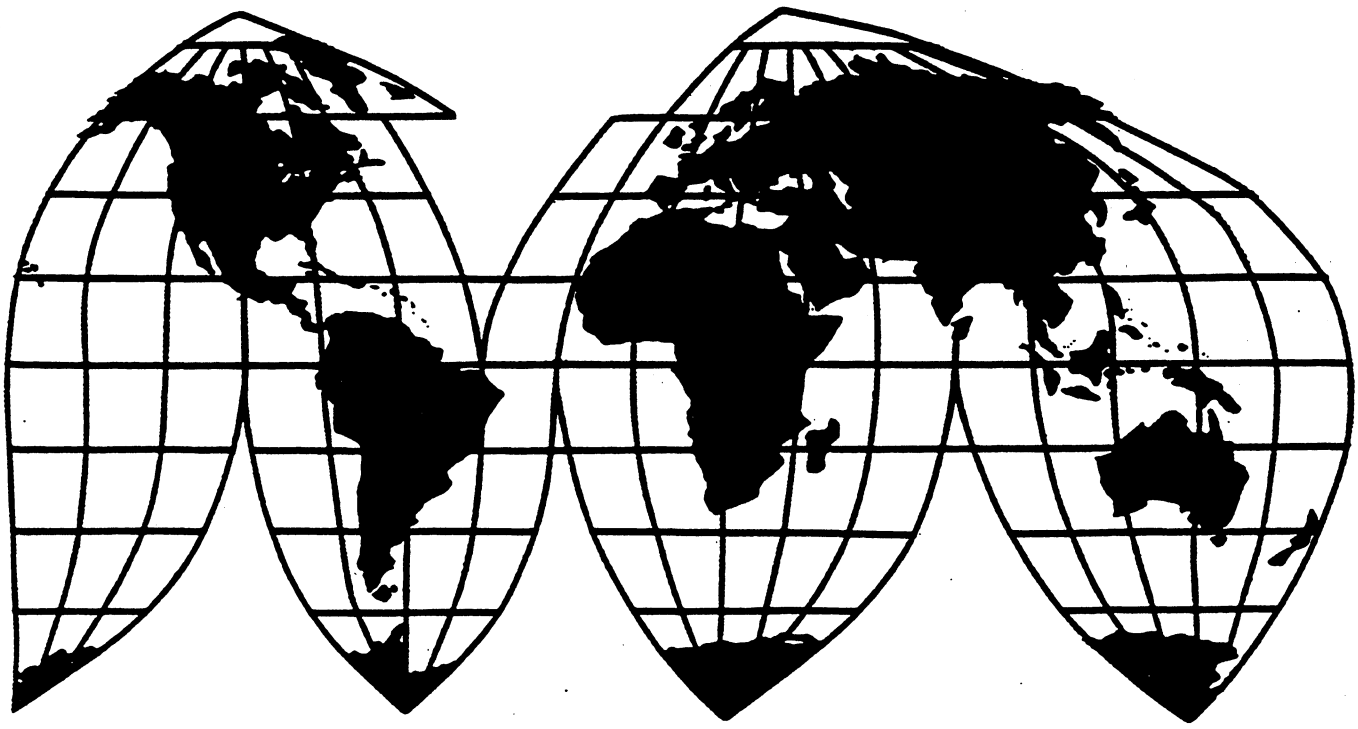
Manganese Metal from the People's Republic of China

Investigation No. 731-TA-724 (Final)

Publication 2939 **December 1995**

U.S. International Trade Commission



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U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-724 (Final)

MANGANESE METAL FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act),[3] that an industry in the United States is materially injured by reason of imports from the People's Republic of China (China) of manganese metal,[4] provided for in subheadings 8111.00.45 and 8111.00.60 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).

Background

The Commission instituted this investigation effective June 13, 1995, following a preliminary determination by the Department of Commerce that imports of manganese metal from China 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 investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 6, 1995 (60 F.R. 35223). The hearing was held in Washington, DC, on November 1, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Chairman Peter S. Watson and Commissioner Carol T. Crawford dissenting.

[3] The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act (URAA). See Pub. L. 103-465, 108 Stat. 4809 at § 291. Therefore, this investigation was conducted pursuant to the substantive and procedural rules of law that existed prior to the URAA.

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

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is materially injured by reason of imports of manganese metal from the People's Republic of China ("China") that are sold in the United States at less than fair value (LTFV).[1] [2]

I. DEFINITION OF 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, the Commission first defines the "like product" and the "domestic industry."[3] Section 771(4)(A) of the Tariff Act of 1930 ("the Act"), as amended, 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. . . ."[4] In turn, the statute 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. . . ."[5] The Commission's decision regarding the appropriate like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[6] No single factor is dispositive, and the Commission

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[1] Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act (URAA). See Pub. L. 103-465, 108 Stat. 4809 at § 291. Thus, this investigation is conducted pursuant to substantive and procedural rules of the law as it existed prior to the URAA. Accordingly, all references to the statute in these views are to the statute as it existed prior to the URAA.

[2] Chairman Watson and Commissioner Crawford determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of manganese metal from China that are sold in the United States at LTFV. See Dissenting Views of Chairman Watson; Dissenting Views of Commissioner Crawford. They join sections I and II of these Views.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(10).

[6] See, e.g., Nippon Steel Corp. v. United States, Slip Op. 95-57 at 11 (Ct. Int'l Trade, Apr. 3, 1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Calabrian Corp. v. United States, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992).

may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[7]

The imported merchandise subject to this investigation has been defined by the Department of Commerce ("Commerce") as manganese metal from China. Manganese metal within the scope of the investigation contains by weight not less than 95 percent manganese.[8]

The single like product issue in this final investigation concerns whether the like product should be expanded downstream to encompass manganese-aluminum briquettes, as advocated by respondent Cometals, Inc.[9] These briquettes are made by blending manganese metal powder with aluminum and compacting the mixture, yielding a brick-like product containing 25 percent aluminum and 75 percent manganese by weight.[10]

Manganese-aluminum briquettes contain less than 95 percent manganese by weight, and thus are not within the scope of the imported articles subject to investigation. Briquettes are a downstream product, and the Commission generally does not include such articles in the like product when the downstream imported product corresponding to the downstream domestic product is not within the scope of investigation.[11]

Application of a traditional like product analysis does not support including manganese-aluminum briquettes in the like product. Briquettes contain by weight 75 percent manganese and 25 percent aluminum, while manganese metal generally contains not less than 99.7 percent manganese by weight.[12] There are also distinctions in end uses. Manganese-aluminum briquettes are used exclusively in the aluminum industry.[13] By contrast, manganese metal is used as a strengthening agent in producing stainless steel and other specialty metals and welding rods, as a feedstock in the production of manganese

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[7] Torrington, 747 F. Supp. at 748-49.

[8] Commerce further stated that "[a]ll compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines." 60 Fed. Reg. 56045 (Nov. 6, 1995).

[9] No party has argued that manganese metal flake and powder should be separate like products. The record in this final investigation concerning the similarity of powder and flake with respect to their chemical composition, channels of distribution, and production processes is the same as the one in the preliminary investigation that led the Commission to conclude that powder and flake should be included within the same like product. See Confidential Report (CR) at I-2-4, I-7-9, Public Report (PR) at I-2-3, I-5-6. We therefore find manganese metal powder and flake to be within the same like product for the reasons stated in the preliminary determination. See Manganese Metal from the People's Republic of China, Inv. No. 731-TA-724 (Preliminary), USITC Pub. 2844 at I-6 (Dec. 1994).

[10] See CR at I-9, PR at I-7.

[11] The Commission also does not use a semifinished products like product analysis in such circumstances. See, e.g., Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom, Inv. No. 731-TA-738 (Preliminary), USITC Pub. 2930 (Nov. 1995); Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684-685 (Final), USITC Pub. 2862 at I-7 n.22 (March 1995); Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 at 9 (March 1991).

[12] CR at I-5, I-9; PR at I-3, I-7.

[13] CR at I-10, PR at I-7.

chemicals, and in production of manganese bronze used in marine castings as well as an input in the production of aluminum and manganese-aluminum briquettes.[14]

Because manganese-aluminum briquettes are used exclusively in aluminum production, they are not interchangeable with manganese metal in steel and chemical applications.[15] Both manganese metal powder and manganese-aluminum briquettes can be used as inputs in the production of aluminum. Interchangeability between powder and briquettes is limited, however, by the fact that an aluminum producer that desires to use manganese metal powder as an input must make a significant investment in powder injection equipment.[16]

Channels of distribution for manganese-aluminum briquettes tend to be similar to those for manganese metal. Both are typically sold to end-users.[17]

Customers and producers do not perceive manganese metal and manganese-aluminum briquettes to be the same product. The record suggests that aluminum producers -- the only customers with the theoretical capability of using both manganese-aluminum briquettes and manganese metal -- perceive manganese-aluminum briquettes and manganese metal powder to be distinct inputs because of the special equipment required to use the latter as an input.[18] Petitioners' product literature given to customers indicates that they also perceive manganese-aluminum briquettes to be a distinct product.[19]

There is some similarity in production processes and employees between manganese-aluminum briquettes and manganese metal. Petitioners produce briquettes in the same grinding area where they grind manganese metal into powder.[20] Nevertheless, two firms in the United States produce manganese-aluminum briquettes but do not produce manganese metal; additionally, petitioners have manufactured briquettes from purchased powder.[21] Prices for U.S.-produced manganese-aluminum briquettes are higher than those for U.S-produced manganese metal flake or powder.[22]

Under the Commission's traditional like product analysis the distinct chemical composition of manganese-aluminum briquettes, the very limited interchangeability between briquettes and manganese metal flake or powder, and producer and customer perceptions of briquettes as a distinct product from manganese metal result in our determination not to include manganese-aluminum briquettes in the same like product as manganese metal. Accordingly, we find one like product in this investigation consisting of all forms of manganese metal containing by weight not less than 95 percent manganese.

We further determine the domestic industry consists of all U.S. producers of manganese metal. These are petitioners Kerr-McGee Chemical Corp. (KMCC) and Elkem Metals Co. (Elkem). In

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[14] See CR at I-4, I-10, PR at I-3, I-7.

[15] CR at I-10, PR at I-7.

[16] See CR at I-10, PR at I-7.

[17] CR at I-10, PR at I-7.

[18] See CR at I-10-11, PR at I-7.

[19] Petitioners' Postconference Brief, app. 2.

[20] CR at I-10, PR at I-7.

[21] See CR at I-10 n.29, III-6, V-1; PR at I-7 n.29, III-3, V-1.

[22] CR at I-10 n.30, PR at I-7 n.30.

accordance with our general practice, we include in the industry producers of all domestic production of the like product, whether captively consumed or sold in the open market.[23]

Elkem is a "related party" pursuant to 19 U.S.C. § 1677(4)(B) because it imported manganese metal from China during 1992.[24] In the preliminary determination, the Commission declined to exclude Elkem from the domestic industry as a related party. This was because its import volumes were very small, and it acquired Chinese product solely for testing purposes. Moreover, the importation had no material impact on Elkem's performance and did not put Elkem in a materially different position from the only other domestic manganese metal producer, KMCC.[25] The record in this final investigation contains no additional or different facts concerning this importation. Accordingly, we have again determined not to exclude Elkem from the domestic industry.

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[26] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[27]

We note at the outset two pertinent conditions of competition distinctive to the manganese metal industry. First, the industry participated in several atypical transactions during 1994. Petitioner Elkem ***. This *** far exceeded *** typical annual ***, which returned to prior levels after the 1994 transaction was completed. Additionally, the size of the *** was very unusual for the industry. ***.[28] Moreover, because Elkem ***.[29] ***.[30] Although we do not disregard these 1994 transactions in our

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

[24] CR at IV-1, PR at IV-1. Although the volume of manganese metal from China imported by Elkem was small, the Commission has determined a domestic producer to be a "related party" when it imports even small quantities of subject merchandise. See Certain Sodium Sulfur Chemical Compounds from the Federal Republic of Germany, the People's Republic of China, Turkey, and the United Kingdom, Inv. Nos. 731-TA-303, 731-TA-465-468 (Preliminary), USITC Pub. 2307 at 11 n.34 (Aug. 1990) (importation of a single shipment).

[25] Manganese Metal from the People's Republic of China, Inv. No. 731-TA-724 (Preliminary), USITC Pub. 2844 at I-8 & n.27 (Dec. 1994).

[26] 19 U.S.C. § 1677(7)(C)(iii).

[27] 19 U.S.C. § 1677(7)(C)(iii).

[28] Petitioners' Posthearing Brief, Answers to Commission Questions at 2-3; Table III-2, CR at III-7, PR at III-4.

[29] CR at III-5-6; PR at III-3.

[30] Petitioners' Posthearing Brief, Answers to Commission Questions at 2.

analysis of the condition of the industry, we have taken the exceptional nature of these transactions into account in our analysis of consumption and shipment data.

A second pertinent condition of competition is that the domestic producers captively consume a substantial portion of their manganese metal production to manufacture manganese-aluminum briquettes. The percentage of total domestic shipments accounted for by company transfers declined from 1992 to 1994, but was higher in the first six months of 1995 (interim 1995) than in the first six months of 1994 (interim 1994).[31] The domestic industry does compete directly with the subject imports in the open market.

