on the disposition of this shipment, therefore staff cannot determine the impact on shipment data and/or inventory data.

U.S. shipment data for silicomanganese from nonsubject countries are nearly complete for 1992, 1993, and 1994, but may be understated in 1991 due to the closure of ***. Nonsubject imports reported in response to the Commission's questionnaires are understated by 24,833 short tons in 1991 compared to the official import data compiled by Commerce, leading staff to believe that the volume of U.S. apparent consumption is similarly understated and that the value of U.S. apparent consumption is understated by \$14.1 million (based on an observed average unit value of \$566.48 per short ton).

⁵⁵ Raw steel production in electric arc furnaces in the United States increased 14.1 percent between 1991 and 1993 and by 0.2 percent between January-June 1993 and January-June 1994. American Iron and Steel Institute, *Monthly Statistical Series*, various years and months.

Figure 3
Silicomanganese: Channels of distribution, 1993

* * * * *

Geographic Distribution of Commercial Shipments

Table 5 presents the geographic distribution of 1993 and January-June 1994 commercial shipments of silicomanganese produced in the United States by Elkem and SKW and silicomanganese from each of the countries subject to investigation. In all, silicomanganese from one or more of these sources was shipped to 34 different states during the 18 months presented in table 5. In general, the largest concentrations of these commercial shipments were found in Illinois, Ohio, Pennsylvania, and Texas.⁵⁶

Table 5
Silicomanganese: U.S. commercial shipments of domestic product and U.S. imports from Brazil, China, Ukraine, and Venezuela, by states, 1993 and January-June 1994

* * * * *

Swap Shipments

Five firms⁵⁷ reported to the Commission that they participate in swaps⁵⁸ with other traders of silicomanganese that they either produced themselves or which they themselves imported directly. These swap shipments accounted for *** percent of Elkem's and SKW's U.S. shipments of domestically produced silicomanganese and *** percent of U.S. shipments of imported silicomanganese in 1993, the peak year for swap transactions.⁵⁹ Traders identified four primary types of swaps: "location" swaps, "time" swaps, "size" swaps, and "commodity" swaps. Any given product exchange may incorporate one or more elements of these swap transactions.

Because of the time and expense of transporting silicomanganese to the customer, a trader may seek to identify a competitor with material available close to the customer. If so, the competitor will, at times, supply the customer in exchange for a like amount of silicomanganese in another location that may be convenient to his own customers. Such *location swaps* benefit all parties by reducing storage and transportation costs and shipment delays.

Time swaps allow traders to smooth out fluctuations in their inventories. Traders with excess inventory may seek out swap partners that, at that point in time, require additional inventory to meet existing or anticipated obligations. Time swaps permit the borrowing of inventory with the promise to repay that inventory at a future date.

Size swaps permit traders to retain flexibility in meeting orders for specific sizes without having to maintain large inventories of multiple sizes. If both parties are agreeable, a trader with

⁵⁶ Table 5 does not include inventories liquidated by the DLA. All silicomanganese released by the DLA was used as payment-in-kind to Elkem. ***.

⁵⁷ ***.

⁵⁸ "Swap" shipments involve the exchange of product for product, as distinguished from "commercial" shipments, which involve the exchange of money for product. In some instances, traders may engage in reciprocal purchase arrangements, in which the sale of a specified quantity of product is "tied" to an obligation to purchase a like quantity of product.

⁵⁹ Swaps of imported product accounted for *** percent of U.S. shipments of silicomanganese subject to investigation and *** percent of U.S. shipments of silicomanganese not subject to investigation in 1993.

excess inventory of certain sizes and an obligation to fill an order stipulating different sizes may exchange the inventoried silicomanganese for that of another trader holding the required sizes. Such size swaps increase efficiency in filling orders and reduce inventory costs.

Location, time, and size swaps generally require that the product being exchanged by both parties be silicomanganese of the same chemistry.⁶⁰ The fourth type of swap arrangement, *commodity swaps*, allows a trader to exchange silicomanganese for a different product, usually *** or ***. Commodity swaps incorporate many of the same benefits associated with location, time, and size swaps (e.g., greater flexibility, better responsiveness to customers, reduced inventory and transportation costs, etc.) but do so across product lines.

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 determinations 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

⁶⁰ Generally grade B, given its prevalence in the market.

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.

Information on the volume of imports (item (B)(I) above) is presented in the section of this report entitled "U.S. Imports." Information on the other factors specified is presented in this section.

U.S. Production Facility

Elkem can produce silicomanganese and ferromanganese interchangeably in one of its three furnaces at its Marietta plant. The company's furnace number 1 was designed and built to produce silicomanganese but during the period for which data were collected was also used to produce high-carbon ferromanganese.⁶¹ Since late July 1993, however, Elkem has dedicated furnace number 1 exclusively to producing silicomanganese. Elkem produces *** on its furnace number 12 and *** on its furnace number 18. Data for Elkem's furnace capacity, furnace production, and capacity utilization for silicomanganese are presented in table 6.⁶²

Table 6

Silicomanganese: U.S. capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Capacity

Elkem's end-of-period capacity to produce silicomanganese fluctuated over the period for which data were collected, reflecting ***. The *** reflects ***. The company's average-of-period capacity likewise reflects ***, but also the product mix representative of Elkem's production during each period, including those portions of a given period when it produced no silicomanganese.

Production

Elkem's production of silicomanganese rose by *** percent between 1991 and 1992 and declined by *** percent between 1992 and 1993, a net increase of *** percent. Elkem's production increased by *** percent between January-June 1993 and January-June 1994. Elkem suspended production of silicomanganese *** times over the period for which data were collected (see table 7). Elkem attributed the *** to the requirements of *** and the *** to low selling prices for silicomanganese.⁶³

⁶¹ Changeover from silicomanganese to ferromanganese production generally requires 8 to 24 hours, during which time material is produced "out of grade."

⁶² Table 6 presents Elkem's capacity and production of silicomanganese which generally conforms to the chemical description in the product definition. This includes the capacity to produce silicomanganese fines, ***. Table 6 does not present Elkem's capacity or production of silicomanganese slag, which it ***. Data on Elkem's "shippable production" (exclusive of recycled fines) and its slag production are included in app. C, table C-5.

⁶³ ***.

Table 7

Silicomanganese: Production by Elkem, by months, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

In these investigations, respondents alleged, citing *American Metal Market* (December 14, 1992), that production declines in 1993 were due to the idling of two of the Marietta plant's three furnaces. According to respondents, the subsequent shutdowns forced Elkem to switch the furnace used to make silicomanganese to ferromanganese production.⁶⁴ Elkem acknowledged that one of its three furnaces exploded and a second experienced a "burn-through."⁶⁵ In its questionnaire response, Elkem noted that ***.

Capacity Utilization

Elkem's end-of-period capacity utilization fluctuated widely over the period examined but generally remained ***, while its average-of-period capacity utilization exhibited smaller fluctuations but ***. This experience reflects the "all-or-nothing" nature of Elkem's production during the period. When Elkem was producing silicomanganese, ***.⁶⁶ However, ***.

U.S. Producers' Shipments

Table 8 presents the aggregate shipments of silicomanganese produced in the United States by Elkem and SKW. Both the volume and value of these shipments increased throughout the period for which data were collected, with the largest increases occurring ***. Both company transfers and domestic ("open market") shipments (commercial shipments plus swap shipments) increased in every period for which data were collected. The unit values of U.S. shipments of domestically produced silicomanganese decreased between 1991 and 1993 but increased between January-June 1993 and January-June 1994.

Table 8

Silicomanganese: Shipments by U.S. producers, by types, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

The Commission requested companies that produced silicomanganese to report each individual shipment of the product. The following tabulation presents the geographic distribution of commercial shipments by Elkem and SKW of silicomanganese that the two companies produced in the United States (*in short tons*):

* * * * *

⁶⁴ Hearing transcript, p. 123.

⁶⁵ Petitioner's postconference brief, exhibit 3, pp. 1-3.

⁶⁶ Because Elkem's budgeted capacity is based on operating *** weeks per year rather than ***, the company ***.

Exports, primarily to ***, fluctuated *** in terms of volume and value during the period for which data were collected.⁶⁷ In every period examined except 1991, ***.

U.S. Producers' Inventories

Elkem's and SKW's end-of-period inventories of silicomanganese are presented in table 9. Such inventories rose throughout the period for which data were collected. As ratios to production, U.S. shipments, and total shipments (U.S. shipments plus exports), end-of-period inventories of silicomanganese decreased between 1991 and 1992 and increased between 1992 and 1993, exhibiting net increases over the 3-year period. These ratios also increased between January-June 1993 and January-June 1994.

Table 9

Silicomanganese: End-of-period inventories of U.S. producers, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

U.S. Employment, Wages, and Productivity

In its questionnaire response, Elkem provided information on the number of production and related workers, hours worked by those employees, and wages and total compensation paid to those employees (table 10). The Oil, Chemical and Atomic Workers, Local 3-639, Belpre, OH, represents Elkem's workers.

Table 10

Average number of total employees and production and related workers in the U.S. establishment wherein silicomanganese is produced, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, by products, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

The number of workers producing silicomanganese⁶⁸ at Elkem's Marietta facility rose between 1991 and 1992 and fell between 1992 and 1993, but exhibited a net increase over the 3-year period. The number of such workers increased between January-June 1993 and January-June 1994 as well, rising in 1994 to ***. Hours worked by, and wages and total compensation paid to, such workers also rose between 1991 and 1992 and fell between 1992 and 1993, resulting in net increases for the 3-year period, and continued to rise in January-June 1994 from levels in January-June 1993. Hourly wages and hourly compensation increased throughout the period for which data were collected.

The productivity of Elkem's workforce producing silicomanganese increased steadily between 1991 and 1993 and between January-June 1993 and January-June 1994. The unit labor costs associated with producing silicomanganese declined throughout the period examined, particularly between *** and ***.

⁶⁷ ***.

⁶⁸ ***.

In its questionnaire, the Commission requested Elkem to provide detailed information concerning actual reductions in the number of production and related workers producing silicomanganese during January 1991-June 1994, if such reductions involved at least 5 percent of the work force or more than 50 workers. Elkem reported the following temporary reductions:

* * * * *

On April 11, 1994, the Department of Labor ("Labor") received a trade adjustment assistance petition from Elkem on behalf of its workers producing manganese alloys and chrome alloys at the Marietta facility.⁶⁹ Upon receipt of the petition, Labor initiated an investigation and, in June 1994, issued a negative determination for worker adjustment assistance.⁷⁰ According to its notice, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the following group eligibility requirements must be met:

- (1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,
- (2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and
- (3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threat thereof, and to the absolute decline in sales or production.

Labor's investigation revealed that the first and second criteria had not been met. The notice does not address the third criterion.

Financial Experience of the U.S. Producer

Elkem, the sole U.S. producer of silicomanganese between January 1991 and June 1994, provided profit-and-loss data on the operations of its overall establishment (Marietta, OH) wherein silicomanganese is produced; on its U.S. operation producing silicomanganese; and on its U.S. operations purchasing silicomanganese from outside sources and reselling it. Elkem's data were verified by Commission staff on October 6 and 7, 1994. While there was some reclassification of costs, there were only relatively minor absolute data changes.

Overall Establishment Operations

Profit-and-loss data on Elkem's overall establishment operations are shown in table 11. Silicomanganese accounts for about *** of establishment net sales, with other manganese alloys (***), special metals (***), and chromium alloys (***), accounting for the remainder. Establishment net sales value ***. The principal reason for *** was ***. Repairs to the furnace (which was not used for silicomanganese production) kept it out of production for *** months. ***.

⁶⁹ 59 F.R. 21775, Apr. 26, 1994.

⁷⁰ 59 F.R. 33786, June 30, 1994.

Table 11

Elkem's profit-and-loss experience on the operations of its overall establishment wherein silicomanganese is produced, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Operations on Silicomanganese Produced in the United States

Elkem's profit-and-loss data on the sales of silicomanganese that it produced in its U.S. establishment are shown in table 12. At the hearing the consultant for the Ukrainian and Brazilian respondents raised several questions regarding the financial data. They pointed out apparent discrepancies where ***.

Table 12

Elkem's profit-and-loss experience on the operations of the silicomanganese produced in its U.S. establishment, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Staff has researched the apparent discrepancies and found the following. ***.⁷¹

Regarding legal fees, staff (along with Elkem's independent auditors) consider such costs operating costs. These costs were highlighted in the verification report because of *** and because Commissioners may choose to consider the financial condition of the industry with and without such costs. Finally, regarding concerns about fines and raw materials, staff again notes that Elkem's questionnaire data tied to its audited financial statements.

***, Elkem's profit levels were ***.

The results ***.

Interim 1994 results ***.

Elkem provided cost of production data on its silicomanganese operations, as summarized below (*in dollars per short ton*):

* * * * *

Elkem ***. Notwithstanding that, the previously discussed *** are readily apparent.

Operations on All Standard Silicomanganese

Selected profit-and-loss data for Elkem on its standard silicomanganese operations⁷² from all sources are shown in table 13. The data in table 13 differ from the data in table 12 in that they not only include the revenues and costs associated with silicomanganese produced in Marietta, OH, but also ***. While Elkem must purchase the silicomanganese that it acquires from Norway, Canada, or brokers, it does not actually pay for the silicomanganese that it acquires from the DLA. Instead, it receives the silicomanganese as payment-in-kind for conversion work it does for the DLA. Elkem's "purchase price" is determined with reference to silicomanganese prices published in *Metals Week*.

⁷¹ Telephone interview with ***.

⁷² These data do not include Elkem's direct imports of low-carbon silicomanganese and its purchases from brokers of low-carbon silicomanganese. Data on these transactions are included in the section of this report entitled "Market Shares."

Table 13

Selected profit-and-loss data for Elkem on its silicomanganese operations from all sources, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Sales of silicomanganese from all outside sources ***.

Investment in Productive Facilities and Return on Assets

Elkem's U.S. investment in property, plant, and equipment, together with its return on its assets, are shown in table 14. The value of silicomanganese-producing assets ***.

Table 14

Elkem's assets and return on assets on its operations producing silicomanganese, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Capital Expenditures

Elkem's capital expenditures are shown in table 15. The company has expended ***. The only expenditure of note for the entire establishment was ***.

Table 15

Elkem's capital expenditures, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Research and Development Expenses

Elkem's research and development (R&D) expenses for its overall establishment and for silicomanganese are shown in the following tabulation (*in thousands of dollars*):

* * * * * * *

The *** level of R&D expenditures *** is reflective of ***.

Capital and Investment

The Commission requested U.S. silicomanganese producers to describe any actual or potential negative effects of imports of silicomanganese from Brazil, China, Ukraine, or Venezuela on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or more advanced version of the product). Elkem's responses are in appendix E.

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

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors⁷³--

- (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,

⁷³ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁷⁴

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 E. 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 are presented in table 16. Total inventories of imported silicomanganese rose throughout the entire period for which data were collected and fluctuated in a generally upward trend as ratios to imports, U.S. shipments of imports, and total shipments of imports. However, the trends in inventory levels and ratios generally differed noticeably between silicomanganese from the four subject countries and silicomanganese from all other countries.

Inventories of silicomanganese from Brazil, China, Ukraine, and Venezuela increased between 1991 and 1993, both cumulatively (by 608 percent) and individually. Between January-June 1993 and January-June 1994, inventories from Brazil and China increased ***, while those from Ukraine rose ***, and those from Venezuela ***, resulting in a 96-percent increase in total inventories of silicomanganese from the subject countries. As ratios to imports, U.S. shipments of imports, and total shipments of imports, inventories of silicomanganese from the subject countries rose between 1991 and 1993 and between January-June 1993 and January-June 1994.⁷⁵ Inventories from all other countries decreased noticeably between 1991 and 1993 but rebounded sharply between January-June 1993 and January-June 1994.⁷⁶

⁷⁴ 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."

⁷⁵ Inventories of silicomanganese from the four subject countries combined ***.

⁷⁶ As ratios to imports, U.S. shipments of imports, and total shipments of imports, such inventories fell steadily between 1991 and 1993, but stabilized or recovered between January-June 1993 and January-June 1994.

Table 16

Silicomanganese: End-of-period inventories of U.S. importers, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (short tons)</i>					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Subtotal	11,564	37,744	81,890	37,183	72,676
Other sources	65,611	58,046	36,184	48,189	68,103
Total	77,175	95,790	118,074	85,372	140,779
<i>Ratio to imports (percent)</i>					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Average	19.4	42.4	45.1	26.6	57.9
Other sources	33.1	29.7	22.2	31.0	28.4
Average	29.9	33.7	34.3	28.9	38.4
<i>Ratio to U.S. shipments of imports (percent)</i>					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Average	18.1	58.9	56.8	26.6	51.6
Other sources	36.9	29.2	19.9	27.8	38.8
Average	32.4	36.5	35.8	27.3	44.5
<i>Ratio to total shipments of imports (percent)</i>					
Brazil	***	***	***	***	***
China	***	***	***	***	***
Ukraine	***	***	***	***	***
Venezuela	***	***	***	***	***
Average	18.0	58.9	56.2	26.3	50.6
Other sources	36.8	29.0	19.6	27.4	38.6
Average	32.3	36.3	35.3	26.9	44.0

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

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

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

The Commission sought information regarding the industries producing and exporting silicomanganese in Brazil, China, Ukraine, and Venezuela from a variety of sources, including counsel and other representatives for each of the subject countries, the U.S. Embassy in each of the subject countries, the appropriate Government Ministry in China, published material, and, as a last resort, the petition. The information on foreign manufacturers/exporters of silicomanganese for each subject country is presented below.

Brazil

Five companies produce silicomanganese in Brazil: Companhia de Cimento Portland Maringa (Maringa); Companhia Ferro Ligas da Bahia (Febrasa); Ferro Ligas Piracicaba (Piracicaba); Cia Paulista de Ferroligas (Paulista);⁷⁷ and Sibra Electrosiderugica Brasileira SA (Sibra). In response to the Commission's request for information on the Brazilian industry, U.S. counsel Dorsey & Whitney provided the data on the operations of two Brazilian silicomanganese producers (Paulista and Sibra, both part of the Paulista Group) presented in table 17. Additional information was compiled from the second edition of *Ferro-Alloy Directory & Databook*,⁷⁸ the U.S. Consulate General in Rio de Janeiro, Brazil, and direct testimony by officers of the companies.

Table 17

Silicomanganese: Brazil's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

* * * * *

Paulista, headquartered in Sao Paulo, SP, was established in 1964. The company has had as many as *** plants producing silicomanganese. Paulista's capacity to produce silicomanganese ***. Paulista projects ***. In addition to silicomanganese, Paulista produces ferrochrome, ferromanganese, ferromolybdenum, ferrophosphorus, ferrosilicon, silicon metal, ferrotitanium, ferrotungsten, and ferrovandium.

Sibra, headquartered in Simoes Filho, BA, was established in 1963 and purchased by Paulista in 1988. ***. In addition to silicomanganese, Sibra produces ferromanganese.