Apparent U.S. consumption of manganese metal increased in both quantity and value from 1992 to 1994. Consumption was lower, however, in interim 1995 than in interim 1994.[32] The trends concerning domestic consumption of manganese metal mirror consumption trends in the steel and aluminum industries, the two principal consumers of manganese metal.[33]

The quantity and value of the domestic industry's U.S. shipments of manganese metal also increased from 1992 to 1994, although at a lower rate than consumption.[34] This increase reflected increased demand in the aluminum and steel industries, as well as the unusual 1994 transactions.[35] U.S. shipments declined in quantity and value in interim 1995 as compared to interim 1994.[36] In terms of total U.S. shipments, domestic producers' market share declined from 1992 to 1994, but was higher in interim 1995 than in interim 1994.[37] By contrast, in terms of open market shipments, domestic

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[31] Company transfers accounted for *** percent of domestic producers' U.S. shipments in 1992, *** percent in 1993, *** percent in 1994, *** percent in interim 1994, and *** percent in interim 1995. Table III-2, CR at III-7, PR at III-4. (Because the domestic industry consists of only two producers, the actual data are confidential.) The reduced 1994 proportions are attributable in substantial part to the unusual transactions described above; as previously stated, ***.

[32] Consumption increased *** percent by quantity (from *** short tons to *** short tons) and *** percent by value (from *** to ***) from 1992 to 1994. Consumption quantity was *** percent lower (*** short tons as opposed to *** short tons) and consumption value was *** percent lower (*** as opposed to ***) in interim 1995 than in interim 1994. Table IV-5, CR at IV-9, PR at IV-7. Open-market consumption also increased from 1992 to 1994 and declined in interim 1995 as compared to interim 1994. Table IV-6, CR at IV-10, PR at IV-7.

[33] See CR at I-4, PR at I-3; Testimony of James C. Burrows, exs. 7, 8.

[34] The quantity of the domestic industry's U.S. shipments increased by *** percent, from *** short tons to *** short tons, and the value of U.S. shipments increased by *** percent, from *** to ***, from 1992 to 1994. Table III-2, CR at III-7, PR at III-4. Open market shipments, as well as total U.S. shipments, increased. Id.

[35] CR at III-6; PR at III-3.

[36] Domestic producers' U.S. shipments were *** percent lower in quantity (*** short tons as compared to *** short tons) and *** percent lower in value (*** as compared to ***) in interim 1995 than in interim 1994. Table III-2, CR at III-7, PR at III-4. Open-market shipments also declined in the interim period comparison. Id.

[37] Measured by quantity, U.S. producers' share of total U.S. shipments declined from *** percent in 1992 to *** percent in 1994; the interim 1995 figure of *** percent was higher than the interim 1994 figure of *** percent. Table IV-5, CR at IV-9, PR at IV-7.

producers' market share increased from 1992 to 1994, and was lower in interim 1995 than in interim 1994.[38]

The domestic industry's production increased from 1992 to 1994 and declined between the interim periods.[39] Capacity fluctuated narrowly during the period of investigation,[40] as did capacity utilization, which increased from 1992 to 1994, and declined between the interim periods.[41]

The domestic industry's shipments increased at a greater rate than did production from 1992 to 1994 because there were significant sales from inventory, particularly by KMCC.[42] The domestic industry's inventories declined irregularly from 1992 to 1994, and also were lower in interim 1995 than in interim 1994.[43] The ratio of inventories to total shipments declined throughout the period of investigation.[44]

The number of production and related workers (PRWs) fluctuated within a narrow range.[45] Wages and total compensation paid to PRWs increased during the period of investigation.[46]

The domestic industry operated unprofitably during most of the period of investigation. Operating losses increased from 1992 to 1994.[47] Although sales increased throughout this period, average unit values declined and selling, general, and administrative expenses ***. By contrast, sales in interim 1995

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[38] Measured by quantity, U.S. producers' share of open market shipments increased from *** percent in 1992 to *** percent in 1994; the interim 1995 figure of *** percent was lower than the interim 1994 figure of *** percent. Table IV-6, CR at IV-10, PR at IV-7.

[39] Production rose from *** short tons in 1992 to *** short tons in 1994, an increase of *** percent. Interim 1995 production of *** short tons was *** percent less than interim 1994 production of *** short tons. Table III-1, CR at III-4, PR at III-2.

[40] Average-of-period capacity increased irregularly from *** short tons in 1992 to *** short tons in 1994. The interim 1995 capacity figure of *** short tons exceeded the interim 1994 figure of *** short tons. Table III-1, CR at III-4, PR at III-2.

[41] Capacity utilization increased from *** percent in 1992 to *** percent in 1994. Capacity utilization in interim 1995 was *** percent, which was lower than the interim 1994 figure of *** percent. Table III-1, CR at III-4, PR at III-2.

[42] Tr. at 21-22 (Ezell).

[43] End-of-period inventories declined by *** percent from *** short tons in 1992 to *** short tons in 1994. Interim 1995 inventories of *** short tons were *** percent less than interim 1994 inventories of *** short tons. Table III-3, CR at III-14, PR at III-5.

[44] Table III-3, CR at III-14, PR at III-5.

[45] The number of production and related workers declined irregularly from *** in 1992 to *** in 1994. In interim 1995, there were *** such workers, as compared to *** in interim 1994. Table III-4, CR at III-16, PR at III-6.

[46] Wages paid to PRWs increased by *** percent from *** in 1992 to *** in 1994. Total compensation rose by *** percent from *** in 1992 to *** in 1994. Between interim 1994 and interim 1995 wages and total compensation increased by *** and *** percent respectively; wages from *** to ***, and total compensation from *** to ***. Table III-4, CR at III-16, PR at III-6.

[47] The domestic industry's operating losses increased from *** in 1992 to *** in 1993 and *** in 1994. Table VI-6, CR at VI-13, PR at VI-4. See also Tr. at 12.

declined as compared to interim 1994, but average unit values increased.[48] During interim 1995, the domestic industry's operating performance improved over interim 1994.[49]

Capital expenditures increased during the period of investigation.[50] Research and development expenses declined irregularly.[51] [52] [53]

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports subject to investigation that Commerce has determined to be sold at LTFV.[54] In making this determination, 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.[55] Although the Commission may consider causes of injury to the industry other than the LTFV imports,[56] it is not to weigh causes.[57] [58]

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[48] Table VI-6, CR at VI-13, PR at VI-4.

[49] The industry posted an operating *** of *** in interim 1995, as compared to an operating *** of *** in interim 1994. Table VI-6, CR at VI-13, PR at VI-4.

[50] Capital expenditures increased by *** percent from *** in 1992 to *** in 1994; interim 1995 expenditures of *** were *** percent higher than interim 1994 expenditures of ***. Table VI-10, CR at VI-20, PR at VI-5. These increases were attributable to ***. CR at VI-17, PR at VI-5.

[51] Such expenses declined by *** percent from *** in 1992 to *** in 1994; interim 1995 expenses of *** were *** percent lower than interim 1994 expenses of ***. Table VI-10, CR at VI-20, PR at VI-5.

[52] Based on the foregoing, particularly the domestic producers' market share decline in terms of total U.S. shipments and the consistent operating losses from 1992 to 1994, Commissioner Rohr and Commissioner Newquist conclude that the domestic manganese metal industry is experiencing material injury.

[53] Chairman Watson and Commissioner Crawford do not join the remainder of this opinion. See their Dissenting Views.

[54] 19 U.S.C. § 1673d(b). The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant." 19 U.S.C. § 1677(7)(A).

[55] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[56] 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).

[57] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

For the reasons discussed below, we determine that the domestic manganese metal industry is materially injured by reason of LTFV imports of manganese metal from China.

A. Volume of Subject Imports

The quantity of subject imports rose dramatically from 1992 to 1994, increasing from 1,730 short tons in 1992 to 2,999 short tons in 1993 and 5,309 short tons in 1994. The value of subject imports increased from $2.54 million in 1992 to $4.24 million in 1993 and $6.94 million in 1994.[59] U.S. market penetration of the subject imports also increased significantly from 1992 to 1994.[60] Non-subject imports were a fairly stable presence in the market throughout the period of investigation.[61]

Subject import volume and market penetration were considerably lower in interim 1995 than in interim 1994.[62] Information in the record -- including testimony by respondent Cometals -- indicates that this decline was largely attributable to importers' unwillingness to import manganese metal from China during the pendency of this investigation.[63] We therefore have given little weight to the 1995 decline in subject import volume in evaluating the significance of the volume of subject imports.

Instead, based on the trebling of subject import quantities and the sharp increase in market penetration from 1992 to 1994, we find that the increase in subject import volumes, both in absolute terms and relative to consumption in the United States, is significant.[64] [65]

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[58] (...continued)

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

[59] Table IV-1, CR at IV-2, PR at IV-2. We have used Department of Commerce statistics to determine import data.

[60] Measured by quantity, subject import market penetration increased from *** percent in 1992 to *** percent in 1993 and *** percent in 1994. Measured by value, subject import market penetration increased from *** percent in 1992 to *** percent in 1993 and *** percent in 1994. Table IV-5, CR at IV-9, PR at IV-7. Subject import market penetration increased in the open market as well as the total market, reaching *** percent, measured by quantity, in 1994. Table IV-6, CR at IV-10, PR at IV-7.

[61] See Table IV-5, CR at IV-9, PR at IV-7.

[62] The quantity of subject imports was 1,087 short tons in interim 1995 as compared to 2,686 short tons in interim 1994; the value was $1.70 million in interim 1995 as compared to $3.48 million in interim 1994. Table IV-1, CR at IV-2, PR at IV-2. Between interim 1994 and interim 1995, subject import market penetration declined from *** percent to *** percent by quantity and from *** percent to *** percent by value. Table IV-5, CR at IV-9, PR at IV-7.

[63] Petitioners' Posthearing Brief, ex. 4; Tr. at 109 (Kofsky).

[64] Respondents argued that subject imports were not significant because they merely displaced nonsubject imports, and not domestic shipments of manganese metal, in the U.S. market. The record here does not clearly demonstrate that subject imports only displaced nonsubject imports. Moreover, in this case, the increase in the volume of subject imports was coincident with price declines which, as discussed further below, had a direct adverse impact on the domestic industry. The increased volume of subject imports was thus particularly significant because the increased volume was at lower, dumped prices.

B. Price Effects of the Subject Imports

The increasing volumes of subject imports were predominantly of a product that competes directly with a domestic product. Manganese metal flake constituted the majority of both imports and domestic open market sales over the period of investigation.[66] This product is generally sold to the steel industry.[67]

The record indicates that the steel industry considers the Chinese product and domestically-produced manganese metal to be fungible. Eight of ten steel industry purchasers of manganese metal stated that Chinese and domestically-produced manganese metal could be used to produce the same range of products.[68] Indeed, although respondent Cometals asserted that several steel producers could not use manganese metal from China in their applications, a majority of these producers informed Commission staff that the Chinese and domestically-produced products could in fact be used interchangeably.[69]

Purchasers further indicated that product quality and price were the two most important factors in their purchasing decisions.[70] The record indicates, however, that there are generally no clear quality distinctions between the subject imports and domestically-produced manganese metal. Ten of 15 responding purchasers reported that, for their uses, there were no significant quality differences between U.S. and Chinese manganese metal.[71] A majority of importers also agreed that any differences in quality between the domestically-produced product and the subject imports were not significant factors in their sales.[72]

Although quality was not a distinguishing consideration between the subject imports and the domestic like product, price -- the other principal factor considered in purchasing decisions -- was. The subject imports undersold the domestic like product in virtually all price comparisons of manganese metal

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[65] (...continued)

[65] Commissioner Rohr and Commissioner Newquist do not dispute the factual nature of the preceding footnote, i.e., that subject imports did not simply displace nonsubject imports. They disagree, however, with the inference that, if the reverse were true, i.e., that subject imports did simply displace nonsubject imports, such a relationship necessarily supports a negative determination.

[66] Figure III-3, CR at III-9, PR at III-4; CR at II-10, PR at II-7.

[67] CR at I-3, PR at I-3.

[68] CR at II-15, PR at II-11. These eight respondents purchased 84 percent of the total manganese metal purchased by the ten respondents. Id. We observe that the purchaser questionnaire data discussed in this section were not available to the Commission in its preliminary investigation.

[69] CR at II-14, PR at II-11. Respondents also argued that the subject imports and domestically-produced manganese metal could not be used interchangeably in the production of manganese aluminum briquettes. As acknowledged by petitioners, the high selenium content of most manganese metal from China does limit its ability to be used in aluminum applications. Tr. at 92 (Ezell), 92-93 (Ferguson). Nevertheless, a sizable minority (*** percent) of manganese metal imported from China during the period of investigation was used to produce manganese-aluminum briquettes. CR at II-15, PR at II-11. We therefore cannot conclude that the subject imports and the domestic like product have no interchangeability in aluminum applications.

[70] CR at II-10-11, PR at II-7-8.