Paulista and Sibra recently filed for *concordatas* (bankruptcy).⁷⁹ Currently, negotiations are in progress to transfer ownership of the companies to the Brazilian manganese ore producer Companhia Vale do Rio Doce and Brazilian steel maker Usiminas.⁸⁰

⁷⁷ According to the Associacao Brasileira dos Produtores de Ferroligas (ABRAFE), the operations of two companies identified in the petition as silicomanganese producers, Bozel Meneracao e Ferroligas SA (Bozel) and Ferroligas Assofun SA (Assofun), have been taken over by Paulista. A third company identified in the petition, Rima Electrometalurgica (Rima), is indeed a ferroalloy producer but according to ABRAFE produces no alloys of iron, silicon, or manganese. Cable from the U.S. Consulate General in Rio de Janeiro, Brazil, Dec. 7, 1993.

⁷⁸ Richard Serjeantson, ed., *Ferro-Alloy Directory & Databook*, 2d ed., (Surrey, England: Metal Bulletin Books Ltd., 1988).

⁷⁹ Cable from the U.S. Consulate General in Rio de Janeiro, Brazil, Dec. 8, 1993.

⁸⁰ As Dr. Cavadas noted, "The next step for the Paulista Group is a complete restructuring through the acquisition of Paulista by Companhia Vale do Rio Doce, a producer of manganese ore and Usiminas, a steel

(continued...)

China

Petitioners have identified eight Chinese producers of silicomanganese: Capital Iron & Steel Ferroalloy Plant (Capital); Chongqing Ferroalloys Works; Emei Ferroalloy Works (Emei); Hunan Ferroalloy Plant; Jiangxi Xinyu Iron & Steel Works; Jinzhou Ferroalloys Works (Jinzhou); Shanghai Ferro-Alloy; 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 ***-based firm representing Chinese silicomanganese producers Emei, Liaoyang Ferroalloy Works, Dandong Joint Venture, and Guizhou Ferroalloy Works (only one of which, Emei, is among the firms identified as producers by the petition) provided limited data on the operations of these firms (table 18).⁸¹ The proportion of total Chinese production of silicomanganese accounted for by these firms is estimated to be low -- *** percent. The ***-based firm could supply no data for the 6-month periods, nor did it supply projections for 1995. Data presented for 1993 and 1994 are based on projections.

The Commission contacted the ***-based firm representing the four Chinese silicomanganese producers three times, but the firm did not resolve the deficiencies in its response. The Commission also requested data from the U.S. Embassy and MOFTEC, both in Beijing, China, but its requests were not even acknowledged.

Table 18

Silicomanganese: China's capacity, production, inventories, capacity utilization, and shipments, 1991-92, Jan.-June 1993, Jan.-June 1994, and projected 1993-95

* * * * *

Ukraine

Both Ukrainian producers of silicomanganese, Nikopol Ferro-Alloy Works (Nikopol) and Zaporozhye Ferroalloy Works (Zaporozhye), responded through counsel O'Melveny & Myers to the Commission's foreign producers' questionnaire. Data for these companies are presented in table 19.

Ukraine's production *** percent between 1991 and 1993 and by *** percent between January-June 1993 and January-June 1994, ***. Despite a period of uncertainty, capacity ***.^{82 83} Both Nikopol and Zaporozhye ***.

⁸⁰ (...continued)
mill. This acquisition is currently being negotiated and is on the verge of being completed." Hearing transcript, p. 164. Counsel extrapolates that this acquisition will redirect silicomanganese produced by Paulista and Sibra to internal consumption by its new owners. Brazilian respondents' posthearing brief, p. 11.

⁸¹ A fifth company, ***, submitted information to the Commission in the preliminary investigations but not the final. Although the data are incomplete (and therefore not presented in table 18), the company's projections for 1993 include ***.

⁸² According to respondents, on Nov. 29, 1993, *** directed Nikopol to cease production because of a severe energy crisis throughout Ukraine. Ukrainian respondents' postconference brief, affidavit of Vyacheslav Alexeyvich Gavrilov, exhibit 11, p. 1; Nikopol's preliminary foreign producers' questionnaire. ***.

⁸³ ***.

Table 19

Silicomanganese: Ukraine's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

* * * * *

Venezuela

Hornos Electricos de Venezuela S.A. (Hevensa), established in 1953, is the only producer of silicomanganese in Venezuela. In response to the Commission's request for information on the Venezuelan industry, U.S. counsel Shearman & Sterling provided the data on the operations of Hevensa presented in table 20.

Hevensa's capacity to produce and actual production of silicomanganese ***. However, the company is considering ***.

Hevensa's silicomanganese shipments within Venezuela *** while its exports ***. These trends ***. Hevensa is projecting ***.

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. Other export markets for Hevensa include Trinidad, Colombia, and Peru.⁸⁴

Table 20

Silicomanganese: Venezuela's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

* * * * *

Antidumping Actions Outside the United States

Silicomanganese is the subject of recent and pending antidumping investigations outside the United States. On October 8, 1991, the Japan Ferro-Alloy Association filed complaints against silicomanganese from China, Norway, and South Africa. The Government of Japan made negative determinations on imports from Norway and South Africa but, on February 3, 1993, imposed antidumping duties of 5 to 27 percent on imports from China. On April 8, 1993, the European Commission, responding to complaints filed by Euro Alliages on behalf of all producers in the European Union, initiated antidumping investigations on silicomanganese from Brazil, Georgia, Russia, South Africa, and Ukraine. To date, the European Commission has not published provisional findings on these investigations.⁸⁵

⁸⁴ Conference transcript (Pedro Marquez, director, Hevensa), pp. 107-109.

⁸⁵ According to counsel, ***. Brazilian respondents' posthearing brief, p. 14.

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

U.S. Imports

Data compiled by Commerce on U.S. silicomanganese imports are presented in table 21 and figure 4.⁸⁶ Monthly data, country-by-country data, and import data from questionnaires are presented in appendix F.

Table 21

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (short tons)</i>					
Brazil	51,656	61,512	71,400	33,329	23,560
China	5,848	12,591	56,430	5,644	19,751
Ukraine	0	8,810	41,493	12,436	15,460
Venezuela	2,756	9,810	15,418	9,906	5,542
Subtotal	60,260	92,724	184,741	61,315	64,313
Other sources	223,140	190,763	163,686	85,859	127,464
Total	283,400	283,487	348,427	147,175	191,777
<i>Landed, duty-paid value (1,000 dollars)</i>					
Brazil	24,349	26,322	29,375	13,619	10,912
China	2,984	5,628	22,967	2,095	7,661
Ukraine	0	3,640	15,300	4,661	5,962
Venezuela	1,373	4,215	5,785	3,571	2,532
Subtotal	28,706	39,804	73,428	23,946	27,068
Other sources	111,545	90,052	74,620	39,610	56,297
Total	140,251	129,856	148,047	63,556	83,365
<i>Unit value (per short ton)</i>					
Brazil	\$471.37	\$427.91	\$411.41	\$408.62	\$463.16
China	510.27	446.93	407.01	371.17	387.89
Ukraine	(1)	413.18	368.74	374.78	385.65
Venezuela ²	498.05	429.65	375.22	360.52	456.92
Average	476.36	429.28	397.46	390.54	420.87
Other sources	499.89	472.06	455.87	461.34	441.67
Average	494.89	458.07	424.90	431.84	434.70

⁸⁶ An investigation by the U.S. Bureau of the Census determined that the official statistics, as reported, overstated imports of silicomanganese from Norway in July 1993 by 10,800,000 kilograms and imports from Australia in May 1993 by 3,854,720 kilograms. The values, however, were verified to be correct as reported. Letter from ***. The quantity, unit value, and share data presented in table 21 have been adjusted accordingly.

Table 21--Continued

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Share of total quantity (percent)</i>					
Brazil	18.2	21.7	20.5	22.6	12.3
China	2.1	4.4	16.2	3.8	10.3
Ukraine	0	3.1	11.9	8.4	8.1
Venezuela	1.0	3.5	4.4	6.7	2.9
Subtotal	21.3	32.7	53.0	41.7	33.5
Other sources	78.7	67.3	47.0	58.3	66.5
Total	100.0	100.0	100.0	100.0	100.0
<i>Share of total value (percent)</i>					
Brazil	17.4	20.3	19.8	21.4	13.1
China	2.1	4.3	15.5	3.3	9.2
Ukraine	0	2.8	10.3	7.3	7.2
Venezuela	1.0	3.2	3.9	5.6	3.0
Subtotal	20.5	30.7	49.6	37.7	32.5
Other sources	79.5	69.3	50.4	62.3	67.5
Total	100.0	100.0	100.0	100.0	100.0

¹ Not applicable.² 1993 data include ***.

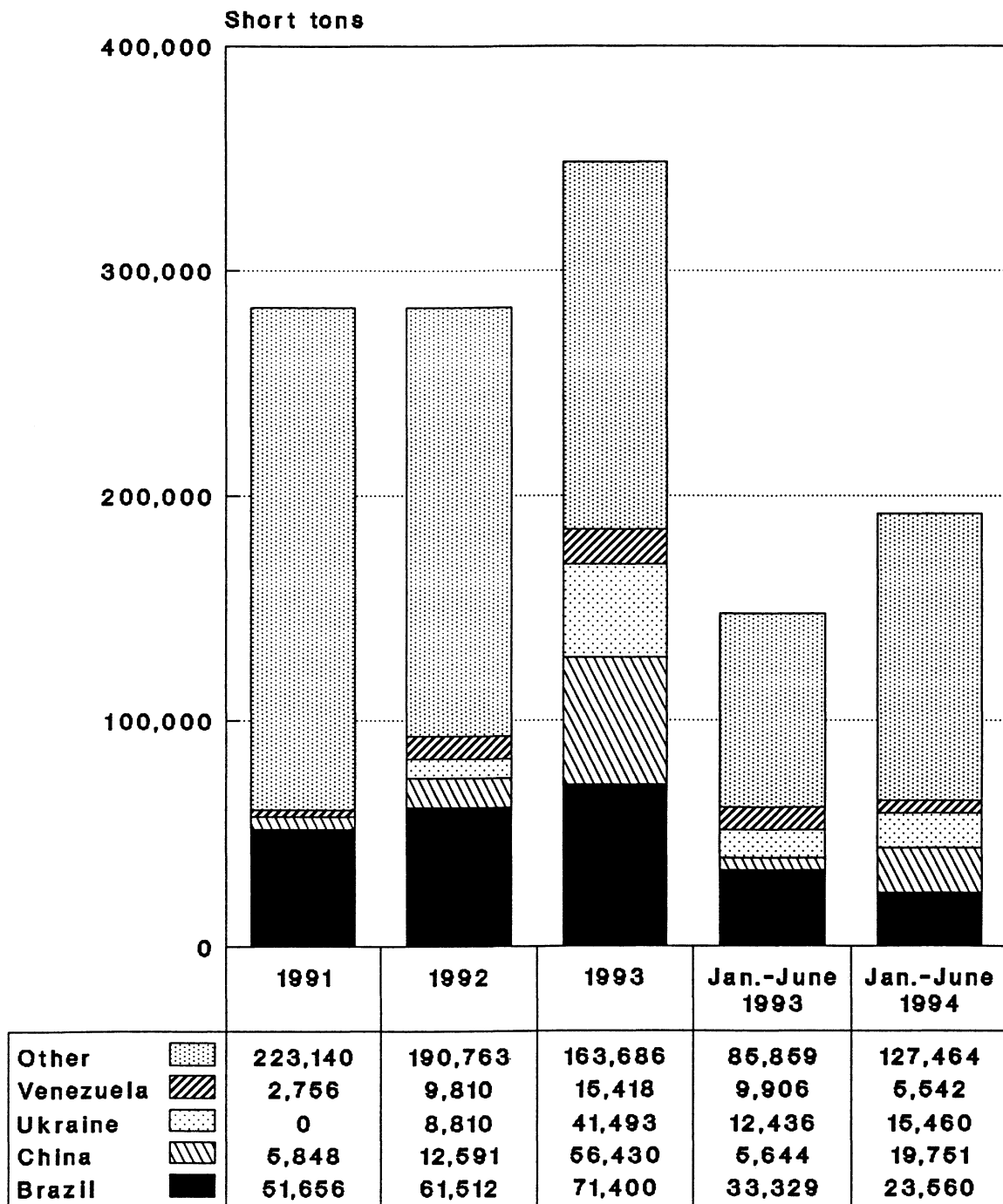
Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce (revised by staff to reflect Census Bureau verification results).

The total quantity of U.S. imports was stable between 1991 and 1992 and increased noticeably between 1992 and 1993, resulting in a net increase between 1991 and 1993. In terms of value, silicomanganese imports decreased between 1991 and 1992 and increased between 1992 and 1993, resulting in a net increase between 1991 and 1993. The quantity and value of U.S. imports of silicomanganese from all four subject countries increased throughout 1991-93, while U.S. imports of silicomanganese from all other countries declined throughout 1991-93. The unit values of U.S. imports of silicomanganese from all sources declined throughout 1991-93, as did the unit values of U.S. imports from each subject country and from all other countries combined.

Figure 4

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994



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

Between the interim (January-June) periods of 1993 and 1994, total U.S. imports of silicomanganese increased noticeably in terms of quantity and value and marginally in terms of unit values. The quantity and value of the subject imports also rose during this period, as increases in imports from China and Ukraine overshadowed decreases in imports from Brazil and Venezuela. The unit values of U.S. imports of silicomanganese from each of the subject countries increased as well. Imports from countries not subject to these investigations increased in terms of quantity and value, but their unit values fell to their lowest levels over the entire period for which data were collected.

By quantity and by value, imports from each of the subject countries increased as a share of total imports between 1991 and 1992, trends which continued between 1992 and 1993 for China, Ukraine, and Venezuela, but not for Brazil. During the interim periods of 1993 and 1994, the quantity and value of imports from China increased as a share of total imports, while those from Brazil, Ukraine, and Venezuela decreased.

The vast majority of silicomanganese imported from the subject countries entered the United States through New Orleans, LA. In 1991, 100 percent of silicomanganese from Brazil, China, and Venezuela entered through New Orleans (there were no imports from Ukraine). In 1992, all silicomanganese imports from all four subject countries entered through New Orleans. In 1993, over 90 percent of silicomanganese from Brazil, China, and Venezuela entered through New Orleans, with most of the remainder entering through Philadelphia, PA (for Brazil and China), and Houston, TX (for Venezuela). In that year, 73.2 percent of silicomanganese imports from Ukraine entered through New Orleans, with the remainder divided evenly between Chicago, IL, and Houston, TX. In January-June 1994, all silicomanganese imports from Brazil and Venezuela entered through New Orleans; 24.4 percent of the subject imports from China entered through New Orleans, 42.8 percent through Los Angeles, CA, and 32.8 percent through Portland, OR; and 76.2 percent of the subject imports from Ukraine entered through New Orleans and 23.8 percent through Houston.

In its questionnaire, the Commission asked firms if they had imported, or arranged for the importation of, silicomanganese from Brazil, China, Ukraine, and Venezuela, for delivery after June 30, 1994. Twenty-one companies, which accounted for virtually all silicomanganese imports during the period examined, responded in the negative and none responded in the affirmative. The official statistics compiled by Commerce also indicate that there were no imports of silicomanganese from any of the subject countries in July-September 1994.

Market Shares

Table 22 and figure 5 present the market shares held by U.S. shipments of silicomanganese produced in the United States, released from inventory by the DLA, imported from subject countries, and imported from nonsubject countries.

Table 22

Silicomanganese: Apparent U.S. consumption and market penetration, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Figure 5

Silicomanganese: Market shares, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

In terms of quantity and value, the share of the U.S. market accounted for by imported silicomanganese remained high throughout the period examined, fluctuating in a generally downward trend but remaining above 80 percent. The market share accounted for by subject imports remained relatively stable between 1991 and 1992, rose sharply between 1992 and 1993, and declined between January-June 1993 and January-June 1994. The market share accounted for by nonsubject imports declined throughout the period examined.

As noted previously, Elkem is involved in other aspects of the U.S. silicomanganese market beyond production and shipments of its own product. The following tabulation identifies the extent of Elkem's non-production participation in the U.S. market by comparing the quantity of Elkem's U.S. shipments of imports from Canada and Norway, its purchases from brokers of silicomanganese from both subject and nonsubject countries,⁸⁷ its net swap receipts, and payment-in-kind from the DLA to the quantity of U.S. apparent consumption (*in percent*).⁸⁸

* * * * *

Prices

Marketing Practices

Most U.S.-produced and imported silicomanganese marketed in the United States is sold directly to end users, the vast majority of which are steel producers. In 1993, approximately 16 percent of U.S. shipments of silicomanganese were to trading companies and distributors for subsequent resale.

Neither importers nor Elkem maintain price lists for silicomanganese. Questionnaire responses and testimony indicate that prices are generally negotiated based on perceived market conditions and customer feedback, often using the prices reported in the publication *Metals Week* as a guide.⁸⁹ Published price data are shown in appendix H. Because silicomanganese is traded internationally and most of what is consumed in the United States is imported, prices and market conditions in foreign locations may also affect the underlying price structure.⁹⁰

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 and 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, though several importers report payment terms can also be net 60 days.

The vast majority of silicomanganese sales to end users are on a quarterly or semiannual requirement contract basis. Contracts typically determine the quantity of the customers' total silicomanganese requirements that will be provided by the supplier for a period of time, typically 3 to 6 months, 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, and destination.

⁸⁷ Primarily ***.

⁸⁸ This tabulation combines shipments and receipts according to the manner in which each transaction in which Elkem was involved affected apparent consumption and market share calculations. A more detailed presentation of Elkem's non-production related activities, segregating shipments, purchases, and swaps, appears in app. G.

⁸⁹ *Metals Week* publishes weekly imported (dealer) quotes, duty-paid, f.o.b. Pittsburgh or Chicago warehouses, of 2-percent carbon silicomanganese. These prices are based on weekly telephone calls to traders and consumers of silicomanganese.

⁹⁰ ***.

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 in the vicinity of their customer,⁹¹ a practice that reduces shipping distances and lead times. Most importers reported that the largest share of sales were within 100 miles of the storage facility, and *** at distances greater than 500 miles.^{92 93} Elkem reported lead times of *** weeks while importers generally reported lead times of less than one week from their warehouse but considerably longer (1 to 3 months) if the product was shipped from the foreign producer.

From the warehouse or plant, the vast majority of silicomanganese is shipped to the final destination by truck. Elkem reported that the actual cost of final transportation to its customers' facilities is generally *** percent of total delivered cost. Importers reported that transportation costs accounted for 3 to 10 percent of the final delivered cost. The relatively low rate for a low-cost, bulky product is unusual and likely reflects the fairly short distances from warehouse to customer.

The large number of warehouse facilities near the various customers and the apparent interchangeability of most silicomanganese also permit the practice of swapping.⁹⁴ In certain situations 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 an agreed-upon location, thereby saving both suppliers the cost of transportation to their desired locations.

Product Comparisons

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 and carbon content.⁹⁵ Some end users can and do substitute between the various grades and sizes of silicomanganese. However, 17 of 25 end users responding to the Commission's questionnaire reportedly cannot or do not substitute between the various grades and sizes.

While most product sold in the United States meets the specifications for ASTM grade B, there are occasional shipments meeting either grade A or grade C standards.⁹⁶ Generally both suppliers and purchasers view all silicomanganese meeting the requirements of a particular grade as being interchangeable.⁹⁷

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

⁹¹ The petitioner and importers use the same terminal and warehouse facilities in some locations.

⁹² Elkem responded that ***.

⁹³ Elkem employs a full-time salesman in Houston, TX, who markets silicomanganese as well as other manganese products, chrome products, and ferrosilicon. ***.

⁹⁴ Swaps are discussed further in the earlier section of this report entitled "Swap Shipments."

⁹⁵ ASTM standard specifications are discussed further in the "Description and Uses" section of this report.

⁹⁶ The petitioner testified that, on occasion, it has unintentionally produced silicomanganese that met grade A standards and that it could do so regularly if the market required it. Conference transcript, p. 52. Mannesmann reported sales of Venezuelan grade C silicomanganese during 1992-94.

⁹⁷ 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 times, sales terms, cost of switching suppliers, etc.

cracking in hot-rolled products, for example, and therefore the Ukrainian product is used only for the production of low-cost commodity grade steel products such as concrete reinforcing bar (rebar), according to AIOC-Pryor, an importer of Ukrainian silicomanganese. AIOC-Pryor stated that in 1993 it had *** customers for the product, ***.⁹⁸ For some end users, the higher content of manganese in the Ukrainian product is an advantage. One purchaser stated in its questionnaire response that if the U.S.-produced product and Ukrainian product are priced the same, the Ukrainian product provides a 5-percent cost savings because of the higher manganese content.

In addition to chemical content, silicomanganese can vary in size from dust to 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 steelmakers. 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 large quantities in the United States.⁹⁹

U.S. Purchasers

The Commission received purchaser questionnaire responses from 29 purchasers of silicomanganese, 26 of which were end users. As noted previously, most silicomanganese is sold directly to end users, mainly steel producers. Silicomanganese accounts for a small percentage of the value of the finished steel product, generally less than 3 percent.

Most end users source silicomanganese from several different suppliers and contact an average of 6 to 7 suppliers before making a purchase. Only about half of the end users surveyed said that they typically know the country of origin of the silicomanganese they purchase. Four of the 26 end users reported that they specifically order silicomanganese from a particular country.¹⁰⁰

Sixteen of 26 end users reported that they require their suppliers to become certified. Product must meet certain chemistry and size specifications. Only four end users reported that any suppliers had failed to qualify their material since 1991. Two end users reported that Ukrainian product sold by *** failed to qualify, one end user reported that Brazilian product from *** failed to qualify due to high phosphorus content, and a fourth end user reported that silicomanganese from *** did not meet its requirements.

Thirteen of 26 end users ranked quality as the most important factor considered in deciding from whom to purchase silicomanganese, while 10 ranked price/cost as the most important factor. Availability was also an important factor named by a large number of purchasers as one of the top three factors in their purchasing decisions. The six largest purchasers which responded to the questionnaire accounted for 21 percent of 1993 apparent consumption. Four of these purchasers

⁹⁸ Two trading companies, AIOC-Pryor and Minerais, reported imports of Ukrainian silicomanganese. 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. Twelve other importers that do not import Ukrainian material stated that all subject imports are interchangeable although five also observed that the high phosphorus content of the Ukrainian material affected marketability or interchangeability to some degree.

⁹⁹ The Venezuelan producer testified that sales of silicomanganese fines occurred in 1993 but that the value of the shipment was significantly lower than normal commercial material. It also stated that fines are imported from Mexico for sale in the United States. Conference transcript, p. 108. ***.

¹⁰⁰ Three of these end users specifically ordered U.S.-produced product, citing such factors as low phosphorus content, technical service, availability, and price. One specifically requested Ukrainian product if priced the same as product from other sources because the greater manganese and silicon content provides an overall lower cost for this purchaser.

ranked price as the most important factor in their purchasing decision while one ranked availability highest and another ranked quality highest.

Overall, most end users considered U.S.-produced silicomanganese and silicomanganese imported from subject and nonsubject countries to be comparable in quality. All end users reported that silicomanganese from Brazil, Venezuela, and nonsubject countries is comparable in quality to the U.S.-produced product. Two of 7 end users considered imports from China to be of inferior quality as compared to the U.S.-produced product. Three of the 7 responding end users that actually purchased the Ukrainian product considered the Ukrainian product comparable in quality to the U.S.-produced product, while 2 considered it to be of inferior quality, and 2 considered it to be of superior quality. This reflects the fact that the higher manganese content of the Ukrainian product may be an advantage to some firms while the higher phosphorus content of the Ukrainian product may be a disadvantage.

Only a few purchasers reported purchasing domestic product when a comparable imported product was available at a lower price. Reasons cited included delivery, lack of variability of quality, service, local source, and reliability. Likewise, only a few end users reported purchasing the imported product when the domestic product was priced lower. Two cited the higher manganese content of the Ukrainian product, one cited the reliability of a supplier of the Brazilian product, and another said that it would seek to buy from more than one source even if the U.S. producer offered the lowest price.

Slightly more than half of end users reported that a combination of ferromanganese and ferrosilicon could be substituted for silicomanganese in the manufacture of steel products. However, only two reported a change in their relative purchases of silicomanganese and these products during the past 2 to 3 years. Both purchasers decreased their purchases of substitute products because of changes in the relative prices of substitute products and silicomanganese; however, one purchaser indicated that it may now switch back to substitute products because of rising silicomanganese prices.

Questionnaire Price Data

The Commission requested U.S. producers and importers to provide U.S. f.o.b. prices 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 1991-June 1994. 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 product.

The petitioner and 13 importers reported price data. Prices reported for silicomanganese sold to unrelated steel producers accounted for *** percent of total commercial shipments of U.S.-produced silicomanganese, *** percent of shipments of Brazilian product, *** percent of shipments of Chinese product, *** percent of shipments of Ukrainian product, and *** percent of shipments of Venezuelan product during January 1991-June 1994. Tables 23 and 24 and figure 6 present weighted-average net f.o.b. prices.

In addition, the Commission requested purchasers to provide delivered prices for contract and spot purchases of silicomanganese. Some purchasers did not know the country of origin of the silicomanganese purchased and thus could not provide usable data. Contract prices reported by purchasers are presented in table 25.¹⁰¹

¹⁰¹ There were very limited data reported by purchasers for spot sales, thus these data are not presented.

Table 23

Weighted-average net f.o.b. prices of grade B silicomanganese sold under quarterly requirement contracts and total quantities sold, reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, Jan. 1991-June 1994

* * * * *

Table 24

Weighted-average net f.o.b. prices of grade B silicomanganese sold on a spot basis and total quantities sold, reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, Jan. 1991-June 1994

* * * * *

Figure 6

Weighted-average net f.o.b. prices of grade B silicomanganese sold under quarterly requirement contracts, reported by U.S. producers and importers, by quarters, Jan. 1991-June 1994

* * * * *

Table 25

Weighted-average net delivered prices of grade B silicomanganese purchased under quarterly requirement contracts and total quantities purchased, reported by U.S. purchasers, and margins of underselling (overselling), by quarters, Jan. 1991-June 1994

* * * * *

Price trends

Most sales of silicomanganese are made under requirement contracts. Sales of U.S.-produced and Brazilian silicomanganese under requirement contracts occurred in each quarter during January 1991-June 1994, while sales of imports from other subject countries were consistent only in 1993 and 1994. Spot sales occurred in ***. 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 similar trends during the period for which data were collected. Prices of U.S.-produced silicomanganese ***. Of the subject imports, only Brazilian product was sold consistently in every quarter during January 1991-June 1994; however, prices of imports from each of the subject countries showed very similar trends to prices of U.S.-produced silicomanganese during the periods in which sales occurred.

Price comparisons

The reported price data for contract sales of U.S.-produced and imported silicomanganese during January 1991-June 1994 resulted in 41 price comparisons, and the price data for spot sales resulted in 14 price comparisons. The imported products were priced below the U.S. producer's price in 21 of the 41 comparisons for contract sales and in 8 of the 14 comparisons for spot sales.

The following tabulation shows the frequency and magnitude of underselling and overselling by subject countries based on contract and spot sales comparisons:

* * * * *

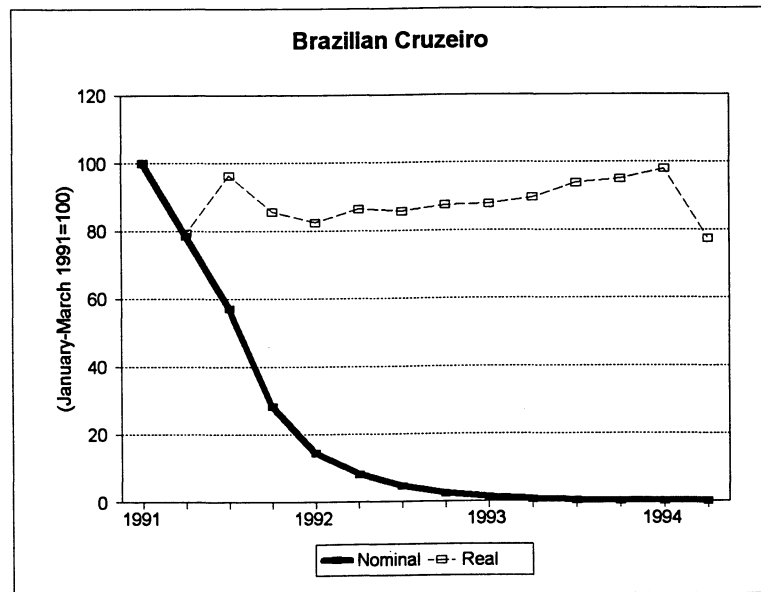
Exchange Rates

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 1991 through April-June 1994 (figure 7). Exchange rate data for Ukraine are unreliable and are not presented here.

The nominal value of the Brazilian cruzeiro¹⁰² declined dramatically, reaching approximately 1/7700 of its initial value in mid-1994. The nominal value of the bolivar and yuan¹⁰³ also declined, by 62 and 40 percent, respectively. 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 22.6 percent during January 1991-June 1994, while the Venezuelan currency declined by 1.3 percent. Because reliable data for Chinese producer price indexes are not available, real exchange rates are not shown for that country.

Figure 7

Exchange rates: Indexes of nominal and real exchange rates (relative to the U.S. dollar) of the Brazilian cruzeiro, the Chinese yuan, and the Venezuelan bolivar, by quarters, Jan. 1991-June 1994

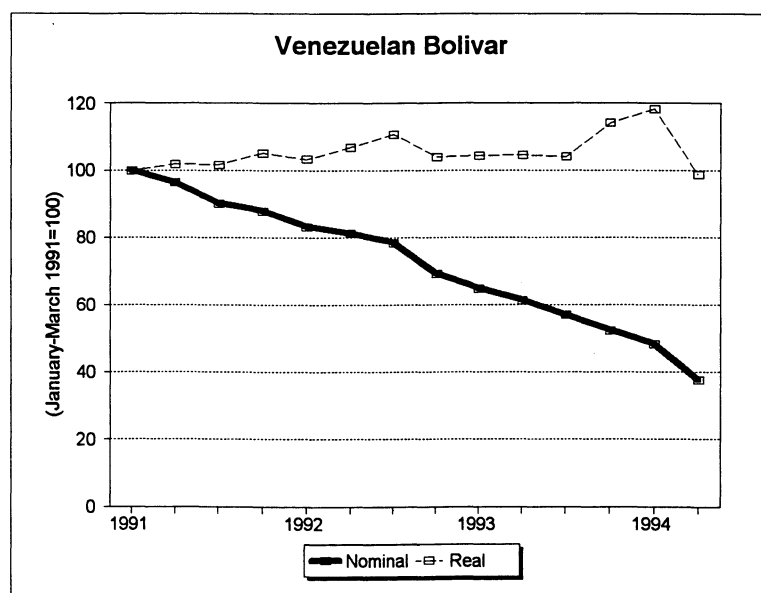
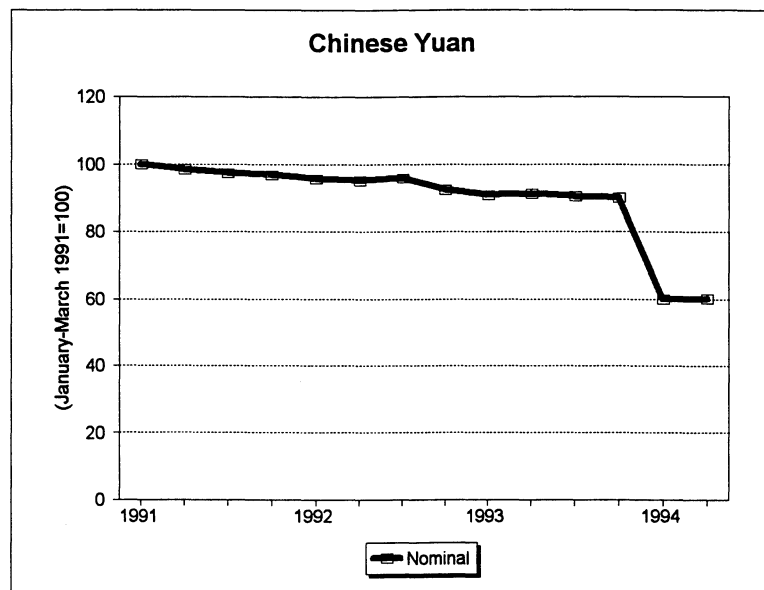


¹⁰² On July 1, 1994, the real, equal to 2,750 cruzeiros reais, was introduced. International Monetary Fund, *International Financial Statistics*, Nov. 1994, p. 130.

¹⁰³ The sharp drop in the nominal exchange rate at the beginning of 1994 is the result of changes in the way the People's Bank of China sets the exchange rate. International Monetary Fund, *International Financial Statistics*, Oct. 1994, p. 164.

Figure 7--Continued

Exchange rates: Indexes of nominal and real exchange rates (relative to the U.S. dollar) of the Brazilian cruzeiro, the Chinese yuan, and the Venezuelan bolivar, by quarters, Jan. 1991-June 1994



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

Lost Sales and Lost Revenues

Elkem provided information on *** allegations involving a total of 8 purchasers. ***.¹⁰⁴ 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 ***, which, he believes, usually trades *** silicomanganese. The reason why he cannot be positive, however, is because among trading companies, swaps of silicomanganese are common to reduce freight costs.

***. Silicomanganese with a higher proportion of manganese reduces the total amount of the product needed and, therefore, is *** 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 considered Brazilian and Venezuelan silicomanganese to be 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, availability and the business relationships that *** has with suppliers are also important. *** lists as excellent suppliers of silicomanganese several firms, including ***. They did not have high regard for the business relationships of ***.

Elkem alleged that *** rejected its price quote of ***.

*** 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 of the same grade is, and must be, equivalent from whatever source due to the fact that the product's quality is determined by an independent agency. He said that Brazilian and Venezuelan silicomanganese is equivalent in quality to U.S.-produced silicomanganese. He stated that he has no direct knowledge of Chinese or 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.

*** does not buy directly from any foreign producers. He simply checks 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; the origin of the product is irrelevant since the quality of the product must be equivalent regardless of the source.

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

Elkem alleged that ***.

¹⁰⁴ ***.

*** does not recall this specific transaction but believes the general price and quantity information is in accordance with his usual business transactions involving silicomanganese. *** said that he only buys silicomanganese from ***.¹⁰⁵ *** 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 from where the silicomanganese came, *** 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 that Brazilian and Venezuelan silicomanganese were equivalent to U.S.-produced silicomanganese. 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 ***, buying *** instead. Additionally, Elkem sold *** to *** after lowering its price of *** to meet a price of *** offered by the importer of *** silicomanganese, thereby losing *** in revenues.

*** agreed that this information was substantially correct. However, he believes that the silicomanganese involved in these *** allegations was a *** product but could not be certain because he buys his silicomanganese from an alloy trading company.

Although price is a major consideration in ***'s purchases, it is not the only determinant. Quality, *** said, is also important. *** said that the quality standards that *** adheres to closely resemble those of the ASTM specifications but are, at times, more rigorous and demanding. *** 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 inferior quality. 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. *** also rejected three higher quotes for *** material from *** for other imported silicomanganese at prices ranging from *** to ***.

Elkem allegedly lost *** to imported product purchased by ***. *** was allegedly rejected in favor of *** product priced at ***. ***.

*** reported that it generally contacts at least 6 suppliers before making a purchase and purchased from 13 different suppliers during 1991-94. It reported that price was the most important consideration in its purchasing decision although quality, service, and traditional suppliers were also important. ***.¹⁰⁶

***, Elkem alleged that it lost sales valued at ***. ***. ***, the purchaser named in the allegation, reportedly purchased silicomanganese from ***. According to ***, silicomanganese from *** is generally priced lower than the U.S.-produced product although Elkem was the most competitively priced supplier during ***. *** reported that the Brazilian product was comparable in quality to the domestic product while the Chinese product was of inconsistent quality. It further reported that price was the most important reason in deciding to purchase *** instead of U.S.-produced product and listed both price and quality as the most important factors in choosing ***.

¹⁰⁵ In its importer questionnaire, ***.

¹⁰⁶ ***.

APPENDIX A

THE COMMISSION'S AND COMMERCE'S
FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

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

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

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-671-674 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether 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 (China), Ukraine, and Venezuela of silicomanganese,¹ provided for in subheadings 7202.30.00 and 7202.99.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, 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 C (19 CFR part 207).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office

¹ Silicomanganese (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 normally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorus. All compositions, forms, and sizes are included within the scope of these investigations, including silicomanganese slag, fines, and briquettes.

of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of silicomanganese from Brazil, China, Ukraine, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). These investigations were requested in a petition filed on November 12, 1993, by Elkem Metals Co., Pittsburgh, PA, and the Oil, Chemical, and Atomic Workers, Local 3-639, Belpre, OH.

Participation in the investigations and public service list.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) 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 final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) 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.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on August 19, 1994, and a public version will be issued thereafter, pursuant to

section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on September 1, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 30, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in these investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 26, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 12, 1994, although parties may submit a supplemental statement within ten days after the Department of Commerce's final determinations regarding sales at less than fair value; this supplemental statement must be limited to a discussion of the Department of Commerce's final determinations and may not exceed five pages in length.

Witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to these investigations may submit a written statement of information pertinent to the subject of the investigations on or before September 12, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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 these 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 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 11, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-17225 Filed 7-14-94; 8:45 am]

BILLING CODE 7020-02-P

established a schedule for their conduct (59 FR 36212, July 15, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation of silicomanganese from the People's Republic of China to October 31, 1994 (59 FR 40008, August 5, 1994). The Commission, therefore, is revising its schedule in the silicomanganese investigations to conform with Commerce's new schedule.

The Commission's new schedule for these investigations is as follows: the prehearing staff report will be placed in the nonpublic record on October 21, 1994; requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 28; the deadline for filing prehearing briefs is also October 28; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on November 2; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on November 3; and the deadline for filing posthearing briefs is November 14.

For further information concerning these investigations see the Commission's notice of institution cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: August 10, 1994.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 94-20177 Filed 8-16-94; 8:45 am]

BILLING CODE 7020-02-M

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

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

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N, 8, 1).

SUPPLEMENTARY INFORMATION: Effective June 16, 1994, the Commission instituted the subject investigations and

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 731-TA-671-674; Final]

**Silicomanganese From Brazil, the
People's Republic of China, Ukraine,
and Venezuela; Notice of Commission
Determination to Conduct a Portion of
the Hearing in Camera****AGENCY:** U.S. International Trade
Commission.**ACTION:** Closure of a portion of a
Commission hearing to the public.