[71] CR at II-13, PR at II-9.

[72] CR at II-13, PR at II-10.

flake.[73] Underselling margins tended to be highest during 1994, when import volumes were at their peak.[74] Moreover, the record contains several instances of confirmed lost sales and lost revenue allegations due to underselling by subject imports.[75] We therefore find significant underselling by the subject imports.

We also conclude that the increasing volumes of subject imports served to a significant degree to depress domestic prices. When subject import volumes were increasing, subject import prices were generally declining. Prices for Chinese flake in 1993 were generally below 1992 levels; and prices in 1994, when import volume and market penetration were highest, were generally below 1993 levels.[76] The price reductions for Chinese manganese metal flake depressed prices for the interchangeable domestic like product. Petitioners testified that they were required to reduce prices across the board to their customers in response to the Chinese competition and the record contains one significant confirmed instance in which a purchaser used lower Chinese prices in order to negotiate price reductions with one of the domestic manganese metal producers.[77] Moreover, overall prices for domestically-produced flake followed a similar pattern to those for the Chinese product; the 1994 prices were well below prices prevailing in 1992.[78]

The nexus between increased subject import volumes and depressed domestic price levels is further evidenced by pricing patterns in 1995, when subject import volumes sharply declined as a result of this investigation. Prices of both domestically-produced and Chinese flake during the first two quarters of 1995 increased significantly from 1994 levels.[79]

C. Impact of the Subject Imports on the Domestic Industry

The significant increase in volume of low-priced LTFV imports had an injurious impact on the domestic industry by precluding the domestic industry from selling manganese metal at prices that would allow profitable operations. While the domestic industry's sales quantities and revenues increased from 1992 to 1994, its average unit sales values declined because of the price depressing effects of the subject imports. Meanwhile, although the domestic industry's average unit cost of goods sold ***. Moreover,

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[73] There was underselling in *** of *** comparisons of sales of manganese metal flake to end users and in *** of *** comparisons of such sales to distributors. CR at V-10, PR at V-5. By contrast, the record contains little pricing data concerning Chinese manganese metal powder, which is a less commercially significant product than flake. Moreover, the few available price comparisons for powder concern very small quantities of product. See Table V-1, CR at V-6, PR at V-4. We do not view the limited pricing data concerning powder to be sufficient to change our conclusions concerning the price effects of the subject imports.

[74] See Table V-2, CR at V-11, PR at V-5.

[75] CR at V-14-15, PR at V-7-8.

[76] Table V-1, CR at V-6-7, PR at V-4. There was some fluctuation of prices between quarters within a year. As previously stated, the record contains insufficient observations of prices of powder from China to support any probative conclusions about pricing trends for that product.

[77] Tr. at 22-23 (Ferguson); CR at V-14, PR at V-7.

[78] Table V-1, CR at V-6-7, PR at V-4.

[79] Table V-1, CR at V-6-7, PR at V-4.

average unit sales values declined at a time when the industry's selling, general, and administrative expenses ***. As a result, even with increased sales during this period, the domestic industry's financial condition did not improve, but was instead characterized by escalating operating losses.[80] [81]

The domestic industry's performance in interim 1995 further demonstrates the negative price effects the subject imports had on the domestic industry's operating results. As previously stated, the growth in Chinese import volumes halted in interim 1995 as a result of this investigation, and domestic prices increased from their depressed 1994 levels. Consequently, average unit sales values for the domestic industry increased in interim 1995 over their interim 1994 levels. As a result, even though the domestic industry's sales quantities and revenues declined, and its unit cost of goods sold and selling, general, and administrative expenses *** over interim 1994 levels, the domestic industry's financial performance improved in interim 1995 as compared to interim 1994.[82]

Therefore, although the domestic industry generally increased its sales and production during the period of investigation, the adverse price effects of the subject imports precluded the industry from operating profitably. We therefore conclude that the domestic industry is materially injured by reason of the subject imports.

CONCLUSION

In light of the foregoing, we have determined that domestic manganese metal industry is materially injured by reason of LTFV imports of manganese metal from China.

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[80] Table VI-6, CR at VI-13, PR at VI-4. This conclusion is confirmed by an analysis of the unusual 1994 *** transaction. The *** involved in this single transaction ***. Petitioners' Posthearing Brief, Answers to Commission Questions at 2. Nevertheless, because the ***. Table D-1, CR at D-3, PR at D-3. Compare Table VI-7, CR at VI-16, PR at VI-4.

[81] Vice Chairman Nuzum and Commissioner Bragg note that the domestic industry's declining financial performance from 1992 to 1994 was not simply a function of the *** of Elkem, as maintained by respondents. While it is true that Elkem ***, the other domestic producer, KMCC, ***. Table VI-7, CR at VI-16, PR at VI-4. Thus, the industry's financial problems are not due solely to one producer. In any event, it is the impact of subject imports on the industry as a whole that is the object of our analysis.

[82] Table VI-6, CR at VI-13, PR at VI-4.

SEPARATE AND DISSENTING VIEWS OF CHAIRMAN WATSON
Manganese Metal from the People's Republic of China
Inv. No. 731-TA-724

Based on the record in this final investigation, I determine that the industry in the United States producing manganese metal is not materially injured nor threatened with material injury by reason of LTFV subject imports of manganese metal from China. With respect to like product and domestic industry, I join the majority determination of my colleagues.

Volume of Subject Imports

Although the volume of subject imports increased between 1992 and 1994, from 1730 short tons in 1992 to 2999 short tons in 1993, to 5309 short tons in 1994, volumes declined during interim 1995 from interim 1994. Concurrently, demand for manganese metal in the U.S. market increased ***% from 1992 to 1994, from *** short tons in 1992 to *** short tons in 1994, and decreased during interim 1995 from interim 1994.[1] Thus, it appears that subject import volume trends correlate closely with U.S. demand levels, and that much of the increase in the volume of subject imports may have served to satisfy increased demand in the U.S. market. In addition, much of the subject imports' increase in market share appears to be primarily at the expense of non-subject South African imports. While the domestic producers' market share declined by *** percentage points from 1992 to 1994, it jumped significantly during interim 1995, to a ***% share. Market shares from other sources increased concurrently with declines in domestic market shares between 1992 and 1994.[2] Although the volume of increase in subject imports from China may appear significant in percentage terms, the overall increase in volume is relatively minor in absolute terms, an increase of 3579 short tons between 1992 and 1994, compared to increased demand in the U.S. market of *** short tons over the same period.[3] Thus, I do not find the volume and market shares of subject imports from China to be significant.

The Effect of Subject Imports on Domestic Prices

In evaluating the effect of LTFV imports of manganese metal on domestic prices, I considered whether there has been significant price underselling by subject imports and whether the imports depress prices to a significant degree or prevent price increases that otherwise would have occurred, to a significant degree.[4] Although the subject imports generally undersold the domestic like product in the majority of pricing comparisons,[5] selling prices of the domestic like product generally remained stable

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[1] As discussed in the condition of the industry, it appears that changes in demand in the steel and aluminum industries are the primary determinants of demand in the manganese metal industry.

[2] Table A-1, CR at A-3, PR at A-3.

[3] Id.

[4] 19 U.S.C. §1677(7)(C)(ii).

[5] Table V-2, CR at V-11, PR at V-5.

over the period of investigation.[6] Despite the frequency and magnitude of the underselling by subject imports, there appear to be several mitigating factors. Based on purchasers' questionnaire data, a majority of purchasers rated quality and price as very important factors in their buying decision,[7] and also indicated that quality, availability of supply, and technical support were the major advantages offered by domestic producers.[8] Conversely, the majority of responding domestic purchasers listed price as the major advantage of Chinese manganese metal.[9] Eleven of twelve responding purchasers reported that Chinese product is inferior in terms of quality and chemistry compared to the U.S. product.[10] In addition, certification requirements favor domestic manganese metal. Chinese manganese metal is more difficult to pre-qualify because it may come from a number of different manufacturers, each of which may need to be qualified.[11] Thus, several factors, including quality, supply, technical support, and certification difficulties favor the domestic product, and the pricing data may reflect these product differences. The staff's economic model estimates of price suppression by reason of subject imports was relatively low, ranging from ***% to ***%.[12] In addition, substantial volumes of domestically-produced product were captively consumed. For these reasons, I find that subject imports from China did not depress or suppress prices to a significant degree.

Impact on the Domestic Industry

I do not find an adverse impact on the domestic manganese metal industry by reason of the subject imports. Although the domestic industry's operating losses between 1992 and 1994 were significant, based on my finding of no significant adverse effects by reason of the subject imports, I find an insufficient causal link between the performance of the domestic industry and the subject imports. The domestic industry's increases in shipments, production, sales, capacity utilization, capital expenditures, and generally stable employment figures all indicate that the subject imports have not had a significant adverse impact on the domestic industry.[13] In addition, the revenue effects on the domestic industry by reason of subject imports was relatively minor, ranging from ***% to ***%.[14] In sum, I find that the evidence fails to establish a sufficient causal connection between the condition of the domestic industry and the presence of the LTFV imports from China. I therefore determine that the U.S. industry

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[6] Weighted-average U.S. f.o.b prices for U.S.-produced manganese metal flake and powder fluctuated between January-March 1992 and April-June 1995 with the final prices above the prices at the beginning of the period. CR at V-4, PR at V-4.

[7] CR at II-12, PR at II-8.

[8] Id.

[9] Id.

[10] CR at II-12, PR at II-8.

[11] CR at II-11, PR at II-8. Conversely, there are only two domestic producers and one South African producer of manganese metal. CR at II-12, note 29, PR at II-9, note 29.

[12] CR at appendix F, F-3.

[13] Table A-1, CR at A-3, PR at A-3.

[14] CR at Appendix F, F-3, PR at Appendix F, F-3.

producing manganese metal is not materially injured by reason of the LTFV imports of manganese metal from China.

No Threat of Material Injury By Reason of the Subject Imports

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[15] The Commission may not make such a determination "on the basis of mere conjecture or supposition."[16] In making my determination, I have considered all of the statutory factors that are relevant to this investigation.[17]

Although Chinese production capacity increased by 24.8% between 1992 and 1994, from 14,661 short tons in 1992 to 18,298 short tons in 1994, capacity has remained at the same level since 1993.[18] Thus, production capacity has not increased in two and a half years and is expected to remain at the same level in 1996.[19] Chinese capacity utilization rate has remained at over 90% over the entire period of investigation, ranging from a 95.5% utilization rate in 1992 to a 94.6% utilization rate in 1994.[20] Thus, despite the increase in overall Chinese production levels, given the relatively fixed production capacity levels and the significantly high capacity utilization levels, Chinese production will likely remain relatively constant in the forseeable immediate future.

Although the percentage increase in Chinese exports to the U.S. between 1992 and 1994 was noticeable, such increase was not significant in absolute terms. The level of Chinese exports to non-U.S. markets, as well as the increase to such non-U.S. markets, was significantly greater than Chinese exports to the U.S. market. Chinese exports to the U.S. increased by 2208 short tons between 1992 and 1994, while Chinese exports to non-U.S. markets increased by 7931 tons over the same period.[21] There is no evidence of any rapid increase in U.S. market penetration. Rather, the increase in subject Chinese imports appears to have satisfied some of the increase in overall domestic demand, and import volume levels have subsided in 1995 as demand for manganese metal has diminished.[22] The record does not support a finding that the inventories of subject imports in the U.S. will have an injurious effect. U.S.

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[15] 19 U.S.C. §§1673d(b) and 1677(7)(F)(ii).

[16] 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." Metallverken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (CIT 1990), citing American Spring Wire, 8 CIT at 28, 590 F.Supp. at 1280.

[17] 19 U.S.C. §1677(7)(F)(i). Several of the statutory threat factors have no relevance to this investigation and need not be discussed. Because there are no subsidy findings, factor I is not applicable. Moreover, factor IX regarding raw and processed agricultural products also is not applicable to this case.

[18] Table VII-1, CR at VII-6, PR at VII-5.

[19] Table VII-1, CR at VII-6, PR at VII-5.

[20] Id.

[21] Id.

[22] Table A-1, CR at A-3, PR at A-3.

importers' inventories were not significant, increasing from 306 short tons in 1992 to 1409 short tons in 1994, but declining to *** short tons during interim 1995.[23]

Based on the price discussion above, I do not find that subject imports will enter the United States at prices that will have a depressing or suppresing effect on domestic prices. There is no evidence to support the conclusion that the prices of the subject imports have had a significant depressing or suppressing effect on domestic prices, and there is no indication that these circumstances will change in the near future, especially in light of the declining consumption levels, and the concurrently declining subject import volume levels in the U.S. market.

With respect to "other demonstrable adverse trends", the record indicates that many domestic purchasers do not change suppliers frequently, partly due to the certification process.[24] In this regard, I note that Chinese manganese metal is more difficult to pre-qualify due to the numerous manufacturers which have to be qualified.[25]

For these reasons, I determine that the domestic industry producing manganese metal is not threatened with material injury by reason of the LTFV imports from China.

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[23] Table VII-2, CR at VII-13, PR at VII-10.

[24] CR at II-11, PR at II-8.

[25] Id.