SUMMARY: Upon request of the Brazilian and Ukrainian respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for November 3, 1994, *in camera*. The *in camera* portion of the hearing will be limited to discussion of (1) the condition of the domestic industry; and (2) "swap" transactions in the U.S. silicomanganese market. The remainder of the hearing will be open to the public. The Commission has further unanimously determined that the 7-day advance notice of the change to a meeting was not possible.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3090. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in these investigations to hold a short portion of the hearing *in camera*. The majority of the information collected by the Commission with respect to the condition of the domestic industry is business proprietary information (BPI) because there is only one domestic producer. Moreover, any discussion of the role of "swap" transactions in the U.S. silicomanganese market implicates the confidential business practices of individual companies. The *in camera* portions of the hearing will be for the purpose of addressing BPI as part of the parties' presentations, and therefore is properly the subject of an *in camera* hearing pursuant to Commission Rule 201.36(b)(4). See 19 C.F.R.

§ 201.36(b)(4). In making this decision, the Commission nevertheless reaffirms its belief that, whenever possible, its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and

by respondents, with questions from the Commission. In addition the hearing will include *in camera* sessions for short presentations by petitioner and by respondents with questions from the Commission with respect to BPI submitted by the parties, as necessary. For the *in camera* portions of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in these investigations. See 19 C.F.R. § 201.35(b)(1),(2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner also may be granted access to the closed session. See 19 C.F.R. § 201.35(b)(1),(2). In the alternative, if a particular respondent's BPI will be discussed in the *in camera* session, personnel of that respondent also may be granted access to the closed session. See 19 C.F.R. § 201.35(b)(1),(2). All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

AUTHORITY: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. § 201.39) that, in her opinion, a portion of the Commission's hearing in *Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela*, Inv. Nos. 731-TA-671-674 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: November 2, 1994

Donna R. Koehnke,
Secretary.

[FR Doc. 94-27561 Filed 11-7-94; 8:45 am]

BILLING CODE 7020-02-P

[A-351-824]

**Notice of Final Determination of Sales
at Less Than Fair Value:
Silicomanganese From Brazil**

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

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT:

Paul Kullman or John Brinkmann,
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) 482-1279 or
(202) 482-5288, respectively.

FINAL DETERMINATION: We determine that
imports of silicomanganese from Brazil
are being, or are likely to be, sold in the
United States at less than fair value, as
provided in section 735 of the Tariff Act
of 1930, as amended (the Act). The
estimated margins are shown in the
"Continuation of Suspension of
Liquidation" section of this notice.

Case History

Since the preliminary determination
and postponement of the final
determination of this investigation on
June 10, 1994, (59 FR 14852, June 17,
1994), the following events have
occurred:

On June 16, 1994, the U.S. Department of Commerce (the Department) received the response of Companhia Paulista de Ferro-Ligas and Sibra Eletro-Siderurgica Brasileira S/A (collectively "Paulista") to the Department's cost of production (COP) and constructed value (CV) questionnaire. The Department sent a COP/CV deficiency questionnaire to Paulista on July 8, 1994, which the company answered on July 29, 1994. On August 3, 1994, the Department sent a letter requesting additional clarification, which the company responded to on August 23, 1994.

The Department conducted verification in Brazil of Paulista's COP/CV response in August 1994.

On September 2, 1994, Paulista informed the Department that it would no longer be participating in the investigation. Paulista cited a lack of personnel and the fact that the company was operating under the Brazilian equivalent of U.S. Chapter 11 bankruptcy protection as reasons why it was withdrawing from the investigation. Paulista requested that all of its proprietary information be removed from the record.

The petitioners (Elkem Metals Company and the Oil, Chemical & Atomic Workers, Local 3-639) submitted a case brief on September 23, 1994. Paulista submitted a rebuttal brief on September 28, 1994. At petitioners' request, a public hearing was held on September 30, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers 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* (HTSUS). Some silicomanganese may also

currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We have determined that the merchandise subject to this investigation constitutes two such or similar categories, lumps and fines.

Best Information Available (BIA)

As noted in the "Case History" section of this notice, Paulista withdrew from the investigation after completion of the COP/CV verification and requested that all of its proprietary data be removed from the record. Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA as a basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions to those respondents found to be uncooperative in an investigation. The Department's two-tiered methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied Signal v. United States*, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)).

When a company refuses to cooperate or otherwise significantly impedes an investigation, the Department normally uses as BIA the highest of: (1) the highest margin in the petition; (2) the highest margin calculated for any other respondent within the same country for the same class or kind of merchandise; or (3) the estimated margin found for the affected firm in the preliminary determination. (*See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19033 (1989)).

As detailed in the DOC position in Comment 1 below, we consider Paulista to have been uncooperative. Under our standard practice, we would have selected as the most adverse BIA for this

investigation the estimated margin found for Paulista in the preliminary determination. However, because Paulista withdrew all of its proprietary data from the record, we cannot rely on the preliminary determination. *Smith Corona Corp. v. United States*, 796 F.Supp. 1532 (CIT 1992) (*Smith Corona*). It would be inappropriate to allow Paulista to thwart proper administration of the law and reward its uncooperative behavior by selecting as BIA the highest rate in the amended petition, which is less adverse than the preliminary rate. Therefore, we assigned to Paulista a BIA margin by comparing United States price (USP) to CV, based on information in the record. (For a discussion of this BIA calculation see the "Fair Value Comparisons" section of this notice and Comment 2 below).

In calculating the "All Others" rate, the Department normally weight averages all positive margins found in the investigation, including BIA rates. As discussed above, as an uncooperative respondent, Paulista will receive an adverse BIA margin. Because Paulista's margin is the only margin found in the investigation, under our normal practice, its margin would become the "All Others" rate. The Department notes, however, that in *Smith Corona*, the Court of International Trade (CIT) held that the Department may assign a rate lower than the highest available rate to nonparticipants in an investigation, when those parties (1) had no control over the sole respondent's withdrawal of documentation, (2) had no reason to believe that an adverse rate would be selected for the respondent as a result of the withdrawal of information, and (3) had no opportunity to offer their own data.

In the present case, as in *Smith Corona*, producers/exporters who were not respondents had no control over Paulista's withdrawal of its information, had no reason to believe that Paulista would receive an adverse rate as a result of withdrawing information, and by virtue of the point at which Paulista withdrew its information from the record, had no opportunity to submit their own data for analysis and verification. We have concluded that, under these circumstances, assigning an adverse BIA rate to all other producers/exporters would be inappropriately punitive. Therefore, the Department has based the "All Others" rate in this investigation on the dumping margin which formed the basis for the initiation of this investigation.

Fair Value Comparisons

As BIA, we have calculated a margin for Paulista based on a comparison of

USP and foreign market value (FMV). USP was based on information contained in the petition, as fully described in the notice of initiation of this investigation (58 FR 64553, December 8, 1993). FMV was based on CV, using data submitted by petitioners and relied upon by the Department in its initiation of the COP investigation (See, Memorandum from Richard W. Moreland to Barbara R. Stafford, May 13, 1994, on file in Room B-099 of the Main Commerce Building), adjusted for interest expense and profit. In accordance with section 773(e)(1)(B)(ii), we added the statutory minimum of eight percent for profit and recalculated interest expense based on the consolidated results of the operations of Paulista for the year ending December 31, 1993, as reflected in its public financial statements. Since FMV is based on a CV, which is exclusive of any value added taxes (VAT), we have adjusted USP to exclude the VAT adjustment that was made for purposes of this initiation.

Interested Party Comments

Comment 1: Petitioners argue that the Department should find Paulista uncooperative because it withdrew its participation from the investigation and removed all of its proprietary information from the record.

Paulista states that the company devoted significant time and resources to provide the information requested by the Department during the course of the investigation, allowed verification of its cost response and provided additional information to the Department after the cost verification.

DOC Position: We agree with petitioners. By withdrawing from the investigation, Paulista significantly impeded the completion of the Department's investigation. Moreover, in light of Paulista's removal of all of its proprietary information from the record, the Department has no choice but to treat Paulista as an uncooperative respondent. This action has the consequence of expunging from the administrative record the basis for showing, either now or on appeal, that Paulista had been cooperative during this investigation. (See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Italy*, 58 FR 37153 (July 9, 1993); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6205 (January 27, 1993)).

Comment 2: Petitioners argue that Paulista withdrew from the

investigation only after recognizing that the results of the investigation would be more favorable if based on the petition or initiation rate. Consequently, petitioners argue that the Department must look beyond the pool of rates identified in its two-tier BIA policy, since none of those rates was sufficiently adverse to compel Paulista's cooperation. Petitioners contend that, as BIA, the Department should use data in petitioners' COP allegation and Paulista's financial statements to calculate FMV, and data provided in Paulista's own ranged public submissions of its questionnaire response to calculate USP. In addition, the petitioners contend that because Paulista was uncooperative, the Department should "de-range" USP information provided in the public version of Paulista's response by reducing gross prices by 10 percent and increasing the foreign movement charges and U.S. selling expenses by 10 percent.

Paulista agrees that BIA is warranted in this investigation. However, Paulista contends that the company's ranged public data should not be used to calculate USP. Paulista argues that the use of its ranged public data as BIA would be unprecedented and contrary to the intent of the Department's public summary requirements, which is to provide meaningful summaries of data for the public. Additionally, Paulista asserts that there is sufficient information on the record in this investigation to establish a BIA dumping rate without resorting to the use of ranged data.

DOC Position: We agree with the petitioners that Paulista should not be rewarded for withdrawing from the investigation. In order to assign Paulista an adverse BIA rate, the Department cannot rely on the margin calculated in the preliminary determination because the use of such a rate would not comport with the CIT's decision in *Smith Corona*. While the Department might otherwise rely on the amended petition for purposes of BIA, given the circumstances of this case and the intent of the statute, we do not find that the rates contained in that petition provide an adequate basis for BIA. Section 776(c) of the Act provides for the use of BIA to compel participation. Further, a more adverse BIA is required where a respondent fails to cooperate or significantly impedes the investigation, as in this case. The preliminary margin was substantially higher than the rate found in the amended petition for purposes of initiation. To use the petition rate would, in effect, reward the respondent for refusing to cooperate.

Moreover, a precedent could be set which would encourage a respondent to withdraw from a proceeding and remove its proprietary information from the record whenever the margin found in the preliminary determination exceeded that which formed the basis of the initiation (e.g., *Krupp Stahl A.G. v. United States*, Slip Op. 93-84, May 26, 1993).

We disagree, however, with petitioners' proposed selection of BIA. Although the Department has used such ranged data as a basis for BIA in the past, the use of such information is a last resort. In this instance, we are not compelled to use the ranged data in order to calculate an adverse final determination rate. There is sufficient data available in petitioners' COP allegation and Paulista's public financial statement to calculate a FMV based on CV. This methodology is consistent with both past practice (see, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), and with the CIT's holding that respondents should not realize a benefit from noncooperation.

Continuation of Suspension of Liquidation

In accordance with Section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Brazil that are entered, or withdrawn from warehouse, for consumption on or after June 17, 1994, the date of publication in the Federal Register of our preliminary determination. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The dumping margins are as follows:

Producer/manufacturer exporter	Antidumping margin
Paulista	64.93
All Others	17.60

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45

days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 94-27546 Filed 11-4-94; 8:45 am]
BILLING CODE 3510-DS-M

[A-570-828]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From the People's Republic of China

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

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Kullman or Michelle Frederick, 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) 482-1279 or (202) 482-0186, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination (59 FR 31199, June 17, 1994) the following events have occurred: On June 28, 1994, counsel withdrew its representation for the two responding firms in this investigation; and on July 28, 1994, at the request of two non-responding firms with significant silicomanganese exports, the final determination was postponed (59 FR 40008, August 5, 1994). No further comments were submitted.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers 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* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1993.

Best Information Available

As detailed in our preliminary determination, the Department sent antidumping questionnaires to 18 producers and exporters that may have sold silicomanganese to the United States during the POI. Further, we sent an antidumping questionnaire to the PRC Ministry of Foreign Economic Trade and Cooperation (MOFTEC) and requested that MOFTEC: (1) Furnish the questionnaire to any silicomanganese producers and exporters with U.S. sales during the POI that were not on our list of 18 companies, and (2) provide a

comprehensive list of those additional companies that received the questionnaire from MOFTEC. Two companies, a PRC producer of silicomanganese and a Hong Kong export company that purchased silicomanganese from that company and sold it to the United States, were found by the Department not to have had any sales during the POI. Further, we did not receive responses from MOFTEC and the remaining potential respondents. Accordingly, given that no information was submitted by potential respondents with respect to sales during the POI, we have based our final determination on best information available (BIA), in accordance with section 776(c) of the Act.

The BIA methodology is described in the notice of preliminary determination. In this case, BIA is the information contained in the petition, as amended on November 24, 1993 (*See Initiation of Antidumping Duty Investigations: Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela*, 58 FR 64553, December 8, 1993). The amended petition provides only one margin, listed below, for all PRC producers and exporters of silicomanganese.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of silicomanganese from the PRC. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology. Because no additional information was submitted since the preliminary determination, the Department is using the same analysis as explained in its preliminary finding and determines that critical circumstances exist for imports of silicomanganese from the PRC.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(4) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994 (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the *Federal Register*). The Customs Service shall require a cash deposit or posting of a bond equal to 150.00 percent *ad valorem* on all entries of silicomanganese from the PRC. This suspension of liquidation will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 94-27545 Filed 11-4-94; 8:45 am]
BILLING CODE 3510-DS-M

[A-307-811]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Venezuela

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

EFFECTIVE DATE: November 7, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Greg Thompson, 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) 482-5288 or (202) 482-2336, respectively.

FINAL DETERMINATION: We determine that imports of silicomanganese from Venezuela are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average

margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994, (59 FR 31204, dated June 17, 1994), the following has occurred:

On June 27, 1994, Hornos Electricos de Venezuela, S.A. de C.V. (Hevensa) submitted its response to Section D of the Department of Commerce's (the Department) questionnaire. (Section D of the questionnaire requests information on the cost of production (COP) and constructed value (CV).) On June 29, 1994, Hevensa submitted a revised version of this response correcting bracketing errors. On July 12, 1994, Hevensa also submitted supplemental responses to its March 1, 1994, and April 19, 1994, submissions.

The Department requested additional information regarding Section D of the questionnaire on July 14, 1994. Hevensa submitted this information on August 15, 1994.

Verification of Hevensa's sales and COP/CV questionnaire responses was conducted in July and September 1994, respectively.

Hevensa and petitioners submitted case briefs on October 3, 1994, and rebuttal briefs on October 6, 1994. At Hevensa's request, the Department held a public hearing on October 7, 1994.

Scope of the Investigation

The merchandise covered by this investigation is silicomanganese. 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers 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* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS

subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Such or Similar Comparisons

We made fair value comparisons using the following such or similar categories: (1) lumps and (2) fines. Where we were not able to compare U.S. sales to sales of identical merchandise, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, on file in Room B-099 of the main building of the Department.

Fair Value Comparisons

To determine whether Hevensa's sales to the United States of silicomanganese were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination.

Foreign Market Value

As noted in our preliminary determination, we initiated a COP investigation on May 9, 1994, based on an allegation by the petitioners (see decision memorandum from Richard Moreland to Barbara Stafford, dated May 9, 1994). On the basis of petitioners' allegations, we gathered and verified data on production costs. Because Hevensa's COP response was not due until after the date of the preliminary determination, this information was not considered for the preliminary determination.

A. Calculation of COP

In order to determine whether prices were above the COP, we calculated the COP in accordance with 353.51(c) of the Department's regulations. Our calculations of COP were based on the sum of Hevensa's submitted costs of materials, fabrication, general expenses, and packing, except in the following instances where we determined that the costs were not appropriately quantified or valued. Specifically, we:

1. Recalculated depreciation expense based on the restated value of Hevensa's fixed assets;

2. Disallowed Hevensa's claimed foreign exchange gains on client accounts receivable;

3. Reclassified foreign exchange gains and losses on the purchase of input materials from financing expense to cost of manufacturing;

4. Recomputed general and administrative expense and interest expense using a cost of sales figure adjusted for depreciation expense and exchange losses on material purchases as noted in 1 and 3 above;

5. Included the same amount of value-added tax (VAT) in home market COP as is included in the domestic sales prices; and

6. Added the additional charge incurred by Hevensa for the production of the Grade C product, as negotiated with its contractor.

B. Test of Home Market and Third Country Sale Prices

After calculating COP, we tested whether home market and third country sales of silicomanganese were made at prices below COP.

We compared product-specific COP to reported prices that were net of movement charges, discounts, rebates, direct and indirect selling expenses, and inclusive of VAT. If over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between ten and 90 percent of a respondent's sales of a given product were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given product were at prices below the COP and were sold over an extended period of time, we disregarded all sales for that product and calculated FMV based on constructed value (CV).

In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: 1) if a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or 2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. Results of COP Test

We found that more than 90 percent of Hevensa's third country sales of Grade C fines were sold at below-COP prices over an extended period of time. Hevensa provided no indication that these below-COP sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. Therefore, we disregarded all third country sales of Grade C fines. For U.S. sales left without a match as a result of disregarding these below-COP sales, we based FMV on CV.

We found that more than ten percent but less than 90 percent of Hevensa's sales of Grade B silicomanganese lump, size 5" x 1", were sold at below-COP prices over an extended period of time. Therefore, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's cost of production.

Price-to-Price Comparisons

We calculated FMV using the methodology described in our notice of preliminary determination, with the following exceptions:

1. We matched the 5" x 2" material sold in the United States to the 5" x 1" material sold in the home market instead of to the 4" x 2" material sold in the home market.

2. We matched 30mm x 6mm Grade C lump material to CV (see concurrence memorandum, dated October 31, 1994).

3. We matched the 6mm x 1mm Grade C fines sold in the United States to CV because more than 90 percent of respondent's sales of this product were at prices below the COP and were sold over an extended period of time.

Price to CV Comparisons

In the instances noted above and where there was otherwise no matching home market or third country sale, we based FMV on CV. We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We made all adjustments described in the COP section (except for the inclusion of VAT) in calculating CV. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture. For profit, we used the actual profit earned by Hevensa where the actual figure was greater than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by Hevensa by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Hevensa asserts that its home market sale of Grade C lump silicomanganese during the POI was outside the ordinary course of trade and, therefore, should not be used to calculate FMV for the 30mm x 6mm Grade C merchandise. Hevensa asserts that the home market sale was the only such sale made during the POI, that the amount of the sale was smaller than those made in Hevensa's ordinary home market sales, and that the sale was made on a trial basis to a trader who had requested a different product that was not available at the time.

Petitioners assert that the sale was a legitimate one and the fact that it was for a smaller than usual amount is not enough to indicate that it was outside the ordinary course of trade.

DOC Position: We agree with Hevensa. During verification, we satisfied ourselves that the home market sale of 30mm x 6mm Grade C material was a trial amount sold outside the ordinary course of trade. This was the only sale of a trial amount during the 16 months examined at verification. Moreover, Hevensa did not make any other sales to this customer during that period of time.

Comment 2: Hevensa contends that the Department should use monthly or bi-monthly weighted-average FMVs, rather than the normal six-month average FMV, to calculate whether there is a margin of dumping in this investigation. Hevensa argues that, during the POI, the interplay among the Venezuelan rate of inflation, the U.S. dollar-based prices of the subject merchandise, and the changes in the exchange rate for U.S. dollars and Venezuelan bolivars, could create a margin of dumping if a weight-averaged FMV were used for the entire POI.

Petitioners argue that Hevensa is requesting that the Department adopt a methodology that is inconsistent with its practice in hyperinflationary

economy cases. Additionally, the petitioners assert that, if Hevensa's monthly FMVs were adopted, any comparison between the FMV and the U.S. price would be distorted. Specifically, the petitioners argue that Hevensa is requesting that the Department apply, in effect, only that part of its methodology for hyperinflationary economies calling for the use of monthly FMVs, not the part of the methodology calling for the submission of costs on a replacement basis.

DOC Position: We disagree with respondent's argument that the Department should use monthly or bi-monthly weighted-average FMVs because of the high rate of inflation in Venezuela during the POI. However, it should be noted that the Department has calculated two weighted-average FMVs to accommodate the introduction of VAT in Venezuela during the last two months of the POI. Because Hevensa's U.S. sales were only invoiced during the last two months of the POI, it happens that Hevensa's U.S. sales of the merchandise in question were compared only to a two-month VAT-inclusive weighted-average FMV.

We agree with the petitioners that it would be inappropriate to apply only the averaging portion, and not the replacement cost portion, of our hyperinflationary economy methodology. Although information on the record of this investigation would permit the Department to calculate the FMV on a monthly or bi-monthly basis, if we were to find the Venezuelan economy to be hyperinflationary during the POI, our methodology for hyperinflationary economies also requires us to calculate the cost of production on a replacement cost basis. It is not possible for us to calculate Hevensa's replacement costs because Hevensa has insisted, and we have accepted, that the Venezuelan economy during the POI was not hyperinflationary. Accordingly, Hevensa has not supplied the Department with its replacement costs, and we have applied our standard non-hyperinflationary methodology in this final determination.

Comment 3: Hevensa argues that the Department should revise its level-of-trade analysis from the preliminary determination. During the POI, all of Hevensa's U.S. sales were made to Mannesmann, who resold the silicomanganese. Hevensa contends that, in the preliminary determination, it was inappropriate for the Department to compare Hevensa's sales to Mannesmann to Hevensa's home market sales to a home market trader because

its home market trader does not perform the same role as Mannesmann. Rather, Hevensa claims that Mannesmann functions as a commission agent, while the home market trader functions as a wholesaler.

Petitioners assert that the Department focuses on the customer's function in the distribution chain to classify sales by level of trade and that Mannesmann functions as any trader does, *i.e.*, it takes title to the material and then resells it. Accordingly, the petitioners argue that both Mannesmann and Hevensa's home market trader "have the same place in the chain of distribution—to sell to end-users and, therefore, they are at the same level of trade."

DOC Position: We agree with the petitioners. We view the level of trade of the sales between Hevensa and its home market trader as being functionally equivalent to the level of trade of Hevensa's sales to Mannesmann. Both Mannesmann and the home market trader are wholesalers, and both are taking title to the merchandise prior to reselling it (see Concurrence Memo for this final determination).

Comment 4: The petitioners argue that the Department should compare Hevensa's U.S. sales of 5" x 2" Grade B lump silicomanganese with home market sales of 5" x 1" Grade B lump silicomanganese to Hevensa's home market trader/wholesaler (*i.e.*, at the same level of trade).

Hevensa argues that, if the Department decides that its U.S. sales to Mannesmann are at the same level of trade as its home market sales to the trader (see Comment 3, above), the Department should not take level of trade into account when making comparisons. Hevensa contests comparisons based on level of trade because there was no correlation between its prices and selling expenses on the one hand, and levels of trade on the other. Hevensa asserts both that its average prices for 5" x 1" Grade B lump material were higher to its home market trader than to its home market end users, and that its selling expenses were roughly equivalent for both traders and end users. Moreover, Hevensa asserts that its sales to both categories of customers were made by the same sales department, within the same sales process, and that no additional technical support or additional services were provided to either category of customer.

DOC Position: We agree with Hevensa. Level of trade can be an important distinction where respondents charge different prices and incur different selling expenses at the

different levels of trade. Here, where the home market trader operates at an intermediate level between Hevensa and the end users, Hevensa's prices to the trader logically would be lower than its prices to end users if there were a relationship between Hevensa's prices and level of trade. Instead, Hevensa has demonstrated that its average prices to the trader were marginally higher than its prices to end users.

The Department also verified that direct selling expenses, with the exception of certain differences in the average credit days for the home market trader and some home market end users, were similar. During verification, we did not note any differences between home market and end-user sales processes or sales services. Furthermore, there is no other information on the record that indicates differences existed for indirect selling expenses.

Accordingly, the Department has not taken the level of trade into account but, rather, has compared Hevensa's U.S. sales of 5" x 2" Grade B material to Mannesmann to the home market sales of 5" x 1" grade material to both the home market trader and the home market end users.

Comment 5: Hevensa argues that the Department should include the amount that the customer was required to pay for VAT when calculating Hevensa's imputed credit expenses on its home market sales. It contends that when it extends credit to its home market customers, it necessarily agrees to a delay in the payment of the full amount owed by the customer, including the VAT. Therefore, the Department must calculate an imputed cost for the full amount of the delayed payment.

The petitioners argue that the Department should not consider VAT in calculating imputed credit. The petitioners assert that Hevensa does not necessarily owe VAT at the time it ships to the purchaser and, in some instances, it may not owe the tax until after it has received payment from the purchaser. The petitioners also state that if the Department were to allow an imputed credit adjustment for the VAT tax, the date of invoice would not be the proper date for calculation. Moreover, the petitioners argue that in cases where the purchaser had paid Hevensa the purchase price, including VAT, prior to the date on which Hevensa owed VAT to the government, the Department would have to calculate a credit revenue for Hevensa.

DOC Position: The Department's practice is to calculate credit expenses exclusive of VAT. (See the discussion of our VAT methodology in the preliminary determination (59 FR

31204, 31205, June, 17, 1994.)

Theoretically, there is an opportunity cost associated with any post-service payment. Accordingly, to calculate the VAT adjustment argued by Hevensa would require the Department to calculate the opportunity costs involved with freight charges, rebates, and selling expenses for each reported sale. It would be an impossible task for the Department to attempt to determine the opportunity cost of every such charge and expense.

Comment 6: Hevensa argues that the VAT methodology employed by the Department in its preliminary determination distorted the Department's calculations by inflating—and possibly creating—the dumping margins found on Hevensa's sales.

The petitioners argue that the VAT methodology employed in the preliminary determination is consistent with the Department's practice.

DOC Position: We agree with petitioners. As we explained in our preliminary determination, we multiplied the foreign VAT rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market VAT was applied to foreign market sales, and we added this product to the U.S. price. The Department also deducted from the USP and FMV those portions of the respective home market tax and the USP tax adjustments attributable to expenses. This methodology was adopted by the Department to comply with *Federal-Mogul Corp. and Torrington Co. v. United States*, 834 F. Supp. 1391 (CIT 1993) and has been the Department's practice since this ruling. See also, *Avesta Sheffield, Inc. v. United States*, 838 F. Supp. 608 (CIT 1993).

Comment 7: The petitioners argue that the Department should calculate duty drawback on only those export shipments of silicomanganese that correspond to valid "Admission Temporal par Perfeccionamiento Activo (ATPA)" permits of the Venezuelan government.

Hevensa concedes that its ATPA had lapsed for the period from June 29, 1993, through November 2, 1993. However, it argues that it is eligible for duty drawback on all exports after November 2, 1993, and that it has the right to request the Venezuelan authorities to modify its documents to apply other shipments against the ATPA.

DOC Position: We agree with the petitioners. The record demonstrates that Hevensa was only authorized duty drawback on the particular export sales for which an ACTA was in effect at the time the silicomanganese was exported.

Accordingly, we have calculated duty drawback adjustments for only such sales.

Comment 8: The petitioners argue that the Department should base the adjustment of FMV for royalties on the amount of the fee for services that had been established between Hevensa and the provider of the technical services and which Hevensa had accrued during the POI.

Hevensa argues that the fee it had agreed to with the provider of the technical services and which it had been accruing during the POI was not approved by the Venezuelan Superintendent of Foreign Investments (SIGHTS) and that the accrued rate had been adjusted subsequently because the original amount had not been authorized by SIGHTS. Hevensa asserts that the adjustment must be based on the amount that SIGHTS approved.

DOC Position: We agree with Hevensa. We have adjusted the royalty expense to reflect the amount that the Venezuelan government permitted Hevensa to pay for the POI.

Comment 9: Petitioners assert that the silicomanganese slag further processed into Grade C silicomanganese by Hevensa is a co-product of Grade B silicomanganese. The petitioners also state that because the silicomanganese slag should be considered a co-product to the Grade B silicomanganese, the Department should allocate Hevensa's production costs equally between Grade B silicomanganese and silicomanganese slag. The petitioners support the argument that the slag should be classified as a co-product by noting that both the Grade B silicomanganese and the slag share a single common production process. The petitioners also argue that inasmuch as only minor processing is necessary to process the slag into Grade C silicomanganese, the value of the Grade C silicomanganese is representative of the value of the slag, and that this value is significant because of the percentage of total sales that Grade C silicomanganese accounted for during the POI.

Hevensa argues that the silicomanganese slag generated in the production of its Grade B silicomanganese is a waste product and, therefore, should not be treated as a co-product. Hevensa cites to the petition in this investigation in which silicomanganese slag was classified as a waste product that received no assignment of costs as support for its treatment of the silicomanganese slag. Hevensa also argues that the silicomanganese slag is not a finished product and cannot be sold without substantial further processing.

DOC Position: We disagree with the petitioners. In determining how to allocate costs among various products manufactured during the course of producing the merchandise subject to the investigation, the Department, pursuant to Section 773(e) of the Act, looks to the value of the other products relative to the value of all products produced during, or as a result of, the process of manufacturing the product under investigation. See, e.g., *Final Determination of Sales at Less Than Fair Value (SLTFV): Sebacic Acid From the People's Republic of China*, 59 FR 28053, 28056 (May 31, 1994). See also *IPSCO, Inc. v. U-Stat*, 965 F.2d 1056 (Fed Cir. 1992). If the value of the joint product is significant, the Department will treat such product as a co-product, with the result that all costs incurred in the production process are allocated based on the relative quantity of output of the joint products. *Id.*, 965 F.2d at 1060.

In this case, the silicomanganese slag further processed into Grade C silicomanganese is not a co-product of the Grade B silicomanganese, because its value is not significant in relation to the Grade B product. The petitioners' conclusion that the total value of Grade C silicomanganese sales revenue during the POI was significant compared to the total value of Grade B silicomanganese sales revenue during the POI is not accurate. The petitioners fail to take into account that the sales revenue data used in their analysis reflects the disproportionate production and sales quantities of Grade B silicomanganese and silicomanganese slag during the POI. That is, a significant amount of silicomanganese slag which was used to produce the Grade C product sold during the POI was generated from slag produced in prior years. Petitioners' analysis also fails to take into account the additional costs incurred to recover the Grade C material from the slag. These additional costs should be deducted from the gross revenues received for the sales of Grade C silicomanganese to perform a net realizable value comparison. After these adjustments, the net realizable value of silicomanganese slag produced during the POI is insignificant when compared to the net realizable value of all products produced during the POI. See, e.g., *Final Determination of SLTFV Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea*, 56 FR 16305, 16316 (April 22, 1991), concerning the accounting of recycled scrap film. Accordingly, no allocation of costs is appropriate.

Comment 10: The petitioners assert that the Department should calculate

depreciation expense on the restated value of Hevensa's fixed assets. The petitioners state that although Hevensa's use of historical cost based depreciation in its submissions to the Department is consistent with Venezuelan Generally Accepted Accounting Principles (GAAP), the resulting depreciation expense is distorted by the high level of inflation in Venezuela during the POI.

Although Hevensa revalued its assets in its financial statements for the fiscal year ending October 31, 1993, Hevensa argues that Venezuelan GAAP did not permit this revaluation of assets. Hevensa further states that because its calculation of depreciation expense on the basis of the historical value of its fixed assets for its submissions to the Department is in accordance with the home-market country's GAAP, it should be accepted by the Department.

DOC Position: We agree with the petitioners that the depreciation expense should be based on the restated value of Hevensa's fixed assets. Normally, the Department does calculate costs in accordance with the GAAP of the home market country (see *NTN Bearing Corp. of America v. V-State*, 826 F. Supp. 1435, 144-42 (CIT 1993)). However, the Department will not use a country's GAAP if it does not accurately recognize a company's actual costs or distorts those costs (see *Id.*). This case is unusual because the accounting authorities in the home market country itself changed their position on the restatement of fixed assets, allowing it for fiscal years beginning after October 31, 1993, after having not approved it in prior years. This decision to revise Venezuelan GAAP was made on the basis of an ongoing analysis of the impact of economic conditions on the reporting of financial data.

Depreciation enables companies to spread large expenditures on purchases of machinery and equipment over the expected useful lives of these assets. Not adjusting for the devaluation of currency due to high inflation results in the depreciation deferred to future years being understated in constant currency terms, and, therefore, distorts the Department's COP and CV calculations.

For these reasons, we have adjusted Hevensa's depreciation expense to reflect amounts based on the restated value of Hevensa's fixed assets.

Comment 11: The petitioners assert that the Department should not deduct Hevensa's net exchange gain on financial assets and liabilities nor its net exchange gain on client accounts in its calculation of Hevensa's interest expense. The petitioners argue that because the net exchange gains on

financial assets and liabilities are not related to the production of silicomanganese, the Department should not offset Hevensa's interest expense with these gains. With respect to exchange gains and losses on accounts receivable, the petitioners argue that Department policy does not permit such items to be used as an offset to interest expense.

Hevensa argues that its net exchange gain on financial assets and liabilities should be treated in a manner similar to interest income on short-term financial assets. The respondent also states that the exchange gain or loss relates to a foreign deposit in which the total return is equal to the sum of the interest to be paid and the exchange gains and losses.

DOC Position: We agree with the petitioners, in part. It is Department practice not to include exchange gains and losses on client accounts receivable because the exchange rate we use to convert third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. (See 19 CFR 353.60.) Accordingly, we have disallowed Hevensa's claimed foreign exchange gains on client accounts receivable.

It is Department practice to include foreign exchange gains and losses on financial assets and liabilities in our COP and CV calculations where they are related to the company's production of the subject merchandise. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. Therefore, we disagree with the petitioners and have included foreign exchange gains and losses on financial assets and liabilities in COP and CV.

Comment 12: The petitioners assert that late payment penalties paid to suppliers and net exchange losses on purchases from suppliers should be reclassified as costs of manufacturing. The petitioners cite prior Department policy in which all costs directly associated with the purchasing of materials were included in material costs.

Hevensa argues that because money is fungible, late payment penalties and net exchange losses on purchases from suppliers should be classified as a general expense, not as a cost of manufacturing. Hevensa notes that by borrowing working capital from its suppliers (by delaying its payments), it freed up its remaining cash to be used in other operations, and thus borrowing from these suppliers helped finance Hevensa's overall operations.

DOC Position: We agree with the petitioners, in part. Foreign exchange gains and losses on the purchase of raw

materials used in production of subject merchandise relate directly to the acquisition of the input materials and should be included in the cost of manufacture. Late payment penalties, which represent interest charges for late payment to suppliers, are directly related to management's decision on the usage of capital. Because the Department considers the cost of acquiring capital to be fungible, we believe these late payment penalties are classified appropriately as interest expense.

Comment 13: The petitioners assert that Hevensa misallocated the cost of silicomanganese fines and manganese ore used in the production of Grade B lump silicomanganese. Hevensa divided the total costs of fines and manganese ore for the month by the total volume of Grade B lump and fines produced during the same month to obtain a monthly cost of fines and ore per unit of silicomanganese produced. Petitioners also assert that because Hevensa reported no sales of Grade B fines during the POI, Hevensa should have allocated the fines and ore cost only over the volume of Grade B lump and silicomanganese slag produced.

Hevensa contends that it properly allocated cost to the Grade B silicomanganese fines produced, even though none were sold during the POI. The costs assigned to the fines are included in the inventory value of the fines, and then included in the submitted costs of manufacture when the fines are used in production. If no cost is assigned to fines generated during production, then no cost for fines used in production should be included in the submitted cost of manufacturing.

DOC Position: We disagree with the petitioners. Hevensa did not misallocate the cost of silicomanganese fines and manganese ore. The costs assigned to the silicomanganese Grade B fines generated in the production process are the same costs assigned to silicomanganese Grade B fines reintroduced into the furnace. In our view, this methodology does not distort costs. Accordingly, no adjustment is necessary.

Comment 14: The petitioners argue that Hevensa should include VAT on raw materials as part of its production costs for months that were subject to VAT. To exclude VAT on cost of materials from COP and CV would be contrary to Department practice.

Hevensa argues that if the Department includes the value added taxes paid on inputs in the cost of production, it must also include the VAT received from its customers in the price for purposes of the sales below cost test.

DOC Position: We agree with the respondent. The amount of VAT included in the home market COP should be the same as the amount that is included in the home market sales prices. For CV and third-country sales, no VAT on raw materials should be included. If the VAT is rebated by the government upon export, no VAT is added to CV on third country sales price in any event, pursuant to Section 773(e)(1)(a).

Comment 15: Hevensa argues that the Department should perform the sales below cost test by comparing the sales price to a monthly weighted-average COP. It asserts that comparing sales prices at the beginning of the POI to a weighted-average COP for the POI would be distortive, given the high rate of inflation experienced in Venezuela during the POI.

The petitioners argue that Hevensa's proposed comparison of monthly COPs, calculated on a historical cost basis, to monthly selling prices would be contrary to Department practice and highly distorted. Petitioners assert that as a consequence of the erosion of the value of the Venezuelan currency between the date the inputs were purchased and the date of shipment of the silicomanganese produced using inventoried inputs, Hevensa's proposed methodology understates Hevensa's production costs.

DOC Position: Department practice is to compute a single POI weighted-average cost of production for each different model or product of subject merchandise. Monthly COPs are computed in situations where the country under investigation is experiencing "hyperinflation." When a country is experiencing hyperinflation, we require respondents to report monthly COPs using the replacement cost methodology. In this investigation, the Department determined that the Venezuelan economy was not experiencing hyperinflation during the POI. Indeed, this was the position taken by Hevensa during the investigation. As a consequence, Hevensa submitted its historical costs rather than the replacement costs required by the Department's hyperinflation methodology. Accordingly, monthly weighted average COPs were not used in the calculations for the final determination.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of silicomanganese from Venezuela that are entered, or withdrawn from warehouse, for

consumption on or after June 17, 1993, the date of publication of our preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Hevensa	8.81
All others	8.81

ITC Notification

In accordance with section 735(d) of the Act, we have notified the U.S. International Trade Commission (ITC) of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

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by the Government of Ukraine to restrict the volume of direct or indirect exports of the subject merchandise to the United States in order to prevent the suppression or undercutting of price levels of United States domestic silicomanganese.

EFFECTIVE DATE: October 31, 1994.

FOR FURTHER INFORMATION CONTACT: James Doyle or Robert Hamilton, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482-0172 or (202) 482-1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1993, the Department initiated an antidumping investigation under section 732 of the Tariff and Trade Act of 1930, (the Act), as amended, to determine whether imports of silicomanganese from Ukraine are being or are likely to be sold in the United States at less than fair value (58 FR 64554, December 8, 1993).

In early December 1993, we notified the International Trade Commission (ITC) of our action. On December 27, 1993, the ITC issued an affirmative preliminary injury determination.