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this final investigation, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of manganese metal from China found by the Department of Commerce to be sold at less-than-fair-value ("LTFV").

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

I. ANALYTICAL FRAMEWORK

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

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States....[1]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[2] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[3]

The statute directs that we determine whether there is "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects 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." It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the

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[1] 19 U.S.C. § 1677(7)(B)(I).

[2] 19 U.S.C.§ 1677(7)(B)(ii).

[3] 19 U.S.C. § 1677(7)(C)(iii).

dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. The Court of International Trade has held that the "statutory language fits very well" with my mode of analysis.[4]

In my analysis of material injury, I evaluate the effects of the dumping on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[5] I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

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

For the reasons discussed below, I determine that the domestic industry producing manganese metal is not materially injured by reason of LTFV imports of manganese metal from China.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor) and whether they have options that allow them to avoid the price increase, for example by switching to alternative products. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is,

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[4] U.S. Steel Group v. United States, 873 F.Supp. 673, 695 (Ct. Int'l Trade 1994), appeal docketed, No. 95-1245 (Fed. Cir. March 22, 1995).

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

whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the elasticity of demand for manganese metal is relatively low.

Cost Factor. The first factor that measures the willingness of purchasers to pay higher prices is the importance of the product to purchasers. If the product is an input, its importance will depend on the significance of the product's cost relative to the total cost of the downstream products in which it is used. When the price of an input is a small portion of the total product cost, changes in the price of the input are less likely to alter demand for the downstream product and, by extension, the demand for the input.

Purchasers reported that manganese metal generally accounts for less than one percent of the total cost of the final steel products in which it is used. Although manganese metal represents a significant portion of the cost of aluminum briquettes, the cost of the manganese metal is a very small share of the cost of aluminum can stock.[6] Thus manganese metal accounts for a very small percentage of the cost of the final products in which it is used.

Alternative Products. A second important factor in determining whether purchasers would be willing to pay higher prices is the availability of commercially viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

In this investigation the record demonstrates that there are no viable alternatives to manganese metal. When asked if substitutes for manganese metal existed, 25 of 27 responding purchasers indicated there was no substitute. Purchasers seeking to avoid a price increase for manganese metal would not have the ability to switch to alternative products.[7]

Taking into consideration both the small cost factor in downstream products and purchasers' inability to use alternative products, I find that the elasticity of demand for manganese metal is low. That is, purchasers would not reduce significantly the amount of manganese metal they buy in response to a general increase in the price of manganese metal.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, purity, rate of defects, convenience or difficulty of usage in production process, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative

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[6] Confidential Report ("CR") at II-9, Public Report ("PR") at II-6.

[7] CR at II-9, PR at II-7.

price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand for manganese metal is relatively inelastic, overall purchases will not decline significantly if manganese metal prices increase. However, purchasers will seek other sources of manganese metal to avoid a price increase. In other words, while overall demand for manganese metal will remain relatively constant, the demand for manganese metal from different sources will decrease or increase depending on their relative prices and the substitutability of manganese metal from different sources. If manganese metal from different sources is substitutable, purchasers are more likely to shift sources when the price from one source (e.g., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers in this investigation have three primary sources of manganese metal: domestically produced manganese metal, subject imports, and nonsubject imports, principally from South Africa. Purchasers are more or less likely to switch from any one of these sources to another as relative price levels change depending on the similarity, or substitutability, between and among them.

Domestic producers captively consumed a significant portion of production of manganese metal in the downstream production of aluminum briquettes throughout the period of investigation. Although a sizable minority of Chinese manganese metal is used to produce aluminum briquettes, it clearly can not be used as readily as the domestic product for this purpose because of its selenium content.[8] Other non-price differences cited by purchasers are certification programs and availability of supply. Most responding purchasers do require some form of certification or prequalification of manganese metal. Chinese product is difficult to prequalify because it may come from several different producers. Also, purchasers often are unable to prequalify Chinese product because the identity of the producer is not known.[9] Domestic producers reported average delivery lead times of one to three days, since most domestic sales are from inventory. The average delivery lead times for importers of the Chinese product, however, range from one to seven days from inventory and one to three months from China.[10] Based on this information, I find that there is limited substitutability between subject imports and domestic manganese metal.

It appears that nonsubject imports of manganese metal are relatively good substitutes for the domestic product. The record shows that manganese metal from nonsubject countries is used in the same applications as the domestic product. Also, nearly all purchasers reported that the quality of the subject merchandise from nonsubject countries is comparable to that of domestic manganese metal.[11] Nonsubject imports of manganese metal do not contain selenium and may be readily used in the production of aluminum briquettes.[12] Similar to imports from China, however, nonsubject imports may be subject to long lead times between order and delivery.[13] I conclude that there is reasonably good substitutability

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[8] CR at II-19, PR at II-14.

[9] CR at II-11, PR at II-8.

[10] CR at II-13, PR at II-9.

[11] CR at II-17, PR at II-12.

[12] Id.

[13] CR at II-20, PR at II-14.

between nonsubject imports and the domestic product and between nonsubject imports and subject imports.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market.

The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers, able to produce sufficient amounts of a product to meet purchaser demand. Capacity utilization rates are also key. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick.

Capacity Utilization and Inventories. In 1994, average-of-period capacity utilization for the domestic industry was *** percent.[14] The domestic industry is operated at near practical full capacity.[15] It did not have sizeable inventories available at the end of 1994. Also, the domestic industry did not have significant export sales in 1994 that could be diverted to the U.S. market.[16] Domestic producers also indicated that converting machinery used in the production of manganese metal to the production of other products either would not be economically feasible or would not be possible.[17] Because of these constraints on supply, it appears that the domestic industry would seek to respond to changes in demand for manganese metal with smaller increases in shipments and larger changes in price.

Level of Competition. The domestic manganese metal market is competitive. There are two domestic producers of manganese metal. In addition, nonsubject imports have a significant presence in the U.S. market, accounting for approximately *** of open market consumption in 1994.[18]

Finally, as I discuss further below, a significant quantity of imports from China would still have entered the U.S. market if subject imports had been fairly priced. The record thus indicates that there would have been significant competition in the domestic market among domestic producers, nonsubject imports, and continued imports from China if subject imports had been fairly priced.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF MANGANESE METAL FROM CHINA

The statute requires us to consider the volume of LTFV imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

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[14] CR at A-3, Table A-1.

[15] Unused domestic capacity includes a dormant production line that Elkem closed in 1990.

[16] CR at A-3, Table A-1.

[17] CR at II-3, PR at II-3.

[18] CR at A-5 to A-6, Table A-2.

A. Volume of Subject Imports

Subject imports of manganese metal increased from 1,730 tons in 1992, to 2,999 tons in 1993, and to 5,309 tons in 1994. The value of subject imports of pure manganese metal was $2.54 million in 1992, $4.2 million in 1993, and $6.9 million in 1994. By quantity, subject imports held a market share in the total market for manganese metal of *** percent in 1992, *** percent in 1993, and *** percent in 1994.[19] In the open market, subject imports held a market share of *** percent in 1992, *** percent in 1993, and *** percent in 1994. The market share attributable to subject and domestic producers in the open market rose consistently while nonsubject imports' market share declined consistently from 1992 to 1994.[20] In both the total market and the open market, the market share of domestic producers considerably exceeded Chinese market penetration during all periods. These factors mitigate the significance of the increases in volume and market share of the subject imports.

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. In light of the anticipated price and volume effects as discussed below, I find that the volume of subject imports is not significant.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the manganese metal market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy more or less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition in the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

In most cases, if the subject imports had not been dumped, their prices in the U.S. market would have increased. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic manganese metal and nonsubject imports. If the subject imports are substitutable with the domestic product and nonsubject imports, purchasers would have shifted towards the relatively less expensive products.

In this investigation the magnitude of the changes in relative price levels if subject imports had been fairly priced would have been dramatically different depending on the margin received by the individual exporter.[21] Exporters accounting for 76.3 of subject imports in 1994 received a weighted average margin of *** percent.[22] Consequently, if this portion of subject imports had been fairly priced, their prices effectively would likely have increased on average approximately *** percent. In

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[19] CR at A-3, Table A-1.

[20] CR at A-5, Table A-2.

[21] See CR at I-1, note 4.

[22] CR at F-4.

these circumstances, most of the subject imports would still have entered the U.S. market. Some of those purchasers that were unwilling to pay a higher price for the subject imports would have switched to the somewhat less expensive domestic product, while others would have switched to the somewhat less expensive nonsubject imports. The shift in demand from subject imports would have been shared by the domestic product and nonsubject imports. Accordingly, the overall increase in demand for domestic manganese metal would have been small.

Notwithstanding the low elasticity of demand for manganese metal, any attempt by the domestic industry to increase its prices in response to the shift in demand would have been unsuccessful. There is significant competition among manganese metal suppliers in the U.S. market. The two domestic suppliers would have competed between themselves as well as with the substantial volume of nonsubject imports. The substantial amount of subject imports that would have continued to enter the U.S. market at fairly traded prices would have provided significant additional price discipline. In these circumstances, any effort by a domestic supplier to raise its prices would have been beaten back by competitors. Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports, but are due to demand and supply conditions in the market. Consequently, I find that subject imports are not having significant effects on prices for domestic manganese metal.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.[23] These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

The domestic industry would not have been able to increase its prices significantly if subject imports had been sold at fairly traded prices. Therefore, any impact of dumped imports on the domestic industry would have been on the domestic industry's output and sales.

As I have discussed above, had subject imports not been dumped, the increase in demand for domestic manganese metal would have been quite small. Domestic suppliers could have increased their production and sales to satisfy the increased demand. However, the domestic industry's output and sales, and therefore its revenues, would not have increased significantly. Accordingly, I find that, had subject imports not been dumped, the impact on the domestic industry's output and sales would not have been significant.

Had subject imports not been dumped, the domestic industry would not have been able to increase its prices, output or sales, and therefore its revenues, significantly. Consequently the domestic industry would not have been materially better off if the subject imports had been fairly traded. Therefore, I find that the domestic industry producing manganese metal is not materially injured by reason of LTFV imports of manganese metal from China.

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[23] 19 U.S.C. § 1677(7)(C)(iii).

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF MANGANESE METAL FROM CHINA

I have considered the enumerated statutory factors that the Commission is required to consider in its determination.[24] 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."[25]

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence[26] that I am required by law to evaluate in making my determination.

Petitioners assert that production capacity in China has doubled since 1992, and that there is significant unused capacity which could be utilized to produce additional product to be exported to the U.S.[27] Respondents contend, based on a survey of Chinese producers, that the Chinese manganese metal industry operates at virtual full capacity, that production capacity has not increased since 1993, and that no increases in capacity are planned through 1996.[28] The Commission was not able to determine the level of production of manganese metal in China, or the Chinese industry's production capacity or capacity utilization. I do not find that this conflicting information regarding production, production capacity and capacity utilization provides positive evidence that a significant increase in subject imports into the U.S. is likely.

The volume and market penetration of subject imports has increased rapidly over the period of investigation.[29] Petitioners contend that the rapid increase in market penetration by subject imports indicates that further increases are imminent. They also claim that any increase in production in China is likely to be exported in substantial part to the U.S., and that exports will be diverted from other markets to the U.S. market because of the size of the U.S. market and because China appears to have saturated the other principal markets for manganese metal in Europe and Japan.[30] Respondents counter that Europe and Japan are the largest markets for their products, and that these markets offer higher prices than the U.S. market. A "rapid increase" in market penetration from 1992 to 1994, without positive information that subject imports will increase significantly in the immediate future, does not constitute persuasive evidence that any threat of material injury is real or that actual injury is imminent. Petitioners have not provided positive evidence that exports would be diverted from other markets to the U.S.

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[24] 19 U.S.C. § 1677(7)(F)(I).

[25] 19 U.S.C.§ 1677(7)(F)(ii).

[26] See American Spring Wire Corporation v. United States, 590 F.Supp. 1273 (1984).

[27] Hearing TR, p. 37.

[28] Chinese Respondents' Posthearing Brief at 14.

[29] CR at A-3.

[30] Petitioners' Posthearing Brief, Answers to Commission Questions at 42.

In my determination of no material injury by reason of LTFV imports of manganese metal from China, I demonstrated that subject imports have had no significant effect on domestic prices. I find nothing in the record to indicate that market conditions will change in the immediate future. Therefore, I conclude that subject imports are not likely to have significant price effects in the future.

The quantity of U.S. inventories of Chinese imports increased significantly from 1992 to 1994. Importers' U.S. inventories, however, increased insignificantly as a percentage of imports over the same period.[31] It also appears that inventories of the subject imports in China are minuscule.[32] Based on the foregoing, I find that inventories of subject imports do not constitute a threat of material injury to the domestic industry.

I find no persuasive evidence of any other demonstrable adverse impending or actual changes in market conditions that indicate the probability that alleged LTFV imports will be the cause of actual injury. In addition, I find no positive evidence to support a conclusion that the potential for product-shifting represents a threat that material injury is real or that actual injury is imminent.[33]

For the reasons stated above, I determine that the domestic industry producing manganese metal is not threatened with material by reason of LTFV imports of manganese metal from China.

V. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing manganese metal is not materially injured or threatened with material injury by reason of LTFV imports of manganese metal from China.

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[31] CR at VII-12, PR at VII-9.

[32] CR at II-6, PR at II-2.

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

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed by Elkem Metals Company (Elkem), Pittsburgh, PA, and Kerr-McGee Chemical Corporation (KMCC), Oklahoma City, OK, on November 8, 1994, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of manganese metal[1] from the People's Republic of China (China).[2] Information relating to the background of the investigation is provided below.

November 8, 1994	Petition filed with Commerce and the Commission; institution of Commission preliminary investigation
December 2, 1994	Commerce's notice of initiation
December 23, 1994	Commission's preliminary determination
June 13, 1995	Commerce's preliminary determination, institution of Commission final investigation (60 F.R. 35223, July 6, 1995)[3]
November 1, 1995	Commerce's final determination (60 F.R. 56045, November 6, 1995, and revision of November 30, 1995)[4]

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

[2] A summary of the data collected in the investigation is presented in app. A. Except as noted, U.S. industry data are based on the questionnaire responses of Elkem and KMCC, which together accounted for 100 percent of U.S. production of manganese metal throughout the period for which data were collected. U.S. imports are based on official statistics of the U.S. Department of Commerce.

[3] Copies of *Federal Register* notices cited in the tabulation are presented in app. B.

[4] On November 20, 1995, petitioners filed a request with Commerce asking that it recalculate its final dumping margins due to ministerial errors. On November 30, 1995, Commerce issued final amended LTFV margins ranging from 0.97 percent to 143.32 percent, as follows: 11.77 percent for China National Electronics Import & Export Hunan Company (CEIEC); 0.97 percent for China Metallurgical Import & Export Hunan Corp. (CMIECHN/CNIECHN); 4.60 percent for China Hunan International Economic Development Corp. (HIED); 5.88 percent for Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals); and 143.32 percent for all other Chinese producers/exporters. During its period of investigation, June 1, 1994, through November 30, 1994, Commerce examined sales made by the 4 aforementioned firms totaling *** metric tons (MT) and valued at $***. It was determined that *** percent of the quantity and *** percent of the value of such sales were made at LTFV.

November 1, 1995	Commission's hearing[5]
December 5, 1995	Date of the Commission's vote
December 15, 1995	Commission determination transmitted to Commerce

THE PRODUCT

The imported product subject to this investigation is manganese metal. Manganese metal is composed principally of manganese, by weight, but also contains some minor elements such as carbon, sulfur, phosphorous, iron, and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms, and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. This section presents information on both imported and domestically produced manganese metal, as well as information related to the Commission's "like product" determination.[6]

Physical Characteristics and Uses

Manganese (Mn) is a chemical element with atomic number 25, an atomic weight of 54.94, and a silvery-gray appearance. It falls between chromium and iron on the periodic table and has certain properties in common with both metals. The major ores of manganese are oxides (in both hydrated and dehydrated forms), silicates, and carbonates. Manganese ore may be considered as either metallurgical, chemical, or battery grade. Metallurgical-grade ore has a range of manganese content of 38 to 55 percent and is used in the manufacture of manganese metal.[7] Manganese is rarely used in its pure state but is widely used as an alloy in the manufacture of steel and nonferrous metals. Principal producing countries of manganese ore include Gabon, Brazil, and Australia. Virtually all commercial-grade manganese metal manufactured worldwide is referred to as electrolytic manganese metal (minimum 99.7 percent Mn) because it is produced using an electrolytic manufacturing process.[8]

Under heading 8111 of the HTS, manganese metal is classified as either waste and scrap (subheading 8111.00.30), unwrought manganese (subheading 8111.00.45), or other manganese and articles thereof (subheading 8111.00.60). Based on information gathered in this investigation, all U.S. production and all U.S. imports of manganese metal from China during the period for which the Commission requested information consisted of unwrought manganese metal.[9]

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[5] A list of witnesses appearing at the hearing is included in app. B.

[6] The Commission's decision regarding the appropriate domestic product or products that are "like" the subject imported products is based on a number of 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, where appropriate, (6) price.

[7] ***.

[8] A general description of the process used to produce manganese metal is presented in app. C.

[9] Based on official statistics of the U.S. Department of Commerce, U.S. imports of manganese metal other than unwrought manganese metal entered under HTS subheading 8111.00.60 totaled 6,068 short tons in 1992, 5,089 short tons in 1993, 4,732 short tons in 1994, and 338 short tons in January-June 1995. The bulk of such imports (continued...)

Unwrought manganese metal is produced in the United States and imported from China in two primary forms, flake and powder. The latter form, manganese metal powder, is arrived at by grinding manganese metal flake into powder. Although there is some overlap in terms of end uses, generally these two forms serve distinct end-use markets. Manganese metal flake is the product preferred by the steel industry, whereas powder is the form most desired by the aluminum and weld-rod industries. Other forms of manganese metal include fines and/or compressed powder. Fines are characterized by U.S. producers as a fine powdery material that is generated from the production and handling of manganese metal flake. For easier handling, fines can be compressed into something resembling a briquette. Generally, fines are not readily marketable forms of manganese metal. In addition to the various forms, manganese metal may also be characterized as being either hydrogenated or dehydrogenated. Dehydrogenated manganese metal is that from which hydrogen has been removed by heat treating the manganese metal flake in a furnace. The bulk of manganese metal sold by KMCC consists of dehydrogenated product, whereas most of Elkem's sales consist of hydrogenated product.[10] During the conference held in connection with the Commission's preliminary investigation it was reported that Chinese producers do not employ a dehydrogenating process and, therefore, produce a hydrogenated product only.[11] However, during the final investigation eight purchasers and one importer reported purchasing dehydrogenated Chinese manganese metal (see p. II-11).

The principal consumers of manganese metal are the steel and aluminum industries. The steel industry uses manganese metal as a desulfurizing and deoxidizing agent and as a strengthening and hardening agent when producing stainless steel and other specialty metals and welding rods. Manganese metal is used at the end of the steel-making process to increase manganese content without exceeding limitations on trace elements, such as carbon and phosphorus. Because of its ability to increase the strength and hardness of certain aluminum alloys, primarily aluminum canstock, manganese metal is also widely used in the aluminum industry in the form of manganese-aluminum briquettes. Manganese metal is also suitable for use as a feedstock in the production of manganese chemicals and to produce manganese bronze used in marine castings. Other minor uses of manganese metal include use as a feedstock in the production of manganese nitrates and manganese acetates and use of manganese metal powder in arc welding rods, where the manganese powder is combined with other powders in varying proportions, depending on the type of material to be welded.

Interchangeability

Manganese metal produced in the United States is comprised of unwrought manganese metal, in flake and powder form, containing not less than 99.7 percent manganese, by weight. Manganese metal

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[9] (...continued)
were from the Republic of South Africa (South Africa) in 1992 and 1993, from both South Africa and China in 1994, and from countries other than these two in the interim 1995 period.

[10] Transcript of the conference (conference TR) held in connection with the Commission's preliminary investigation, p. 34.

[11] Ibid., p. 81, testimony of Jeff Kofsky of Cometals.

imported from China is also in the form of flake and powder and generally contains not less than 99.7 percent manganese, by weight. As a general rule, there is little interchangeability between manganese metal flake and manganese metal powder. Petitioners argue that manganese metal is a commodity product and is chemically interchangeable regardless of source.[12] U.S. importers and U.S. purchasers of the Chinese product also generally agree that U.S.-produced manganese metal and manganese metal imported from China are interchangeable and are of comparable quality. However, all also agree that in the aluminum canstock industry, where more stringent chemical specifications are demanded, most Chinese product is not interchangeable with the U.S-produced product because the Chinese product contains selenium, which the aluminum industry finds unacceptable.[13] [14]

In this investigation, respondent Cometals, Inc. argues that Chinese-produced and U.S.-produced manganese metal are noninterchangeable in aluminum applications and have only limited interchangeability in certain steel applications.[15] Cometals argues that the production process used by Chinese producers yields a product that is high in selenium. Selenium, a highly toxic substance, is of particular concern to the aluminum canstock industry.[16] Furthermore, Cometals makes the argument that Chinese manganese metal is not universally interchangeable with domestically produced product in those steel applications where strict purity specifications are a must. Because Chinese producers use a lower grade ore and exercise poor process or quality control, Cometals argues, Chinese manganese metal is high in impurities and hydrogen content. This combination of high impurity levels and high hydrogen content makes the Chinese product undesirable to certain steel users.[17] However, Cometals acknowledges that China's national standards do require producers to produce a higher grade, low impurity product but that Chinese producers seem not to be able to produce such a product on a consistent basis.[18]

Respondents CEIEC, CMIECHN/CNIECHN, HIED, and Minmetals also argue that there is only limited interchangeability between Chinese-produced and U.S.-produced manganese metal in aluminum and certain steel applications because of the high selenium levels in the Chinese product.[19]

Commenting on respondents' arguments concerning any lack of interchangeability, petitioners state that electrolytic manganese metal produced in China is identical to manganese metal produced in the United States and that the majority of importers, distributors, and end users consider the Chinese product to be of equal or comparable quality to the product produced domestically.[20] Petitioners note

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[12] Petition, p. 18.

[13] Petition, p. 17; conference TR, pp. 51 and 82.

[14] Apparently not all Chinese manganese metal has high selenium levels. In 1994, ***. Based on information supplied in Commission questionnaires, a substantial minority of subject imports were used to make manganese-aluminum briquettes.

[15] Hearing TR, pp. 57-61.

[16] Petitioners' posthearing brief, Answers, p. 9.

[17] Hearing TR, pp. 57-61; see also Cometals' posthearing brief, p. 4.

[18] Hearing TR, pp. 59 and 60.

[19] Respondents' posthearing brief, p. 4.

[20] Petitioners' posthearing brief, pp. 6 and 7.

that purchasers and importers reported purchasing both hydrogenated and dehydrogenated product from China.[21] Insofar as selenium is concerned, petitioners state that low-selenium content manganese metal is available from China and that, even if it were not, high-selenium Chinese product can be blended with other manganese metal to make a blend acceptable to the aluminum industry.[22]

Information pertinent to petitioners' and respondents' arguments is presented in the section of the report entitled "Quality Comparisons."

Channels of Distribution

Both Elkem and KMCC captively consume a significant portion of their manganese metal production. Although most U.S. importers of Chinese manganese metal import for the purpose of reselling the product to unrelated buyers, a few also import almost exclusively for their own internal use.[23] Such captive consumption by these U.S. importers accounted for *** percent of U.S. importers' total U.S. shipments of imported Chinese manganese metal in 1994. For those U.S. importers of Chinese product who did not captively consume manganese metal during the period for which the Commission requested information, the bulk (83 percent) of their sales were directly to end-user customers. This compares with *** percent for Elkem's and KMCC's combined shipments to the same type of customers. Accounting then for only about *** percent of U.S. producers' and U.S. importers' open-market shipments, U.S. distributors appear to be a much less important link in the channel of distribution both for U.S. producers and for U.S. importers.

Customer and Producer Perceptions

A number of firms that responded to the Commission's purchasers' questionnaire indicated their belief that manganese metal imported from China is inferior in quality to that produced in the United States. ***, a purchaser of ***, as well as of manganese metal produced in the United States, listed poor quality among the disadvantages of the Chinese product because of "heavy metal" content. ***, a manufacturer of ***, purchases U.S.-produced manganese metal and manganese metal imported from South Africa. Among the advantages the firm listed for both products were their good quality and good chemistry (that is, low residual levels of hydrogen, iron, sulphur, carbon, oxygen, and silicon); among the disadvantages listed for the Chinese product was its poor chemistry. Another purchaser, ***, stated in its questionnaire response that although it considers Chinese manganese metal inferior to the domestic product, the high quality of the domestic product is not required for its use. The firm stated that the Chinese product is not as clean as the U.S. product and that it contains higher levels of trace elements than U.S-produced manganese metal.

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[21] Information gathered by the Commission from purchasers on their perceptions concerning any quality differences between Chinese manganese metal and manganese metal produced in the United States is presented in the section below entitled "Customer and Producer Perceptions."

[22] Hearing TR, p. 12; petitioners' posthearing brief, p. 9.

[23] These include ***.

Use of Common Manufacturing Facilities and Production Employees

The predominant method used throughout the world for producing manganese metal is the electrothermic process.[24] With the possible exception of one producer, all Chinese producers are also believed to use this method.[25] The electrothermic process was developed by the U.S. Bureau of Mines in the 1940s and has been in use since then with few modifications, if any.[26]

In the electrothermic process, manganese ore is used as the feed material. The manganese recovered from the ore is leached in an acid solution. The purified solution is then introduced into an electrolysis-type cell in which the manganese metal is plated out of the solution onto an electrode. The plated manganese metal is then removed from the cell electrode as chip or flake, after which it is packaged for shipment or transferred to a grinding operation where it is transformed into manganese metal powder. Manganese metal chip or flake produced by KMCC may also go through the additional processing step of degassing, which consists of heat treating the chip or flake in a furnace to remove hydrogen. After degassing, the product is then either packaged for shipment or converted to powder. KMCC produces both hydrogenated and dehydrogenated manganese metal, whereas Elkem produces mostly hydrogenated product.[27]

Within U.S. establishments wherein manganese metal is produced, equipment and machinery used to produce manganese metal are used solely for that purpose. Although other products are also produced within the establishments, such production occurs separately and apart from manganese metal. Likewise, production workers used to produce manganese metal generally are not used to produce the other products of the establishments.[28] The grinding of manganese metal flake into powder is perceived by both U.S. producers as an integrated phase of the production process for manganese-aluminum briquettes. In allocating costs, therefore, the use of grinding equipment and machinery is charged to U.S. producers' briquetting operations.