On June 17, 1994, we published a preliminary determination that imports of silicomanganese from Ukraine were being sold in the United States at less than fair value (LTFV)(59 FR 14851).

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994 (59 FR 14851, June 17, 1994), the following events have occurred:

On June 20, 1994, the petitioner, Elkem Metals Company and the Oil, Chemical, & Atomic Workers, Local 3-639, (petitioners) alleged that the Department had made significant ministerial errors in the preliminary determination calculations. We agreed in part with the allegation, but determined that the ministerial errors that had been made were not significant in accordance with 353.15(g)(4)(ii) of the Department's proposed regulations. Therefore, we did not publish an amended preliminary determination.

On July 8, 1994, the petitioners alleged that the Department, in determining whether the errors were significant, had looked only at correcting the arithmetic errors and had not carried forward all of the corrected numbers to the final spreadsheet. The

International Trade Administration
[A-823-805]

Antidumping: Silicomanganese From Ukraine; Suspension of Investigation

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

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping investigation involving silicomanganese from Ukraine. The basis for the suspension is an agreement

petitioners alleged that the carrying forward of arithmetical corrections to the spreadsheets would constitute a significant ministerial error, as it would result in a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original preliminary determination. The Department agreed that this error had been made, and that the recalculation would result in a significant change to the margin. Therefore, on July 19, 1994, the Department amended the preliminary determination (59 FR 18167, July 26, 1994).

We conducted the factory and sales verifications of the Nikopol Ferroalloys Plant (Nikopol) and the Zaporozhye Ferroalloys Works (Zaporozhye) during the period September 26 through 30, 1994.

On September 30, 1994, the Department initialled a proposed suspension agreement with the Government of Ukraine. By October 25, 1994, the Department had received comments regarding the proposed suspension agreement from petitioners and respondents.

Petitioners submitted a case brief on October 11, 1994.

On October 31, 1994, the Department and the Government of Ukraine signed the final suspension agreement.

Scope of Investigation

The merchandise covered by this investigation is silicomanganese. 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers 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 (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our

written description of the scope of this investigation is dispositive.

In accordance with section 733(f) of the Act, we will notify the ITC of this determination. In addition, if the investigation is continued, we will make all nonprivileged and non-proprietary information relating to these investigations available to the ITC.

Suspension of Investigations

The Department consulted with the parties to the proceeding and has considered the comments with respect to the initialled suspension agreement. The signed suspension agreement reflects the decisions of the Department with respect to many of the issues parties raised in their comments.

We have determined that the agreement will prevent the suppression or undercutting of price levels of United States silicomanganese, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed on October 31, 1994, are set forth in Annex 1 to this notice.

Consistent with section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse for consumption, of silicomanganese from Ukraine, effective, March 19, 1994, as directed in our "Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicomanganese From Ukraine," is hereby terminated. Any cash deposits on entries of silicomanganese from Ukraine pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Upon receipt of a request during the anniversary month of the publication of this suspension agreement, the Department will conduct an administrative review as provided in section 751 of the Act.

On November 1, 1994, petitioners and respondents both requested that the Department continue the investigation in accordance with section 734(g) of the Act.

This notice is published pursuant to section 734(f)(1)(A) of the Act and 19 CFR 353.18.

Dated: November 21, 1994.

Susan G. Esserman,
Assistant Secretary for Import Administration.

I have determined pursuant to section 734(l) of the Act that the provisions of this suspension agreement prevent

suppression or undercutting of price levels of domestic products with respect to silicomanganese exported, directly or indirectly, from Ukraine to the United States. Furthermore, I have determined, in accordance with section 734(d) of the Act, that this suspension agreement is in the public interest and that the agreement can be monitored effectively.

Dated: October 31, 1994.

Susan G. Esserman,
Assistant Secretary for Import Administration.

AGREEMENT SUSPENDING THE ANTIDUMPING INVESTIGATION ON SILICOMANGANESE FROM UKRAINE

For the purpose of encouraging free and fair trade in silicomanganese, establishing more normal market relations, pursuant to the provisions of Section 734(l) of the U.S. Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the "Act"), the United States Department of Commerce ("the Department") and the Government of Ukraine enter into this suspension agreement ("the Agreement").

The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic silicomanganese products by imports of the merchandise subject to this Agreement.

On the basis of this Agreement, the Department shall suspend its antidumping investigation with respect to silicomanganese produced in Ukraine, subject to the terms and provisions set forth below. Further, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation and to release any cash deposit or bond posted on the products covered by this Agreement as of the effective date of this Agreement.

I. Basis for the Agreement

In order to prevent the suppression or undercutting of price levels of United States domestic silicomanganese, the Government of Ukraine will restrict the volume of direct or indirect exports to the United States of silicomanganese products from all producers/exporters of silicomanganese products in Ukraine subject to the terms and provisions set forth below.

II. Definitions

For purposes of this Agreement, the following definitions apply:

(a) "Date of Export" for imports into the United States accompanied by an export license and certificate of origin of

the merchandise subject to this Agreement shall be considered the date the export license was endorsed.

(b) "Parties to the Proceeding" means any interested party, within the meaning of 353.2(k) of the Department's regulations, which actively participates through written submissions of factual information or written argument.

(c) "Indirect Exports" means arrangements as defined in Section IV.D of this Agreement and exports from Ukraine through one or more third countries, whether or not such export is sold in one or more third country prior to importation into the United States.

(d) For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

(e) "For consumption" means use in the production of steel, cast iron or medium-carbon ferromanganese. The material shall not be loaned or swapped. The material shall not be resold except as a result of force majeure.

(f) "End-user" means an entity, such as a steel, cast iron or medium-carbon ferromanganese producer, which consumes silicomanganese as defined in Section II(e).

(g) "Reference Price" means the price calculated by the Department, as described in Section IV.B, on a monthly basis to be used as a floor price for sales of Ukrainian silicomanganese into the United States.

III. Product Coverage

The merchandise covered by this Agreement is silicomanganese. 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 this Agreement, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

This agreement covers 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 (HTSUS). Some silicomanganese may also be

classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

V. Export Limits

A. The export limits of this Agreement shall be effective for the periods November 1 through October 31 (the "Relevant Period").

The Government of Ukraine will restrict the volume of direct or indirect exports of Ukrainian silicomanganese on or after the effective date of this Agreement to the United States and the transfer or withdrawal from inventory (consistent with the provisions of Section IV.C) of the merchandise subject to this Agreement in accordance with the export limits established annually by the Department based on the methodology set forth in Appendix A.

Export limits are expressed in terms of metric tons of silicomanganese.

Export limits are applied on the basis of "Date of Export", as defined in Section II.

B. To qualify for delivery directly or indirectly to the United States, the contract price must be at a price at or above the reference price in effect on the date the contract was signed. The relevant price comparison shall be made at comparable delivery terms.

The reference price shall be calculated consistent with the methodology described in Appendix C, and shall be releasable to the parties to the proceeding under administrative protective order (APO). The reference price shall be calculated based on published data available to the Department as of the 25th day of each month. The reference price shall be releasable to the parties to the proceeding under APO at most five days later. In the event that the release date falls on a non-business day, the Department may release the reference price earlier, but in no case shall release the reference price later than the next business day. The reference price will be in effect for the next 30 calendar days or complete month, whichever terminates later. Following the initial calculation of the reference price, it is understood that in subsequent periods the Department will apply consistently the calculation methodology used to determine reference prices.

At any time during a Relevant Period, a delivery may be made for the entire amount of quota remaining for that Relevant Period. Any amount delivered during a Relevant Period shall not, however, when cumulated with all prior deliveries in such Relevant Period,

exceed the annual quota for that Relevant Period.

C. Any inventories of Ukrainian-origin silicomanganese, currently held by Ukraine in the United States and imported into the United States between the period beginning on or after March 19, 1994, (the date corresponding to the Department's critical circumstances determination) through the effective date of this Agreement will be subject to the following conditions:

Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an export license and certificate of origin issued by the Government of Ukraine. A request for an export license and certificate of origin under this provision shall be accompanied by a report specifying the original date of export, the date of entry into the United States, the identity of the original exporter and importer, the customer, a complete description of the product (including lot numbers and other available identifying documentation), and the quantity expressed in metric tons.

Any amounts authorized by Ukraine issuing an export license under this provision shall be counted toward the export limit for the covered products for the period during which the export license and certificate of origin were issued for the product that is transferred or withdrawn. The volume shall be determined on the basis of metric tons authorized by Ukraine as set forth in the export license.

In the event that there is a surge of sales of Ukrainian-origin silicomanganese from such inventory currently held in the United States, the Department will decrease the export limits to take into account such sales.

D. Any arrangement involving the exchange, sale, or delivery of silicomanganese products from Ukraine will be counted towards export limits under this Agreement to the degree it can be shown to have resulted in the sale or delivery in the United States of silicomanganese products from a country other than Ukraine.

E. Where covered products are imported into the United States and are subsequently re-exported or further processed and re-exported, the export limits for the entered product shall be increased by the amount of metric tons re-exported. This increase will be applicable to the Relevant Period corresponding to the time of such re-export. This increase will be applied only after presentation to the Department and opportunity for verification of such evidence demonstrating original importation, any

further processing, and subsequent exportation.

F. Export limits established for any of the identified Relevant Periods may not be used after October 31 of the corresponding Relevant Period, except that limits not so used may be used during the first three months of the respective following period up to a maximum of 15 percent of the export limit for the current Relevant Period.

Export limits for the Relevant Periods may be used as early as September 1 of the previous period within the limit of 15 percent of the export limit for the previous Relevant Period.

V. Confirmation of Deliveries

In recognition of the requirements of Section 734(d)(2) and (l)(1), the Department and the Government of Ukraine agree that any sales contract with an end-user to be used for the purpose of delivering silicomanganese under this Agreement must be submitted to the Office of Agreements Compliance, U.S. Department of Commerce, and confirmed by the Department in accordance with this Section. To be confirmed for delivery under this Agreement, the party submitting the contract must provide the following information, which shall be releasable under APO at the time the Department approves the delivery:

- The date and terms, including price, of the contract with the end-user pursuant to which the delivery(ies) will be made;
- A description of the material being imported;
- Identification of the Ukrainian supplier of the delivery(ies);
- The estimated place and date on which the imports will enter the customs territory of the United States;
- The export license and certificate of origin number(s) under which the delivery(ies) will be exported;
- A copy of the contract with the end-user pursuant to which the delivery(ies) are to be made;
- An estimated delivery schedule;
- Certification from the end-user that it will consume the imported product in the United States in accordance with Section II(e) of this Agreement;
- Certification that the Department will be provided with proof of payment for every delivery received by the end-user; and
- Any other information that the Department, after consultation with the Government of Ukraine, determines necessary to confirm that the requirements of this Agreement have been met.

As soon as possible, but within 15 days of a complete confirmation request

being filed with the Import Administration's Central Records Unit, the Department will confirm that the shipment qualifies for delivery under the Agreement or will state specifically why it does not so qualify. In making such determination, the Department will limit its review to determining (i) whether the delivery amount under review comes within the amount of quota remaining for the Relevant Period, and (ii) whether the sales price for the delivery is at or above the reference price that was in effect on the date the contract was signed.

Upon confirmation, the Department will subtract the total amount of the delivery of Ukrainian-origin silicomanganese from the amount of quota remaining for that Relevant Period. The Office of Agreements Compliance shall make publicly available, on a current and continuous basis, the amount of annual quota that remains available for the Relevant Period. If the Department fails to respond to a confirmation request within 15 days, the request shall be deemed to be approved notwithstanding any other provisions of the Agreement.

Further, if such silicomanganese is not immediately delivered to the end-user, the following conditions must be met:

- (1) The material will be maintained in a separate account for imports of Ukrainian silicomanganese under this Agreement;
- (2) The importer (if the owner of material, or the person for whom or on whose behalf the material is imported) or his consignee, certifies to the Department that such material will not be sold, loaned, swapped, or utilized other than for delivery to the U.S. end-user for consumption in accordance with Section II(e) of this Agreement;
- (3) The material enters the U.S. but shall not be liquidated until such time as it is delivered to the end-user; and
- (4) The importer certifies in writing to make available to the Department, each month, a full accounting of all deliveries from its dedicated account (including each delivery from the account, to whom delivery was made, pursuant to which contract, in what quantity, and confirmation of the status of any transaction that occurred from the account).

Prior to U.S. Customs clearance of the Ukrainian-origin silicomanganese, the importer (if the owner of material, or the person for whom or on whose behalf the silicomanganese is imported) will notify the Department of the date of import, the quantity and declared value of the shipment, the vessel name, the port of entry, and the individual contract

pursuant to which the delivery is being made. If such information is consistent with a pre-confirmed delivery and the notice of request for delivery from the end-user, the Department will notify the U.S. Customs Service within five business days. The importer will provide certification to U.S. Customs at time of import that the material will be used only for a sale subject to the conditions of the Agreement and will be consumed in accordance with Section II(e) of this Agreement. The Department will instruct Customs to promptly release the shipment once the Department has confirmed that Customs has received the foregoing notification and certification.

VI. Export Licenses/Certificates

A. The Government of Ukraine will restrict, by means of export licenses and certificates of origin, the volume of direct or indirect exports of Ukrainian silicomanganese.

The Government of Ukraine will ensure that the price for the merchandise when exported from the territory of Ukraine is at or above the reference price as calculated pursuant to Appendix C, adjusted for expenses associated with the merchandise reaching the United States.

The Government of Ukraine shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export licenses and certificates of origin. The Government of Ukraine will inform the Department of any violations concerning the price restrictions, export licenses and/or certificates of origin which come to its attention and the action taken with respect thereto.

The Department will inform the Government of Ukraine of violations concerning the price restrictions, export licenses and/or certificates of origin which come to its attention and the action taken with respect thereto.

B. Export licenses shall be issued and certificates of origin shall be authorized, respectively, by the Government of Ukraine for all direct or indirect exports to the United States of the merchandise subject to this Agreement in quantities no greater than the number of metric tons specified by the Department under Section IV.A for each Relevant Period.

C. Export licenses will be issued and certificates of origin will be issued and endorsed against the export limits for Relevant Periods.

Export licenses for the Relevant Periods may be used as early as September 1 of the previous Relevant Period within a limit of 15 percent of

the export limit for the previous Relevant Period.

Export licenses issued for each Relevant Periods, may not be used after October 31 for each subsequent year, except that export licenses not so used may be used during the first three months of the respective following period, up to a maximum of 15 percent of the export limit for the current period.

D. The Government of Ukraine will require that all exports of the merchandise subject to this Agreement shall be accompanied by an export license (form to be agreed) and certificate of origin. The export license shall be endorsed pursuant to a certificate of origin and issued no earlier than one month before the day, month, and year on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export. The export license will also indicate the customer, the complete description of the product exported, country of origin of the silicomanganese, and quantity expressed in terms of metric tons. If any of this information is in a language other than English, the export license and certificate of origin must also contain an English language translation of this information.

E. The United States shall require presentation of such export license and certificate of origin as a condition for entry into the United States of the covered products of the merchandise subject to this Agreement on or after the effective date of this Agreement. The United States will prohibit the entry of such products not accompanied by such an export license.

VII. Implementation

In order to effectively restrict the volume of exports of silicomanganese to the United States, the Government of Ukraine agrees to implement the following procedures:

A. Establish an export licensing and certification program for all exports of silicomanganese from Ukraine to, or destined directly or indirectly for consumption in, the United States.

B. Ensure compliance by all Ukrainian producers, exporters, brokers, traders, users, and/or related parties of such silicomanganese with all procedures established in order to effectuate this Agreement.

C. Collect information from all Ukrainian producers, exporters, brokers, traders, users, and/or related parties of such on the production and sale of silicomanganese.

D. Require that purchasers agree not to circumvent this Agreement, report to Ukraine subsequent arrangements entered into for the sale, exchange, or loan to the United States of silicomanganese purchased from Ukraine, and include these same provisions in any subsequent contracts involving silicomanganese purchased from Ukraine.

E. Impose strict sanctions, such as monetary damages or prohibition from participation in the export limits allowed by the Agreement, in the event that any Ukrainian or Ukrainian-related party does not comply in full with all the terms of the Agreement.

VIII. Anticircumvention

A. The Government of Ukraine will take all appropriate measures under Ukrainian law to prevent circumvention of this Agreement. It will not enter into any arrangement for the purpose of circumventing the export limits in Section IV of this Agreement. It will require that purchasers agree not to circumvent this Agreement. It will require that all purchasers report to Ukraine subsequent arrangements entered into for the sale, exchange or loan to the United States of silicomanganese purchased from Ukraine. It will also require that all purchasers include the same provisions in any subsequent contracts involving silicomanganese purchased from Ukraine.

B. In addition to the reporting requirements of Section IX of this Agreement, the Government of Ukraine will share within 15 days of any request from the U.S. Department of Commerce all particulars regarding initial and subsequent arrangements of silicomanganese between Ukraine and any party regardless of the original intended destination.

C. The Department of Commerce will accept comments from all parties for fifteen days after the receipt of information requested under paragraph B of this Section. The Department will determine within 45 days of the date of the information request under paragraph B whether subject arrangements circumvent the export limits of this Agreement.

D. In addition to the above requirements, the Department shall direct the U.S. Customs Service to require all importers of silicomanganese into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the silicomanganese being imported was not obtained under any arrangement, swap, or other exchange designed to circumvent the

export limits for silicomanganese of Ukrainian origin established by this Agreement. Where there is reason to believe that such a certification has been made falsely, the Department will refer the matter to Customs or the Department of Justice for further action.

E. The Department of Commerce and the Government of Ukraine will consult regarding any arrangement determined by the Department of Commerce to constitute circumvention of this Agreement. If the Department determines that Ukraine and its related parties did not actively participate in the arrangement, the Department will request consultations with Ukraine to resolve the problem. If the problem has not been resolved to the mutual satisfaction of both the United States and Ukraine, the volume of the silicomanganese product involved in the circumvention may be counted against the export limit in effect at such time. If the Department determines that Ukraine actively participated in the arrangement, the volume of such arrangement will be deducted from the export limits for Ukraine.

F. If the Department of Commerce or Government of Ukraine determines that any silicomanganese has been exported to the United States without the required export licenses and/or certificates of origin, Ukraine shall: (1) Thereafter prohibit any Ukraine producer, exporter, broker, trader, user, and/or related party from supplying silicomanganese to the customer responsible for such circumvention; (2) impose other penalties as allowed by law; and/or (3) take other actions to prevent such circumvention in the future.

G. Given the fungibility of the world silicomanganese market, the Department of Commerce will take into account the following factors in distinguishing normal silicomanganese market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which circumvent the export limits of this Agreement:

1. Existence of any verbal or written arrangements which may be designed to circumvent the export limits;
2. Existence of any arrangement as defined in Section IV.D that was not reported to the Department pursuant to Section IX.A;
3. Existence and function of any subsidiaries or affiliates of the parties involved;
4. Existence and function of any historical and/or traditional trading patterns among the parties involved;
5. Deviations (and reasons for deviation) from the above patterns.

including physical conditions of relevant silicomanganese facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements;

8. Any other information relevant to the transaction or circumstances;

H. "Swaps" include, but are not limited to: Ownership swaps—involve the exchange of ownership of any type of silicomanganese product(s), without physical transfer. These may include exchange of ownership of silicomanganese products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of silicomanganese products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of silicomanganese products, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of silicomanganese product(s) from Ukraine to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced silicomanganese products of any type, regardless of the sequence of the transaction.

I. The Department will enter its determinations regarding circumvention into the record of the Agreement.

IX. Monitoring

The Government of Ukraine will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department of Commerce shall provide semi-annual reports to the Government of Ukraine indicating the volume of imports of the subject merchandise to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, the Government of Ukraine shall collect and provide to the Department the information set forth, in the agreed format in Appendix B. All such information will be provided to the Department on a semi-annual basis on June 1 and December 1 of each calendar year, or upon request. Such information

will be subject to the verification provision identified in Section IX.C of this Agreement.

The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Both governments recognize that the effective monitoring of this Agreement may require that Ukraine provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement. The Department shall provide notice to the Government of Ukraine of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501, entry summaries, and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM-115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the subject merchandise during the period this Agreement is in effect.

C. Verification

The Government of Ukraine agrees to permit full verification of all information related to the administration of this Agreement, on an annual basis or more frequently, as the Department deems necessary to ensure that Ukraine is in full compliance with the terms of the Agreement.

X. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the

Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section IX.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

XI. Consultations

The Government of Ukraine and the Department shall hold consultations regarding matters concerning the implementation, operation, or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement, except that in the 12 months following the signing of the Agreement, consultations will be held semi-annually. Additional consultations may be held at any other time upon request of either the Government of Ukraine or the Department. Emergency consultations may be held in accordance with Section XII.A.

XII. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission by the Government of Ukraine except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

The Government of Ukraine will inform the Department of any violations which come to its attention and the action taken with respect thereto.

Imports in excess of the export limits set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of Section 734(l) of the Act, where such imports are minimal in volume, are the result of technical shipping circumstances, and are applied against the export limits of the following year.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After

consultations, the Department will provide the Government of Ukraine 10 days within which to provide comments. The Department will make a determination within 20 days.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under Section 734(i) of the Act and § 353.19 of the Department's Regulations.

XIII. Duration

The export limits provided for in Section IV of this Agreement shall remain in force from the effective date of this Agreement through October 31, 1999.

The Department will, upon receiving a proper request no later than October 31, 1998, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than October 31, 1999, as long as Ukraine has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted consistent with § 353.25 of the Department's regulations.

The Government of Ukraine may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of the Government of Ukraine, the provisions of Section 734(i) of the Act shall apply.

XIV. Other Provisions

A. In entering into this Agreement, the Government of Ukraine does not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value or that such sales have materially injured, or threatened material injury to, an industry or industries in the United States.

B. The English language version of this Agreement shall be controlling.

C. For all purposes hereunder, the Department and the signatory Government shall be represented by, and all communications and notices shall be given and addressed to:

Department of Commerce

U.S. Department of Commerce,
Assistant Secretary for Import
Administration, International Trade
Administration, Washington, D.C.
20230, USA

Government of Ukraine

Ministry of Foreign Economic Relations
of Ukraine, Deputy Minister for
Foreign Economic Relations, 8,
Lvivska Square, Kiev, GSP-655,
254655, Ukraine

XV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on silicomanganese from Ukraine, October 31, 1994.

Signed on this thirty-first day of October 1994.

For the U.S. Department of Commerce.
Susan G. Esserman.

For the Government of Ukraine.
Valeriy L. Mazur.

Appendix A

The annual export limits for each Relevant Period will be calculated in a two-step process. The first step, which will be calculated only once, is the calculation of the ratio of 7,992 metric tons of silicomanganese to U.S. raw steel production in 1993. The second step, which is to be calculated at the beginning of every Relevant Period, is to multiply the ratio calculated in the first step by the U.S. raw steel production forecast covering the upcoming Relevant Period.

The Department will obtain estimates of United States raw steel production for the purposes of this Agreement from Data Resources, Inc.

During the life of the Agreement, the Department can, as appropriate, select alternative sources to use in determining U.S. raw steel production. Should the Department determine that the identified source is no longer appropriate, the Department will give parties at least 30 days notice of its decision.

The export limit will be announced by the Department 30 days prior to the start of the Relevant Period.

Appendix B

In accordance with the established format, the Government of Ukraine shall collect and provide to the Department all information necessary to ensure compliance with this Agreement.

The Government of Ukraine will collect and maintain sales data to the United States, in the home market, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department. Information for the periods November 1 through April 30 and May 1 through October 31 for each Relevant Period, will be provided to the Department on a semi-annual basis on June 1 and December 1 respectively of each calendar year, or upon request.

The Government of Ukraine will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

Report of Inventories

Report, by location, the inventories held by Ukraine in the United States and imported into the United States between the period

beginning March 19, 1994, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure and in metric tons.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the merchandise.
4. License Number(s): Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the export license is endorsed.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include lot numbers and other available information.

United States Sales

1. Export License Number(s): Indicate the number(s) relating to each entry now being held in inventory.
2. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
3. Complete Description of Merchandise: Include lot numbers and other available information.
4. Quantity: Indicate in original units of measure and in metric tons.
5. Total Sales Value: Indicate currency used.
6. Unit Price: Indicate currency used.
7. Date of Sale: The date all terms of order are confirmed.
8. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
9. Date of Export: Date the export license is endorsed.
10. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
11. Importer of Record: Name and address.
12. Customer: Name and address.
13. Customer Relationship: Indicate whether related or unrelated.
14. Final Destination: Name and address of location for consumption in the United States.
15. Other: *i.e.*, used as collateral, will be re-exported, etc.

Home Market Sales

1. Sales Order Number(s): Indicate the number(s) relating to each sale.
2. Quantity: Indicate in original units of measure and in metric tons.
3. Date of Sale: Date all terms of order are confirmed.
4. Delivery Date: Date the merchandise was delivered to the customer.
5. Customer: Name and address.
6. Customer Relationship: Indicate whether related or unrelated.

Sales Other Than United States

1. Export License Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.

3. Quantity: Indicate in original units of measure sold and/or entered and in metric tons.
4. Date of Sale: The date all terms of order are confirmed.
5. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
6. Date of Export: Date the export license is endorsed.
7. Date of Entry: Date the merchandise entered the United States or the date a book transfer took place.
8. Importer of Record: Name and address.
9. Customer: Name and address.
10. Customer Relationship: Indicate whether related or unrelated.
11. Final Destination: Name and address of location for consumption.
12. Other: *i.e.*, used as collateral, will be re-exported, etc.

longer appropriate, the Department will give parties at least 30 days notice of its decision

[FR Doc. 94-29374 Filed 11-28-94; 8:45 am]

BILLING CODE 3510-DS-P

Appendix C

The following is the methodology the Department will use when calculating the monthly reference price for the purposes of this Agreement. The monthly reference price will be calculated according to a six-step process.

(1) The Department will calculate the historical market price in effect for the base period. The relevant weekly prices will be averaged by the Department to arrive at one figure for the base period. The Department will do this calculation only once, using Metals Week information.

(2) The Department will identify the current market price in effect and available to the Department for the latest four weeks before the 25th of each month. The Department will calculate a simple average of those figures, using the midpoint of each week's Metals Week price range as the reported price.

(3) The Department will calculate the percentage change from the base period Metals Week price to the current Metals Week price by subtracting the historical price from the current price and dividing the result by the historical price.

(4) The Department will identify the price to the domestic producer of silicomanganese during the base period using information presented in the petition.

(5) The Department will apply the percentage change calculated in the third step by the price to the domestic producer during the base period, resulting in an updating adjustment for that price.

(6) The Department will add the adjustment from the price to the domestic producer during the base period to yield the upcoming month's reference price.

The base period for calculating the monthly reference price shall be the same for the historical market price and the price to the domestic producer. That base period shall span between 6 months and 3 years and shall end no later than 18-30 months before the effective date of this agreement.

During the life of the Agreement, the Department can, as appropriate, select alternative sources to use in determining the current U.S. market price for silicomanganese. Should the Department determine that the identified source is no

[A-823-805]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Ukraine

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

EFFECTIVE DATE: December 6, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Donna Berg, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-5288 or (202) 482-0114, respectively.

FINAL DETERMINATION: We determine that silicomanganese from Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994 (59 FR 14851, June 17, 1994), the following events have occurred:

On June 20, 1994, the petitioners, Elkem Metals Company and the Oil, Chemical, & Atomic Workers, Local 3-639, alleged that the Department of Commerce (the Department) had made significant ministerial errors in our preliminary determination calculations. After reviewing the allegation, we determined that the errors made were not "significant" within the meaning of section 353.15(g)(4)(ii) of the proposed regulations (55 FR 9048 (March 9, 1990)).

On July 8, 1994, the petitioners alleged that the Department had not carried forward all of the corrected numbers and that a complete recalculation would constitute a "significant" ministerial error (i.e., a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original preliminary determination). On reexamination, we agreed that this error had been made, and that the recalculation would result in a significant change to the margin. Thus, on July 19, 1994, we amended the preliminary determination (59 FR 18167, July 26, 1994).

We conducted the factory and sales verifications of the Nikopol Ferroalloys Plant (Nikopol) and the Zaporozhye

Ferroalloys Works (Zaporozhye) during the period September 26 through 30, 1994.

On September 30, 1994, the Department and the Government of Ukraine initialled an agreement that, if ultimately accepted by the Department, would suspend the antidumping investigation on silicomanganese from Ukraine.

Petitioners submitted a case brief on October 11, 1994.

On October 31, 1994, the Department suspended the investigation by accepting an agreement with the Government of Ukraine pursuant to section 734(l) of the Act. (See Notice to the Federal Register of Antidumping: Silicomanganese from Ukraine; Suspension of Investigation, signed November 21, 1994). Both the petitioners and the respondents in this investigation filed requests on November 1, 1994, pursuant to section 734(g) of the Act, that the antidumping investigation be continued.

Scope of Investigation

The merchandise covered by this investigation is silicomanganese. 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 four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers 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 (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Ukraine's Status as a Non-Market Economy

The Department determined in Ferrosilicon from Ukraine (see Final Determinations of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan and Ukraine 58 FR 13050, March 9, 1993) that Ukraine is a non-market economy (NME). A designation as an NME remains in effect until revoked by the Department (see section 771(18)(C) of the Act). No party has contested Ukraine's designation as an NME in this investigation.

Best Information Available (BIA)

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country. Since neither respondent in this case qualified for separate rates, they will be treated as a single respondent for purposes of assigning an antidumping margin.

Although the respondents did attempt to cooperate with the Department's requests for documents during their respective verifications, they were not able to provide the full range of documentation necessary for the Department to establish the accuracy and completeness of the information provided (see verification reports). Therefore, the Department must assign a dumping margin on the basis of BIA, pursuant to section 776 (b) and (c) of the Act.

In determining what rate to use as BIA, the Department applies a methodology which has been upheld by the Court of Appeals for the Federal Circuit in *Allied-Signal v. United States*, 996 F.2d 1185 (Fed. Cir. 1993). Specifically, in the case where there is only one respondent, and that respondent has been cooperative, the Department assigns as BIA the higher of (a) the estimated margin found in the preliminary determination, or (b) the margin in the petition. (Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19033 (May 3, 1989)). Accordingly, the Department is using as BIA the estimated margin calculated in the preliminary determination (i.e., 163 percent).

Verification

As provided in section 776(b) of the Act, we attempted to verify information provided by respondents by using standard verification procedures, including the examination of sales and

accounting records, and selection of original source documentation containing relevant information. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Critical Circumstances

On June 10, 1994, we preliminarily found that critical circumstances exist for the two respondents in this investigation.

Pursuant to section 733(e)(1) of the Act, we based the preliminary decision on a finding of (1) a petition margin (123.02 percent) in excess of 25 percent, and (2) a massive increase in imports. It should be noted that the second part of this finding, a massive increase in imports, was based on BIA because one respondent, Nikopol, did not provide adequate information (59 FR 14852, June 17, 1994).

For the final determination, we have received no information that would lead us to change our preliminary determination of critical circumstances. We have continued to use BIA as the basis for our determination with regard to a massive increase in imports, and we determine that critical circumstances exist for all exporters in this investigation.

Interested Party Comments

Comment 1: The petitioners assert that the Department should assign a BIA margin at a rate higher than the petition rate of 125.3 percent because the petition rate was not high enough to induce the respondents to prepare for the verifications. The petitioners propose that BIA should be based on the amended preliminary determination margin of 163.00 percent because that margin is based on data supplied to the Department by the respondents.

DOC Position: We agree with the petitioners. (See the BIA section of this notice.)

Suspension of Liquidation

Consistent with section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse for consumption, of silicomanganese from Ukraine, will not now be reimposed. Suspension of liquidation will be reinstated only if the International Trade Commission (ITC) issues an affirmative injury determination and the Department terminates the agreement suspending this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our

determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated. If the ITC determines that such injury does exist, the suspension agreement will remain in force and the Department will not issue an antidumping duty order. Consistent with section 734(f)(3)(B) of the Act, the Department will not issue an order, so long as the agreement remains in force.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act, 19 USC 1673d(d), and 19 CFR 353.20(a)(4).

Dated: November 30, 1994.

Susan G. Esserman,
Assistant Secretary for Import
Administration.

[FR Doc. 94-29994 Filed 12-5-94; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

WITNESSES APPEARING AT THE HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing on silicomanganese from Brazil, China, Ukraine, and Venezuela. Public and *in camera* sessions were held in connection with these investigations on November 3, 1994, in Washington, D.C.

**In Support of Imposition of
Antidumping Duties:**

Baker and Botts
Washington, DC
on behalf of

Elkem Metals Co. and
Oil, Chemical and Atomic Workers Local 3-639

Russell Craig, Marketing Manager, Manganese
and Chromium Alloys, Elkem Metals Co.

Kenneth Button, Ph.D., Vice President,
Economic Consulting Services, Inc.

Vincent Honnold, Economist, Economic
Consulting Services, Inc.

William D. Kramer)
Michael X. Marinelli) -- OF COUNSEL
Andrea F. Farr)

**In Opposition to Imposition of
Antidumping Duties:**

Dorsey and Whitney
Washington, DC
on behalf of

Companhia Paulista de Ferro-Ligas and
Sibra Eletro-Siderúrgica Basileria S/A

Dr. Jose Antonio de Freitas Valle, Commercial
Director, Companhia Paulista de Ferro-Ligas

Dr. Luis Guillermo Cavadas, Director, Sibra
Eletro-Siderúrgica Basileria S/A

Roger Yannetti, General Sales Manager,
F&S International

Philippe M. Bruno)
Karen Zughaib) -- OF COUNSEL

**In Opposition to Imposition of
Antidumping Duties (continued):**

O'Melveny and Myers
Washington, DC
on behalf of

Zaporozhye Ferroalloys Plant
Nikopol Ferroalloys Plant
Minerais U.S., Inc.
AIOC Corp.

Zaporozhye Ferroalloys Plant
Vyacheslav Gavrilov, Director
Alexander Gerasimenko, External Trade Advisor
Oleg Borissenko, External Trade Advisor

Nikopol Ferroalloys Plant
Boris Velichko, Director
Sergei Nossov, Economist

Minerais U.S., Inc.
Hal Kohn, Vice-President

William Finan, Economist, Horst Frisch
Grant Clowery, Economist, Horst Frisch

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

Sherman and Sterling
Washington, DC
on behalf of

Hornos Electricos de Venezuela S.A. de C.V.

Ross Baker, Division Manager, Mannesmann Pipe
and Steel Corp.

Jeffrey Winton)
Shavit Matias) -- OF COUNSEL

**In Opposition to Imposition of
Antidumping Duties (continued):**

Steel Manufacturers Association,
Washington, DC

James F. Collins, President

Norbert P. Zagas, Northwestern Steel
and Wire Co., Sterling, IL

Robert F. Unfried, Vice President of
Finance, Structural Metals Inc.,
Birmingham, AL

William Meier, Purchasing Manager, Structural
Metals Inc., Seguin, TX

APPENDIX C
SUMMARY DATA

Table C-1

Silicomanganese: Summary data concerning the U.S. market (including DLA inventory adjustments), 1991-93, Jan.-June 1993, and Jan.-June 1994

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

Item	Reported data					Period changes			
	1991	1992	1993	Jan.-June-- 1993	1994	1991-93	1991-92	1992-93	Jan.-June 1993-94
U.S. consumption quantity:									
	*	*	*	*	*	*	*	*	*
U.S. consumption value:									
	*	*	*	*	*	*	*	*	*
U.S. importers' imports from--									
	*	*	*	*	*	*	*	*	*
Subject sources:									
U.S. shipments quantity	56,433	64,101	136,923	69,909	70,464	+142.6	+13.6	+113.6	+0.8
U.S. shipments value	29,508	30,529	63,087	31,447	35,739	+113.8	+3.5	+106.6	+13.6
Unit value	\$522.89	\$476.26	\$460.75	\$449.83	\$507.20	-11.9	-8.9	-3.3	+12.8
Ending inventory qty	11,564	37,744	81,890	37,183	72,676	+608.1	+226.4	+117.0	+95.5
Other sources:									
U.S. shipments quantity	177,821	198,618	181,537	86,716	87,676	+2.1	+11.7	-8.6	+1.1
U.S. shipments value	100,732	101,401	85,384	41,294	44,280	-15.2	+0.7	-15.8	+7.2
Unit value	\$566.48	\$510.53	\$470.34	\$476.20	\$505.04	-17.0	-9.9	-7.9	+6.1
Ending inventory qty	65,611	58,046	36,184	48,189	68,103	-44.9	-11.5	-37.7	+41.3
All sources:									
U.S. shipments quantity	234,254	262,719	318,460	156,625	158,140	+35.9	+12.2	+21.2	+1.0
U.S. shipments value	130,240	131,930	148,471	72,741	80,019	+14.0	+1.3	+12.5	+10.0
Unit value	\$555.98	\$502.17	\$466.22	\$464.43	\$506.00	-16.1	-9.7	-7.2	+9.0
DLA--									
	*	*	*	*	*	*	*	*	*
U.S. producers'--									
	*	*	*	*	*	*	*	*	*

Note.--Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. 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.

Figure C-1

Silicomanganese: Summary data for the U.S. market, 1991-93

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Figure C-2

Silicomanganese: Summary data for the U.S. market, Jan.-June 1993 and Jan.-June 1994

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Table C-2

Silicomanganese: U.S. consumption (excluding DLA inventory adjustments), 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table C-3

Silicomanganese: U.S. open market consumption (including DLA inventory adjustments) 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table C-4

Silicomanganese: U.S. open market consumption (excluding DLA inventory adjustments), 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table C-5

Silicomanganese: Alternative calculations of U.S. capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

APPENDIX D

**OWNERSHIP OF U.S. COMPANIES
THAT PRODUCE OR IMPORT
SILICOMANGANESE**

Table D-1

Silicomanganese: Ownership of U.S. companies that produce or import silicomanganese^{1 2 3 4 5}

U.S. company	Parent company	Parent's nationality	Share of ownership
	*	*	*

¹ ***. BHP owns 51 percent of manganese ore producer Groote Eylandt Manganese Sales (the other 49 percent is owned by Elkem A/S) and 49 percent of Elkem Mangan A/S, which includes silicomanganese producers and exporters Elkem Sauda and Elkem PEA (the other 51 percent is owned by Elkem A/S).