Price

During the period January 1992-June 1995, the price of domestic powder was sometimes above and sometimes below the price of domestic flake. The price of Chinese flake was below that of domestic flake in all but one quarter. In contrast, the price of Chinese powder, in the 4 quarters for which data were available, was above the price of domestic powder and domestic flake.

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[24] The electrothermic process produces a 95-percent or better manganese content product (petition, p. 8).

[25] Petition, p. 9.

[26] A detailed description of KMCC's manufacturing procedure using the electrothermic process is presented in app. C.

[27] Conference TR, p. 34.

[28] *** uses a total of *** (*** per shift) workers to produce both manganese metal powder and manganese-aluminum briquettes.

Intermediate Products

Petitioners Elkem and KMCC each consume manganese metal within their establishments wherein it is produced. Both firms consume manganese metal for use in the production of manganese-aluminum briquettes, a product used almost exclusively by the aluminum industry for making aluminum canstock. In 1994, both firms consumed about *** percent of their individual manganese metal production in the production of this downstream product.

Manganese-aluminum briquettes are produced by mixing or blending manganese metal powder with aluminum powder. The blended mix, consisting of 75 percent manganese metal and 25 percent aluminum, by weight, is then compacted to form a briquette, much like a charcoal briquette. As stated earlier, manganese-aluminum briquettes are used exclusively in the aluminum industry. Briquettes have no applications outside this industry, and therefore do not compete with manganese metal flake in steel and in other applications. However, manganese-aluminum briquettes and manganese metal do share some similarities. Both use the same channels of distribution inasmuch as both products are typically sold directly to end-user customers. To a limited extent, both products also use common production processes and production facilities, as briquettes are produced in the same grinding area in which manganese metal flake is ground to powder.[29] Workers who operate the grinding equipment are usually charged to the production of briquettes. In terms of selling prices, manganese-aluminum briquettes typically sell at a substantially higher price than manganese metal does, particularly on a noncontract basis.[30]

In this investigation, respondent Cometals argues that manganese-aluminum briquettes constitute a domestic like product inasmuch as all forms of manganese metal (that is, manganese metal flake, manganese metal powder, and manganese-aluminum briquettes) are equally suited to the production of aluminum alloys.[31] Cometals identified 3 aluminum alloyers (***) that it asserts use manganese metal powder and manganese-aluminum briquettes interchangeably in identical applications. ***, a purchasing official for ***, stated that about 2 years ago his firm invested approximately $*** in the acquisition of 4 powder injectors and storage hoppers that now allows *** to inject manganese metal powder directly into its furnaces at its *** plant. ***'s present form of manganese metal consumption, *** stated, consists of about *** percent powder and *** percent briquettes.[32] ***, procurement manager for metals at ***, stated that, although *** currently uses manganese-aluminum briquettes exclusively, his firm also is planning to invest in powder injection equipment. By ***, *** estimates, about *** of his firm's usage of manganese metal at *** will be in the form of powder. While *** primarily uses ***-produced manganese metal, *** noted that some consideration is being given to the use of *** manganese powder. He also noted that the Chinese product is not presently being considered because of that product's unreliability.[33]

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[29] There are also 2 other U.S. firms that produce manganese-aluminum briquettes. *** and *** produce manganese-aluminum briquettes using purchased manganese metal. A third firm, ***, ceased briquette production in late 1993.

[30] As an example, ***.

[31] Posthearing brief, Responses to Questions of the Commission and Staff, pp. 1-4.

[32] ***, telephone conversation with Woodley Timberlake of the Commission's staff, Nov. 28, 1995.

[33] Ibid.

U.S. Tariff Treatment

Imports of manganese metal waste and scrap, unwrought manganese,[34] and other manganese (and articles thereof) are classified in HTS subheadings 8111.00.30, 8111.00.45, and 8111.00.60, respectively.[35] Rates of duty for these HTS subheadings in 1995 are presented in the tabulation that follows (in percent ad valorem):

Subheading	MFN duties	Special duties[1]	Column 2 duties
8111.00.30	Free	-	Free
8111.00.45	14%	Free (E,IL,J,MX) 4.2% (CA)	20%
8111.00.60	5.1%	Free (A,E,IL,J,MX) 1.6% (CA)	45%

[1] Programs under which special tariff treatment may be provided and the corresponding symbols for such programs as they are indicated in the "Special duties" column are as follows: Generalized System of Preferences (A), Caribbean Basin Economic Recovery Act (E), United States-Israel Free Trade Area (IL), the Andean Trade Preference Act (J), and the North American Free-Trade Agreement, goods of Canada (CA) and Mexico (MX). Where eligibility for special tariff treatment is not claimed or established, goods are dutiable at general or most-favored-nation (MFN) rates. Imports from China have been dutiable at MFN rates since 1980. GSP benefits are presently in suspension, awaiting Congressional approval.

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

[35] None of the parties participating in the investigation has been able to identify the specific products classified (or being imported) under HTS subheading 8111.00.60, that is, manganese metal other than unwrought manganese metal and articles thereof. Petitioners believe that some of the unwrought manganese metal being imported from China is entering the United States under subheading 8111.00.60 in order to take advantage of its lower tariff rate (see conference TR, p. 43).

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

DISTINCTIVE INDUSTRY CHARACTERISTICS

The manganese metal industry in the United States can be characterized as a mature industry and one in which there have been few, if any, structural changes over the years. The process used to produce manganese metal was developed in the 1940s and is still in use today.[1] There are no technological innovations on the horizon, either immediately or in the long term, which are expected to significantly impact the production process. The one essential to manganese metal production is a reliable power source. An interruption in power for only 5 to 10 minutes, for example, can require a complete shutdown and restart of the production process and could take up to several days to accomplish.[2]

BUSINESS CYCLES

There are no business cycles unique to the manganese metal industry alone. Demand typically rises and falls in conjunction with demand for the products in which manganese metal is consumed, principally steel and aluminum.[3]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information it is likely that U.S. manganese metal producers generally respond to changes in demand with relatively small changes in shipments of U.S.-produced manganese metal to the U.S. market and larger changes in price. Factors contributing to this limited responsiveness of supply include primarily the reported high levels of capacity utilization, the inability to shift production from other products, and a modest export market.

Capacity in the U.S. industry

The level of U.S. producer output is determined by the number and size of production lines in operation. Except for power failure and cleaning, each line is in operation 24 hours a day, 365 days a year.[4] Total capacity of the two domestic producers to produce manganese metal ranged from *** short

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[1] Testimony of Mr. David W. Ezell at the Commission's conference (Conference TR, pp. 13 and 14).

[2] Ibid.

[3] Hearing TR, pp. 25 and 26.

[4] Day-to-day cleaning and repairs are done on rotation in order to minimize down time.

tons (ST) in 1992 to *** ST in 1993 (table III-1).[5] U.S. producers' capacity utilization levels rose from *** percent in 1992 to *** percent in 1994 and January-June 1995.[6] [7]

The production of manganese metal requires a significant investment in capital equipment. KMCC estimated that adding a new cell line would cost from $*** to $***. Elkem estimated that building a *** metric ton greenfield plant would cost $***. Since 1990, Elkem has operated only *** of its *** full production lines. These lines can be run with all or some part of the cells attached.[8] Elkem claims to be able to bring an additional *** to *** cells, part of the *** cell line, into operation in ***. Bringing the full *** cells of the *** line into operation would require minor repairs and purchase of consumables (parts such as the anodes, cathodes, and plastic vats which wear out with use) and would take approximately ***, mainly because of the lead time required for ordering the titanium cathodes. This would increase its capacity by *** short tons annually, enable an increase in production of *** percent,[9] and cost approximately $***.[10] The *** people needed to run the fourth line could be recalled from lay-off and would require *** of training.

Inventory levels

U.S. producers' ending inventories peaked in 1993 at *** ST, an amount equal to *** percent of the domestic industry's output in that year. By the end of the second quarter of 1995, inventories had fallen to *** ST, about *** percent of annual output, the lowest level of inventories recorded in the period examined. According to some purchasers, domestic supply is already short.[11]

KMCC claims that its inventories would have been much higher after 1992 if it had not entered into a number of what it terms abnormal arrangements to reduce inventory buildup.[12] KMCC sold

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[5] Total U.S. capacity included a dormant production line that Elkem did not operate during the period of investigation. This line accounted for approximately *** percent of total U.S. capacity to produce manganese metal.

[6] KMCC's production of manganese metal is ***.

[7] Total U.S. capacity to produce manganese metal averaged *** percent of U.S. apparent consumption of manganese metal during January 1992-June 1995.

[8] ***.

[9] If capacity utilization on this new line equals that on lines already in operation, however, Elkem's production will increase only *** percent. Increasing production by *** ST would increase domestic production by *** percent. This equals approximately *** percent of domestic apparent consumption in 1994.

[10] About *** the cost would be for the purchase of consumable parts.

[11] *** reports that demand for manganese metal is extremely high and that they have difficulty getting it from either domestic producer. *** reported that Elkem was unable to supply manganese metal and that KMCC and the South African producer have not been able to provide enough quantity to satisfy all their requirements. *** reported that *** was unwilling to supply all the manganese metal it requested because *** did not have an adequate supply.

[12] ***.

manganese metal to ***. KMCC claims that traditionally, rather than selling to ***, ***; however, with KMCC's high inventories, this was not an effective strategy.

Production alternatives

The U.S. manufacturers state in their questionnaire responses that converting machinery used in the production of manganese metal to production of other goods either would not be economically feasible or would not be possible.[13]

Export markets

The existence of export markets indicates that U.S. producers of manganese metal have some flexibility to react to changes in domestic demand. Exports are an important share of non-captive sales. Exports fell from *** percent of U.S. producers' commercial shipments in 1992 to *** percent in 1994. Throughout this period, the amount of exports rose, but this was swamped by the increase in domestic sales (table III-2).

Both producers reported that they would have difficulty expanding exports. Elkem reported that it is difficult to sell in Europe and Japan because of low-priced Chinese products. KMCC reported it lacks an overseas sales organization. At the hearing, Elkem reported it was able to sell in Canada with the same sales force used in the United States.

Subject Imports

Available information indicates that manganese metal producers in China generally respond to changes in demand in the U.S. market with larger changes in shipments to the U.S. market relative to changes in prices. The main factor contributing to supply responsiveness is the large share of manganese metal sold to countries other than the United States.

Information on the Chinese manganese metal industry is based on reports from 6 firms producing manganese metal in China. These firms report that they are responsible for the bulk of the exports of manganese metal to the United States but represent a minority of all manganese metal producers in China. The Chinese Chamber of Commerce has identified 17 major producers; however, the exact number of Chinese producers is unknown, and estimates run as high as 50 producing plants.

Industry capacity

The Commission was unable to determine the level of production of manganese metal in China, its overall capacity, or its capacity utilization. The petitioners and the respondents provided very different information on the level of Chinese output and its "practical" capacity. In part this is because the Chinese Chamber of Commerce data used by the respondents do not include small, inefficient producers such as

[13] ***.

those owned by townships. According to the petitioners, these firms represent a large part of both production and unused capacity.

Chinese export data show that exports of manganese metal increased rapidly during the period of investigation from 32,396 ST in 1992 to 38,388 ST in 1993 and 55,388 ST in 1994.[14]

The 6 Chinese producers responding to the Commission's questionnaires reported capacity utilization rates ranging from 92 percent in 1993 to 96 percent in the first half of 1995.[15] The Chinese Chamber of Commerce identified 17 "major" producers of manganese metal, 4 of which answered the Commission's questionnaire.[16] The 17 major producers, however, could supply a rapidly falling share of overall Chinese exports according to the official Chinese export data. These firms' production could provide 92 percent of all Chinese exports of manganese metal in 1992; this fell to 62 percent in 1994.[17] Ms. Chen reported that producers not included in the Chamber's survey could not be contacted by her agency and that they were either very small, at unknown locations, or no longer in operation. According to the Chinese Chamber of Commerce data, the 17 firms all produced at 100-percent capacity. Asked to elaborate on this, Ms. Chen said the Chinese Chamber of Commerce had a difficult time finding capacity data. The firms contacted were producing full time all year long except when prevented from operating by floods or electrical outages. Floods typically occurred every year, and the amount of production lost depended on the plant; however, this year she believed they had lost, on average, about 17 days of production because of floods. Thus, overall, Ms. Chen thought that the capacity utilization (as the Commission would define it) was similar to the 6 firms responding to Commission's questionnaires. Ms. Chen also stated that if no dumping duties were imposed they expect future exports to the United States to be at the level of 1994.

The petitioners' witness *** asserted in *** prehearing brief that Chinese manganese metal producers had the practical capacity to produce *** metric tons (*** ST), or *** metric tons (*** ST), more than was exported in 1994. *** asserted that very small producers and producers that may not be producing at any given time produce an important share of Chinese production and represent an important part of the Chinese unused capacity. In addition, electricity generation is growing and this will allow increased production of manganese metal.

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[14] The data were supplied by petitioners in their prehearing brief (exhibit 15).

[15] The export data provided by these companies cannot be reconciled with official U.S. import statistics. They report selling 114 percent of official U.S. imports of manganese metal in 1992, 118 percent in 1993, and 79 percent in 1994.

[16] The remaining two firms are not manganese metal "producers" but convert flake to powder; they therefore do not affect the total production.

[17] In 1994, there would need to be 10 additional firms in China the same size as the average size included in the Chinese Chamber of Commerce survey to produce all the manganese metal exported.

Inventory levels

The Chinese producers and exporters reported production equal to sales in each year and, therefore, no inventories. Ms. Chen also reported that the Chinese firms produce manganese metal to order and that no inventories are held by either producers or exporters in China or Hong Kong.

The level of U.S. importer inventories of Chinese manganese metal grew between the end of 1992 and 1994. The lowest inventory was recorded at the end of 1992 at 306,000 ST, and the highest at the end of 1994 at 1,409,000 ST. In 1992, ending inventories were 26 percent of the annual total imports of these companies; this rose to 32 percent in 1993 and fell back to 26 percent in 1994 (table VII-2).

Non-U.S. markets

Based on the official Chinese export statistics, exports to countries other than the United States rose from 28,453 metric tons (31,364 ST) in 1992 to 45,440 metric tons (50,044 ST) in 1994. Exports to the United States, however, grew more rapidly, from 3.2 percent of all Chinese exports in 1992 to 9.6 percent in 1994.

The 5 Chinese exporters that responded to the questionnaire had exports to countries other than the United States that rose as a share of their total exports from 51.3 percent in 1992 to 70.5 percent in 1994 and to *** percent in the first half of 1995.[18] Exports rose mainly at the expense of Chinese internal consumption, which fell from 9,907 short tons in 1992 to 3,089 short tons in 1994 before rising in the first half of 1995 to 2,416 short tons (table VII-1).

The two major markets for manganese metal outside the United States are Japan and Europe. Production in Europe ceased in 1992, and production in Japan ceased in 1994.[19] According to Ms. Chen of the Chinese Chamber of Commerce, demand in Europe and Japan has been rising and prices in these markets are traditionally higher than U.S. prices. As a result, there is no reason to increase exports to the United States. Petitioners, in contrast, believe that Chinese exports will continue to increase because Chinese exports overall will continue to rise and the price in the United States is higher than the world price.[20]

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[18] These companies may have overstated their sales to the United States. They report selling 114 percent of all imports of manganese metal from China in 1992 and 118 percent in 1993, but only 79 percent in 1994.

[19] *Platt's Metal Weekly*, Nov. 6, 1995, p. 9.

[20] The world price of manganese metal flake in warehouse depends on whether it contains a minimum 99.7 percent manganese or 99.9 percent manganese metal. According to *Metal Bulletin*, the world price of manganese metal between January 1992 and August 1993 for 99.7 percent manganese metal varied between $0.638 and $0.732 per pound and for 99.9 percent manganese metal the price varied between $0.935 and $1.000 per pound. Average per-pound prices to end users recorded from producer and importer questionnaires between January 1992 and September 1993 varied between $*** and $*** for U.S.-produced manganese metal and between $*** and $*** for Chinese manganese metal. Most of the Chinese manganese metal is less than 99.9 percent pure.

U.S. Demand

Available information indicates that the quantity of manganese metal demanded is unlikely to change significantly with changes in its price. The main factors affecting this demand-price relationship include the lack of viable substitute products and the generally low cost share of manganese metal in finished steel, aluminum, and other products in which it is used. Demand for manganese metal is determined mainly by the level of demand for certain steel and for aluminum canstock. Manganese metal is also used in the production of chemicals, brass, bronze, zinc, aluminum manganese master alloys, and welding rods. Demand for the main downstream products using manganese metal is cyclical, particularly for steel, and rose between 1992 and 1994, for both steel and aluminum canstock. Apparent consumption of manganese metal in the United States grew 32 percent between 1992 and 1994, with growth in both imports and U.S. sales and production (table IV-3).

Purchasers

The Commission contacted 55 potential domestic purchasers. Out of 38 firms that responded, 28 provided useable price information,[21] and 8 reported they did not purchase manganese metal between January 1992 and June 1995. Twenty-three reported purchasing domestically produced manganese metal and 20 reported purchasing Chinese manganese metal. The responding purchasers provided prices on 29 percent of domestic commercial shipments of manganese metal between 1992 and the first half of 1995. Excluding nonsubject imports for which prices were not recorded, this represents 68 percent of commercial shipments.[22] In addition, the firms reported that 81 percent of the imported Chinese manganese metal was purchased by end users.

Twenty-four purchasers were end users, producing a wide range of products including steel (14), manganese-aluminum briquettes (2), brass or bronze ingots (4), and chemical and other goods (6). Some end users produced more than one of these products. Seven purchasers reported being distributors. One was both an end user and a distributor.

Cost Share

The price of manganese metal accounts for a small percentage of the cost of steel, generally less than 1 percent. Manganese metal is close to *** percent of the cost of manganese aluminum briquettes. The cost of manganese metal is a much smaller share of the cost of aluminum canstock.[23] Since manganese metal accounts for such a small share of the final products' total cost, an increase in the price of manganese metal should have little impact on the price of the steel or aluminum in which it is used.

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[21] Two answered the questionnaire but did not provide usable price data.

[22] There may be some double-counting as the same metal may be purchased by distributors and end users. In addition, some purchasers, being uncertain of the origin of the material they purchased, may have included some nonsubject imports as either a domestic or a Chinese product.

[23] ***.

However, an increase in the price of manganese metal will increase the price of manganese-aluminum briquettes.

Substitute Products

When asked whether substitutes for manganese metal existed, 25 of 27 purchasers answered that there was no substitute,[24] whereas 2 purchasers claimed that some substitutes existed. In their opinion, the closest substitutes for manganese metal are ferromanganese and other manganese compounds. These can be used in the production of steel, but are seldom technically acceptable by those who currently use manganese metal. In steel production, manganese metal is used when the exact amount of elements in the steel is important. Ferromanganese and other manganese compounds are not useable for aluminum canstock, which accounts for more than half of domestic consumption.[25] Manganese metal is more expensive than other manganese-containing compounds used in different types of metals, and therefore compounds are used if possible.

Substitutability Issues

Domestic Products versus Subject Imports

Overlap of competition

Manganese metal is sold either in flake or in powder form. Most of the domestic and imported manganese metal sold in the United States is sold in flake form. Flake can be ground into powder. Flake is mainly used to make stainless steel and other metal products; powder is mainly used to make manganese-aluminum briquettes.

Importers and domestic producers sold flake to both end users and distributors. Importers sold powder only to end users, while domestic producers sold powder to both end users and distributors. U.S. producers and importers sold to a similar range of end users, except that importers did not sell to briquetters.[26] Some briquetters, however, imported manganese metal directly from China.

Importers primarily sold in the eastern United States, but 4 of the 10 responding importers sold to the entire United States (or the lower 48). For 7 of the 9 responding importers, the location of the customers determined the market area. Elkem sold to *** customers and KMCC sold to ***.

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[24] Four purchasers reported that recent increases in price have not reduced demand for manganese metal and this was evidence that relative changes in prices of potential substitutes had not reduced demand for manganese metal.

[25] Most manganese metal consumed in the United States is used for manganese-aluminum briquettes; most of this material is either captively consumed by the domestic producers or the importers. As a result, most manganese metal sold in the United States is used in steel.

[26] Importers also did not sell to chemical customers, but this was a relatively small part of the market.

Factors affecting purchasing decisions

The following factors were reported by purchasers as important to their decisions to purchase from Chinese sources rather than from U.S. producers of manganese metal:[27]

	Very important	Somewhat important	Not important
Quality of product	12	3	1
Price	14	2	0
Speed of delivery	8	7	1
Service	4	8	4
Credit terms	4	9	3
Traditional source	0	9	6
Maintain several sources of supply	4	9	4

A majority of these purchasers rated quality of product and price as very important factors in their buying decisions. A majority of purchasers also reported that they considered other factors at least somewhat important, including maintaining several sources of supply, speed of delivery, service, and credit terms.

Most manganese metal is sold on the spot market or in relatively short-term contracts. This would be expected to increase the firms' ability to change suppliers and to adjust prices to changes in supply and demand. Many of the purchasers, however, do not change suppliers frequently. Of the 21 purchasers responding, 16 changed suppliers either never, seldom, very infrequently, or infrequently.

For some purchasers, the certification process may stand in the way of changing suppliers or using imported Chinese manganese metal. Only 10 of the 29 responding purchasers did not require or prefer some form of certification or prequalification. When asked what percentage of the manganese metal the firm purchased needed to be prequalified, 15 of 18 answering the question required it for all their manganese metal. Many of these purchasers apparently require only certification of the product's chemistry and flake size, which usually comes with the product. Others required test samples. Only 2 purchasers reported that some suppliers failed to qualify their manganese metal; both reported problems

[27] Purchasers frequently did not provide responses to all the characteristics listed; as a result, the totals for each characteristic are not the same.

with Chinese manganese metal.[28] Chinese manganese metal tends to be more difficult to prequalify because it may come from a number of different manufacturers, each of which may need to be qualified.[29] Purchasers, and even importers, may not know which Chinese manufacturer produced the manganese metal they purchase, which makes prequalifying the Chinese manganese metal impossible.[30]

Seventeen purchasers listed advantages of domestically produced manganese metal, including quality (reported by 8 purchasers), technical support and service (5), known, local, or domestic producer (4), availability or continuity of supply (3), and payment terms (3). Disadvantages of domestic manganese metal were listed by 10 purchasers; 7 reported price and 3 reported current supply problems/limited availability/delivery problems. Twelve purchasers listed advantages of Chinese manganese metal, including price (reported by 11 purchasers), quality (2), terms (1), and wear on the compacting parts (1). Eleven purchasers reported disadvantages of the Chinese product including poorer quality or chemistry (reported by 5 purchasers), unreliable supply/lead times/not always available (6), poor service or support (3), "no terms" (1), location (1), poor recovery (1), too many fines (1), variability in size (1), and the involvement of traders (1).

Seventeen of 29 responding purchasers listed availability as one of the three most important factors when determining from whom to purchase manganese metal for any one order. Three purchasers reported difficulty purchasing domestically produced manganese metal. *** reported that demand for manganese metal is extremely high and that it has had difficulty getting product from either domestic producer. *** reported that *** was unable to supply manganese metal and that *** and importers of nonsubject manganese metal have not been able to provide enough to satisfy all its requirements. *** reported that *** refused to sell material because *** claimed it was sold out. Four of 12 importers reported difficulty purchasing imported manganese metal from China at competitive prices or reported having shipments delayed and prices increased from the original contract.

Fifteen of 16 purchasers reported that delivery times were at least somewhat important in their purchasing decisions. U.S. producers reported lead times to be from the same day to 3 days from order since most sales are from inventories. The importers' lead time from inventories varied from 1 to 7 days. Lead times from China were 1 to 3 months.

Quality comparisons

Eleven of 29 purchasers listed quality as the most important criterion for purchasing manganese metal. All purchasers agreed that U.S.-produced manganese metal was at least as good as imports from China, with 10 of the 15 responding purchasers reporting that, at least for their uses, there were no significant differences in quality between U.S. and Chinese manganese metal. In another question, 5 of

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[28] Twenty-three firms reported that no firm had failed to qualify their manganese metal. Since these questions were given separately, the number of firms answering the questions differs.

[29] There are only two domestic producers and one South African producer of manganese metal. There are at least 17 large Chinese manufacturers; some estimates of the total number of Chinese producers reach as high as 50.

[30] None of the purchasers, other than those which were also importers, listed the name of possible Chinese producers when requested. ***, an importer, said this made it difficult to know who manufactured Chinese manganese metal and therefore it was difficult to prequalify this material.

the 16 respondents claimed that domestically produced manganese metal was superior to Chinese. The problems with the quality of the Chinese manganese metal included higher levels of impurities, fines, dust, and oxidation. Five of 14 purchasers also claimed that domestic manufacturers produced high grade, low impurity manganese metal that was not available from China.

Opinions of importers differed as to whether the quality of imported manganese metal from China is a significant factor in their sales. Three of the 11 importers responding to the question believed that the lower quality of Chinese manganese metal limited the market for this material, whereas the remaining 8 believed that the differences were not a significant factor in their sales.