² Elkem is affiliated through common parent Elkem A/S to Elkem Sauda and Elkem PEA of Norway, which produce and export silicomanganese. As noted above, it is also indirectly related to U.S. silicomanganese importer BHP (U.S.A.), Australian silicomanganese producer and exporter Temco, and Mexican silicomanganese producer and exporter Compania Minera Autlan SA de CV, through the common shareholdings of Elkem A/S of Norway and Broken Hill Proprietary Co. of Australia. Also, Elkem A/S is minority shareholder (2.1 percent) in the Gabonese manganese ore producer Cie Miniere de l'Ogooue (Comilog), also owned in part by the French firm Societe du Ferromanganese de Paris-Outreau (SFPO), a company in which South African silicomanganese producer Samancor Ltd. recently purchased a 5-percent interest.

³ Both Mannesmann Pipe and Steel Co. and its immediate parent, Mannesmann Capital Corp., are U.S. subsidiaries of Mannesmann AG of Germany.

⁴ ***.

⁵ ***.

Source: Compiled from information submitted in response to questionnaires of the U.S. International Trade Commission; from *Moody's International Manual* (Moody's Investors Service, Inc., New York, NY, 1993); and from *Annual Report 1993* (Elkem A/S).

APPENDIX E

COMMENTS BY ELKEM METALS CO. ON THE IMPACT OF IMPORTS OF SILICOMANGANESE FROM BRAZIL, CHINA, UKRAINE, AND VENEZUELA ON ITS GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND DEVELOPMENT AND PRODUCTION EFFORTS

The Commission requested Elkem to describe and explain the actual and negative effects, if any, of imports of silicomanganese from the four subject countries on its growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of its product). Elkem was also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of this product from these countries. Elkem's response is shown below as it was submitted:

Actual Negative Effects

* * * * *

Anticipated Negative Effects

* * * * *

Influence of Imports on Capital Investment

* * * * *

APPENDIX F
IMPORT DATA

Table F-1

Silicomanganese: U.S. imports of silicomanganese from Brazil, by months, 1991-93, Jan.-June 1993, and Jan.-June 1994

(In short tons)					
Item	1991	1992	1993	Jan.-June-- 1993	1994
January	7,282	15,773	15,008	15,008	5,154
February	2,867	0	0	0	10,309
March	1,383	7,235	7,569	7,569	0
April	4,634	1,378	0	0	8,097
May	4,409	2,868	10,752	10,752	0
June	9,375	2,866	0	0	0
July	3,307	1,488	10,104	(1)	(1)
August	4,774	5,129	0	(1)	(1)
September	7,997	4,136	8,290	(1)	(1)
October	1,381	2,098	11,257	(1)	(1)
November	2,866	13,169	6,927	(1)	(1)
December	1,380	5,372	1,494	(1)	(1)
Total	51,656	61,512	71,400	33,329	23,560

¹ Not applicable.

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

Table F-2

Silicomanganese: U.S. imports of silicomanganese from China, by months, 1991-93, Jan.-June 1993, and Jan.-June 1994

(In short tons)					
Item	1991	1992	1993	Jan.-June-- 1993	1994
January	0	0	0	0	18,649
February	0	0	0	0	1,102
March	0	0	2,869	2,869	0
April	0	0	19	19	0
May	0	0	2,756	2,756	0
June	3,090	0	0	0	0
July	551	0	0	(1)	(1)
August	0	0	1,687	(1)	(1)
September	2,207	3,307	6,664	(1)	(1)
October	0	2,749	2,901	(1)	(1)
November	0	0	29,820	(1)	(1)
December	0	6,535	9,714	(1)	(1)
Total	5,848	12,591	56,430	5,644	19,751

¹ Not applicable.

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

Table F-3

Silicomanganese: U.S. imports of silicomanganese from Ukraine, by months, 1991-93, Jan.-June 1993, and Jan.-June 1994

(In short tons)					
Item	1991	1992	1993	Jan.-June-- 1993	1994
January	0	0	0	0	1,875
February	0	0	9,681	9,681	0
March	0	0	0	0	11,311
April	0	0	2,756	2,756	2,274
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	(1)	(1)
August	0	0	8,790	(1)	(1)
September	0	0	2,821	(1)	(1)
October	0	0	0	(1)	(1)
November	0	0	17,445	(1)	(1)
December	0	8,810	0	(1)	(1)
Total	0	8,810	41,493	12,436	15,460

¹ Not applicable.

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

Table F-4

Silicomanganese: U.S. imports of silicomanganese from Venezuela, by months, 1991-93, Jan.-June 1993, and Jan.-June 1994

(In short tons)					
Item	1991	1992	1993	Jan.-June-- 1993	1994
January	0	0	0	0	1,298
February	0	0	2,116	2,116	0
March	0	0	4,373	4,373	1,764
April	0	661	0	0	0
May	0	0	0	0	2,480
June	0	0	3,417	3,417	0
July	2,756	0	0	(1)	(1)
August	0	1,488	1,213	(1)	(1)
September	0	0	2,646	(1)	(1)
October	0	2,094	0	(1)	(1)
November	0	2,877	1,653	(1)	(1)
December	0	2,690	0	(1)	(1)
Total	2,756	9,810	15,418	9,906	5,542

¹ Not applicable.

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

Table F-5

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
Quantity (short tons)					
Brazil	51,656	61,512	71,400	33,329	23,560
China	5,848	12,591	56,430	5,644	19,751
Ukraine	0	8,810	41,493	12,436	15,460
Venezuela	2,756	9,810	15,418	9,906	5,542
Subtotal	60,260	92,724	184,741	61,315	64,313
Australia	41,024	35,256	29,471	14,546	21,236
France	10,955	13,052	15,128	4,105	4,134
Mexico	25,303	21,839	25,309	11,557	5,732
Norway	16,103	11,846	7,190	1,649	3,536
South Africa	68,484	70,562	63,461	32,804	68,886
Argentina	9,012	13,611	0	0	0
Canada	17,209	156	184	184	0
India	0	0	0	0	15,068
Italy	3,527	0	5,732	5,732	0
Philippines	1,102	0	0	0	0
Russia	0	0	494	0	0
Spain	2,441	2,613	2,294	857	830
United Kingdom	2,759	1,381	0	0	0
Yugoslavia (former)	25,221	20,447	14,424	14,424	8,043
Total	283,400	283,487	348,427	147,175	191,777
Value (1,000 dollars)					
Brazil	24,349	26,322	29,375	13,619	10,912
China	2,984	5,628	22,967	2,095	7,661
Ukraine	0	3,640	15,300	4,661	5,962
Venezuela	1,373	4,215	5,785	3,571	2,532
Subtotal	28,706	39,804	73,428	23,946	27,068
Australia	19,295	13,815	11,863	6,122	9,132
France	6,058	5,977	6,532	1,765	1,975
Mexico	12,139	10,573	10,376	5,180	2,588
Norway	9,681	8,610	6,130	1,388	2,937
South Africa	34,691	33,605	28,708	15,475	28,662
Argentina	3,946	4,794	0	0	0
Canada	7,878	75	62	62	0
India	0	0	0	0	6,900
Italy	1,692	0	2,476	2,476	0
Philippines	524	0	0	0	0
Russia	0	0	182	0	0
Spain	2,267	2,400	1,901	753	669
United Kingdom	1,263	611	0	0	0
Yugoslavia (former)	12,112	9,590	6,389	6,389	3,435
Total	140,251	129,856	148,047	63,556	83,365

Table continued on the following page.

Table F-5--Continued

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
	Unit value (<i>per short ton</i>)				
Brazil	\$471.37	\$427.91	\$411.41	\$408.62	\$463.16
China	510.27	446.93	407.01	371.17	387.89
Ukraine	(1)	413.18	368.74	374.78	385.65
Venezuela	498.05	429.65	375.22	360.52	456.92
Average	476.36	429.28	397.46	390.54	420.87
Australia	470.33	391.84	402.55	420.87	430.04
France	553.05	457.92	431.81	430.03	477.72
Mexico	479.76	484.16	409.96	448.17	451.45
Norway	601.19	726.86	852.52	842.08	830.76
South Africa	506.56	476.25	452.37	471.72	416.08
Argentina	437.85	352.25	(1)	(1)	(1)
Canada	457.76	478.80	334.38	334.38	(1)
India	(1)	(1)	(1)	(1)	457.94
Italy	479.66	(1)	431.99	431.99	(1)
Philippines	474.97	(1)	(1)	(1)	(1)
Russia	(1)	(1)	369.17	(1)	(1)
Spain	928.85	918.49	828.84	878.49	805.71
United Kingdom	457.60	442.82	(1)	(1)	(1)
Yugoslavia (former)	480.23	469.02	442.96	442.96	427.04
Average	494.89	458.07	424.90	431.84	434.70
	Share of total quantity (<i>percent</i>)				
Brazil	18.2	21.7	20.5	22.6	12.3
China	2.1	4.4	16.2	3.8	10.3
Ukraine	0	3.1	11.9	8.4	8.1
Venezuela	1.0	3.5	4.4	6.7	2.9
Subtotal	21.3	32.7	53.0	41.7	33.5
Australia	14.5	12.4	8.5	9.9	11.1
France	3.9	4.6	4.3	2.8	2.2
Mexico	8.9	7.7	7.3	7.9	3.0
Norway	5.7	4.2	2.1	1.1	1.8
South Africa	24.2	24.9	18.2	22.3	35.9
Argentina	3.2	4.8	0	0	0
Canada	6.1	.1	.1	.1	0
India	0	0	0	0	7.9
Italy	1.2	0	1.6	3.9	0
Philippines . . . . .	.4	0	0	0	0
Russia	0	0	.1	0	0
Spain . . . . .	.9	.9	.7	.6	.4
United Kingdom	1.0	.5	0	0	0
Yugoslavia (former)	8.9	7.2	4.1	9.8	4.2
Total	100.0	100.0	100.0	100.0	100.0

Table continued on the following page.

Table F-5--Continued

Silicomanganese: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
	Share of total value (<i>percent</i>)				
Brazil	17.4	20.3	19.8	21.4	13.1
China	2.1	4.3	15.5	3.3	9.2
Ukraine	0	2.8	10.3	7.3	7.2
Venezuela	1.0	3.2	3.9	5.6	3.0
Subtotal	20.5	30.7	49.6	37.7	32.5
Australia	13.8	10.6	8.0	9.6	11.0
France	4.3	4.6	4.4	2.8	2.4
Mexico	8.7	8.1	7.0	8.2	3.1
Norway	6.9	6.6	4.1	2.2	3.5
South Africa	24.7	25.9	19.4	24.3	34.4
Argentina	2.8	3.7	0	0	0
Canada	5.6	.1	(2)	.1	0
India	0	0	0	0	8.3
Italy	1.2	0	1.7	3.9	0
Philippines . . . . .	.4	0	0	0	0
Russia	0	0	.1	0	0
Spain	1.6	1.8	1.3	1.2	.8
United Kingdom . . . . .	.9	.5	0	0	0
Yugoslavia (former)	8.6	7.4	4.3	10.1	4.1
Total	100.0	100.0	100.0	100.0	100.0

¹ Not applicable.² Positive figure, but less than significant digits displayed.

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 (revised by staff to reflect Census Bureau verification results).

Table F-6
 Silicomanganese: U.S. imports as reported in Commission questionnaires, by sources, 1991-93,
 Jan.-June 1993, and Jan.-June 1994

* * * * *

APPENDIX G

**ELKEM'S NON-PRODUCTION PARTICIPATION
IN THE U.S. MARKET**

Table G-1

Silicomanganese: Elkem's U.S. shipments of its imports, by types and by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Table G-2

Silicomanganese: Elkem's purchases, 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * *

Elkem purchased silicomanganese from ***.¹ Elkem purchased silicomanganese from ***.² Elkem provided invoices identifying ***.³ Elkem was unable to allocate these shipments between ***, but was able to ***.⁴ The following tabulation presents the volume of ***:

* * * * *

The differences noted in the preceding tabulation ***. Since this tabulation records ***,⁵ Elkem's swaps ***.

¹ Elkem's purchases were equivalent to ***.

² Elkem accounted for ***.

³ Elkem's invoices ***.

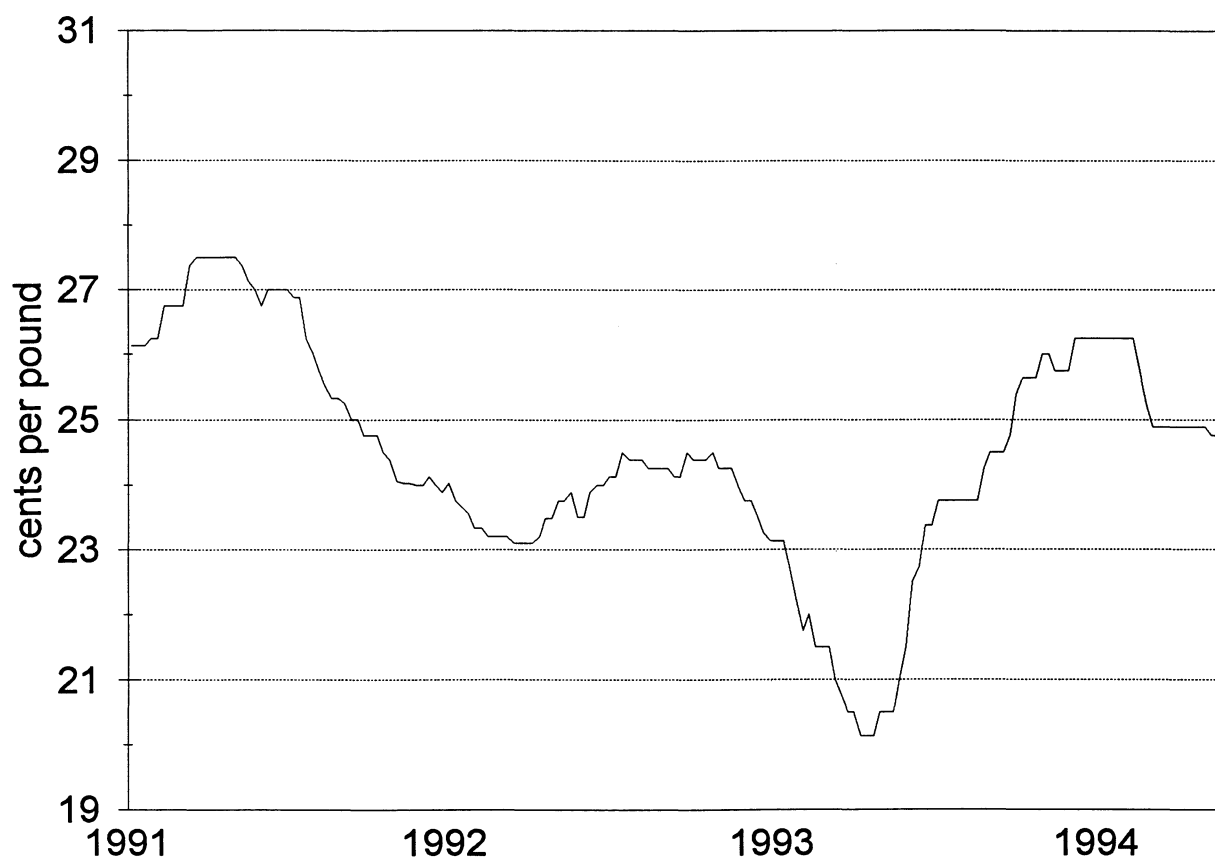
⁴ Elkem's swap shipments of its domestically produced silicomanganese are presented in the section of this report entitled "U.S. Producers' Shipments."

⁵ For instance, ***.

APPENDIX H
PUBLISHED PRICE DATA

Figure H-1

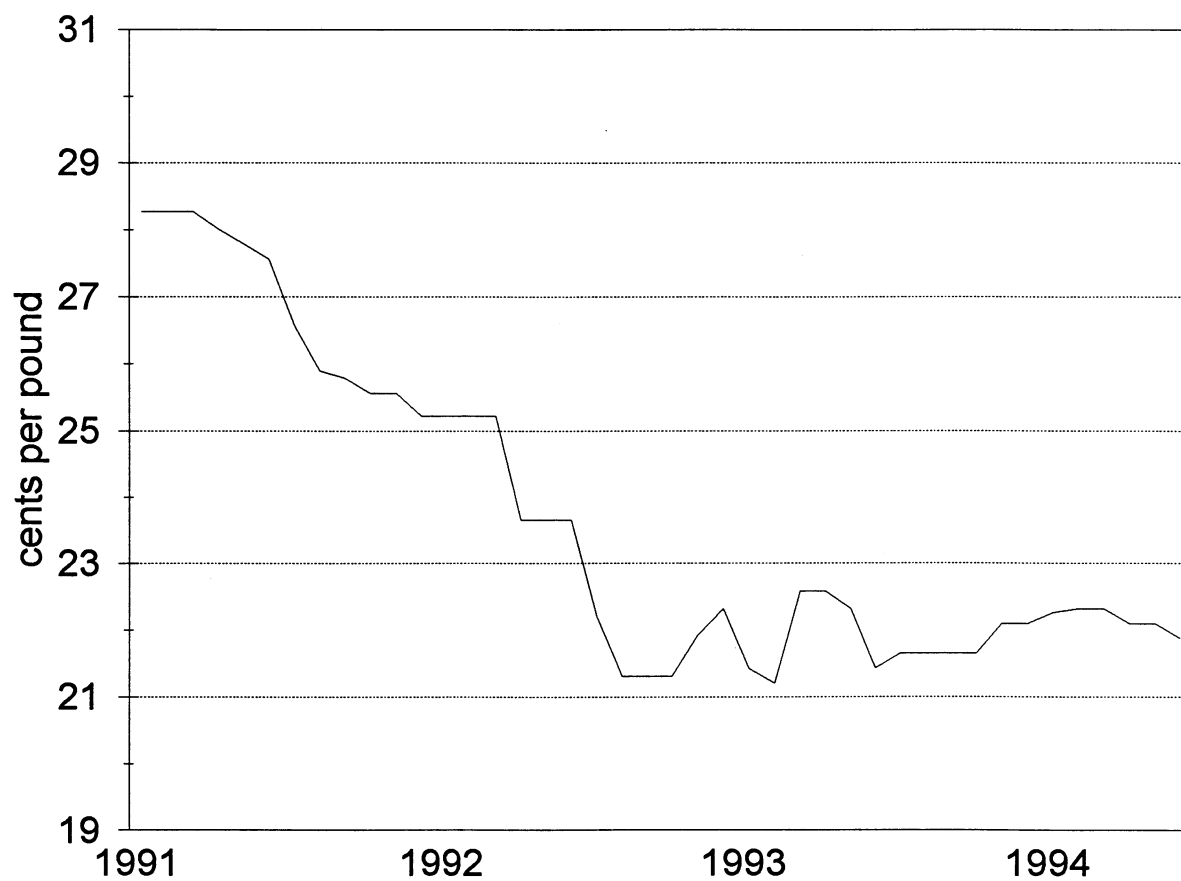
Metals Week 2-percent carbon imported silicomanganese prices,¹ Jan. 1991-June 1994



¹ Imported (dealer) quote, duty-paid, f.o.b. Pittsburgh or Chicago warehouses, 65-68% Mn, 16-18.5% Si, 0.2% P, 2% C.

Source: *Platts Metals Week*.

Figure H-2
Metal Bulletin's ferromanganese prices,¹ Jan. 1991-June 1994



¹ Ferromanganese (78% Mn, standard 7.5% C) prices, free market, in warehouse Pittsburgh.

Source: *Metal Bulletin*.