Both domestic producers reported that differences in quality between U.S. and Chinese manganese metal were not a significant factor in their firms' sales of manganese metal. Nevertheless, they reported that domestic manganese metal was superior to the Chinese product. They said that Chinese and U.S. manganese metal could be used interchangeably in steel. They originally believed that Chinese manganese metal could not be used in briquettes for the aluminum industry because of the selenium content,[31] but three importers are known to have used the Chinese product to produce such briquettes. One used low-selenium Chinese manganese metal, but this firm ceased production in 1993.[32] One firm used a combination of low-selenium domestic and South African manganese metal with high-selenium Chinese manganese metal. One firm used small amounts of Chinese product because domestic and South African manganese metal were not available. While at least one Chinese manufacturer has produced low-selenium manganese metal during the period of investigation, the Commission was not able to determine the current availability of that product from China.

In his testimony to the Commission, Jeffrey Kofsky of Cometals said that Chinese manganese metal frequently could not be used interchangeably with domestic manganese metal in the production of steel. He cited six steel producers that he said had specifications beyond those which the Chinese can guarantee.[33] Two of these answered the questionnaire and responded that Chinese material could be used in all of the products in which domestic manganese metal was used.[34] The Commission contacted the four remaining firms. Two responded that Chinese manganese metal could be used interchangeably

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[31] Manganese-aluminum briquettes use *** the manganese metal consumed in the United States.

[32] *** of *** said that they had been able to purchase low-selenium manganese metal from China. The maximum selenium level allowable for this was 0.08 percent. The firm had no particular problem getting it. They no longer import manganese metal or produce manganese-aluminum briquettes because it was not profitable enough. Conversation with Commission staff, Aug. 16, 1995.

[33] Mr. Kofsky also listed 5 aluminum producers which "required material meeting specifications beyond what the Chinese can guarantee." Most of these firms use manganese-aluminum briquettes, which, he believes, should be included in the definition of "like" product. In discussions with *** of *** Nov. 28, 1995, *** reported replacing manganese-aluminum briquettes with manganese metal powder. Using powder both reduced cost and improved the chemistry of the product. At this time *** uses only domestically produced powder. On Nov. 29, 1995, *** of *** reported ***. ***.

[34] *** and *** in their response to the questionnaire agreed that Chinese manganese metal was employable for the same range of uses as domestically produced manganese metal.

with domestic material in all uses.[35] The other two claimed that if the Chinese product matched their specifications they could use it; but neither was sure whether the Chinese metal available actually met their specifications.[36]

Eight of the 10 domestic steel producers that responded to the question agreed that Chinese manganese metal could be used interchangeably with domestic manganese metal.[37] The 8 firms that said Chinese manganese metal could be used in the same range of products as domestic manganese metal purchased 84 percent of the manganese metal purchased by the 10 steel producers responding to the question. One firm stated that the Chinese product could not be used in the same range of products as domestic manganese metal because of poor chemistry. One said Chinese manganese metal could be used in the same range if the chemical requirements were met.

A sizable minority (*** percent) of the Chinese manganese metal imported into the United States between 1992 and the first half of 1995 was used to produce manganese-aluminum briquettes. Thus, although selenium content may be a problem in using Chinese manganese metal in the production of manganese-aluminum briquettes, it does not preclude its use.

Domestic producers claim that Chinese manufacturers are less likely to degas (dehydrogenate) manganese metal than they are.[38] Degassing removes hydrogen from the material and makes it more suitable for some methods of manufacturing steel. Many purchasers did not answer the question on whether they purchased degassed manganese metal and may not have known which they purchased. Eight U.S. purchasers and one importer reported purchasing degassed Chinese manganese metal,[39] and nine purchasers of domestic manganese metal reported purchasing degassed manganese metal.[40]

Purchaser sourcing

Ten purchasers reported buying U.S. manganese metal although cheaper Chinese manganese metal was available. Reasons for purchasing domestic product include a contract with Elkem, preference for domestic product if it can be sold profitably, keeping a domestic source, reliability, and service. One

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[35] ***, ***, responded that both materials meet their specs, that they could use Chinese and domestic manganese metal interchangeably, and they did use Chinese material. *** of *** said he saw no reason they could not use Chinese manganese metal in the same range of applications as domestic manganese metal. Nov. 2, 1995.

[36] ***, the purchaser for ***, was contacted Nov. 3, 1995. *** did not use Chinese manganese metal but *** said if it came within their specifications they could use it. In a discussion with *** of *** (***) on Nov. 2, 1995, *** said he had not come across Chinese manganese metal which met the firm's specifications, but he was unsure whether such material exists.

[37] Fourteen firms answering the questionnaire said they were primarily steel producers. Only 10 of these firms, however, answered this question.

[38] Both domestic producers produce both dehydrogenated and non-dehydrogenated manganese metal. Elkem normally produces non-dehydrogenated manganese metal and produces dehydrogenated manganese metal on request; KMCC normally produces dehydrogenated manganese metal and produces non-dehydrogenated manganese metal on request.

[39] Five purchasers and 5 importers reported purchasing Chinese manganese metal that was not degassed.

[40] Only 3 purchasers reported purchasing domestically produced manganese metal which was not de-gassed.

purchaser reported that it could not use Chinese product exclusively for compaction (into briquettes) or sell it to the welding-rod industry, one reported consistency of chemical specification as the reason it preferred U.S. manganese metal, one reported speed of delivery, and one reported smaller quantity requirements. On the other hand, one purchaser claimed that the purchase of higher priced domestic manganese metal was an accident; late delivery of the domestic product caused it to be delivered at the same time as lower priced Chinese manganese metal. One firm did not explain why it purchased domestic product; it claimed, however, to be losing business because of the high price of domestic manganese metal.

Nonsubject Country Imports Versus Domestic Products and Subject Imports

Although imports from China grew rapidly between 1992 and 1994, the majority of imported manganese metal came from South Africa, a nonsubject country. (Nonsubject manganese metal fell from 86.5 percent of all imports in 1992 to 80.0 percent in 1993 and 72.6 percent in 1994.) In the first two quarters of 1995, imports from nonsubject countries fell to 71.0 percent of all imports; however, the amount of nonsubject imports fell to 48.0 percent of the level they had been in the first two quarters of 1994.

The quality of South African manganese metal is similar to that produced in the United States according to most purchasers. One purchaser, ***, reported purchasing South African manganese metal when less expensive Chinese metal was available. It reported purchasing South African manganese metal after receiving bids from a domestic producer at $*** per pound, a Chinese importer at $*** per pound, and an importer of South African manganese metal at $*** per pound. Two purchasers reported problems with the characteristics of South African manganese metal. One purchaser reported that it had lower compactability than domestic manganese metal; the other purchaser reported that South African manganese metal was of lower quality than domestic.[41]

According to purchasers, most nonsubject imports can be used in the same applications as domestic manganese metal. Most purchasers (13) reported that nonsubject imports of manganese metal were comparable in quality to domestic product, but 2 claimed that nonsubject imports were inferior. Fifteen purchasers reported that nonsubject imports were comparable or superior to the Chinese product. One purchaser claimed that nonsubject imported manganese metal was lower in quality than the Chinese product. Seven of the responding purchasers reported that the price of nonsubject imports was the same as the price of the domestic product, while two said the price of nonsubject imports was higher than the domestic price, and three said that the price was lower.

The domestic producers report that South African manganese metal is superior to Chinese product and is similar in quality to domestic manganese metal. Domestic producers can use it to manufacture manganese-aluminum briquettes. During ***, *** used South African manganese metal to produce manganese-aluminum briquettes.

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[41] ***, ***, reported that all South African manganese metal is 99.9 percent manganese, equal in purity to the most pure domestic manganese metal.

ELASTICITY ESTIMATES[42]

Supply Elasticity[43]

The domestic supply elasticity for manganese metal measures the sensitivity of the quantity supplied by U.S. producers to a change in the U.S. market price. The elasticity of domestic supply depends on several factors, including the level of excess capacity, the ease with which producers can alter productive capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced manganese metal.[44] Analysis of these factors indicates that U.S. producers have only limited ability to alter their supply of manganese metal in response to relative changes in the demand for their product; thus, the domestic supply elasticity is estimated to be relatively low or in the range of 1 to 3. (The parties had no comment on this estimate of the elasticity of supply.)

U.S. Demand Elasticity

The U.S. demand elasticity for manganese metal measures the sensitivity of the overall quantity demanded to a change in the U.S. market price. This estimate depends on factors discussed earlier, such as the existence, availability, and commercial viability of substitute products, as well as the component cost share of manganese metal in the production of downstream products. The elasticity of demand for manganese metal is also influenced by the elasticity of demand for steel, aluminum, and other products using manganese metal, and by the potential import of downstream products such as manganese-aluminum briquettes. Original staff estimates of the demand elasticity for manganese metal were in the range of 0.25 to 1. However, as purchasers would not likely be very sensitive to changes in the price of manganese metal and would continue to demand fairly constant quantities of this product over a considerably wide range of prices, the estimates have been reduced to the range of 0.2 to 0.4.

The petitioners during the hearing claimed that demand elasticity is actually lower than the staff proposed and that the correct elasticity of demand would be close to 0.1. The reason is that manganese metal is an essential ingredient and that it constitutes an extremely small percentage of the value of the final product. However, the staff notes that, although few substitutes exist for manganese metal, if the price of manganese metal rose, firms could import manganese-aluminum briquettes. These briquettes would reduce demand for domestic manganese metal.

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[42] COMPAS runs using these estimates are presented in appendix F.

[43] A supply function is not defined in the case of a noncompetitive market.

[44] Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[45] Product differentiation, in turn, depends on such factors as quality and conditions of sale (price discounts/rebates, lead times between order and delivery dates, payment terms, product services, etc.). Based on available information discussed earlier, the elasticity of substitution between domestic and imported Chinese manganese metal is likely to be between 2 and 4. The Chinese and domestic manganese metal are not identical in quality, and the Chinese manganese metal cannot be used in all products as readily as domestic manganese metal can, particularly in manganese-aluminum briquettes. In addition, Chinese and domestic manganese metal suppliers differ in the support they provide, as well as in product availability, and delivery time. These factors would reduce substitutability even if the products were identical.

The petitioners claimed that this elasticity estimate given by the Commission was too low and that the elasticity of substitution should be between 4 and 6. Chinese and U.S. produced manganese metal can be used for the same range of applications. This is reflected in the answers to the questionnaires. The majority of the end users claim that Chinese manganese metal is of comparable quality to domestic manganese metal or, if quality differences exist, these do not matter and that the majority of importers say quality differences do not matter. The staff notes, however, that Chinese and U.S. manganese metal are not identical in quality; they cannot be used interchangeably in all products, particularly for manganese-aluminum briquettes used in aluminum canstock. In some cases, firms are willing to pay more in order to have domestically produced manganese metal.

Substitution between nonsubject imports and domestic manganese metal will be greater than that between domestic and Chinese manganese metal because South African manganese metal, which makes up the vast majority of nonsubject imports, is similar in quality to domestic manganese metal. Based on available information discussed earlier, the elasticity of substitution between domestic and imported nonsubject manganese metal is likely to be between 3 and 5.

Substitution between nonsubject imports and Chinese manganese metal will be greater than that between Chinese and domestic manganese metal, but similar to that between domestic and nonsubject imports. South African manganese metal, which makes up the overwhelming majority of nonsubject imports, is similar in quality to domestic manganese metal and superior to Chinese manganese metal because it does not contain selenium. South Africa remains the most important source of imports of manganese metal. Both Chinese and nonsubject manganese metal, however, may require long periods between order and provision because both are imported. Imports are also purchased through agents who may not provide the support domestic producers provide. Based on available information discussed earlier, the elasticity of substitution between imported nonsubject manganese metal and Chinese manganese metal is likely to be between 3 and 5.

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[45] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and U.S. like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject imported product (or vice versa) when prices change.

PART III: CONDITION OF THE U.S. INDUSTRY

INFORMATION PRESENTED IN THIS SECTION

The Commission analyzes a number of factors in making its determination of material injury by reason of subject imports (see 19 U.S.C. § 1677(7)(B) and 1677(7)(C)). Information on the final margins of sales at LTFV was presented earlier in this report, and information on the volume and pricing of imports of manganese metal from China is presented in the sections entitled "U.S. Imports, Apparent Consumption, and Market Shares" and "Pricing and Related Data," respectively. Information on the other factors specified is presented in this section and in section VI and (except as noted) is based on questionnaire responses of all known U.S. producers of manganese metal during the period for which information was collected in the investigation.

U.S. PRODUCERS

Petitioners Elkem and KMCC account for 100 percent of domestic manganese metal capacity and hence 100 percent of U.S. production. No other U.S. firms are known to have entered or exited the industry during January 1, 1992, through June 30, 1995.

Elkem Metals Company (Elkem)

Elkem was formed in 1981 after its parent company, Elkem A/S of Norway, acquired the U.S. manganese operations of Union Carbide. Elkem's principal line of business is special metals, which includes hardeners for the aluminum industry, chromium metal for the superalloy industry, simplex ultra-low-carbon ferrochrome and nitrated medium-carbon ferromanganese for the steel industry, and manganese metal for the steel and chemical industries. All of these products are produced at the firm's Marietta, OH, plant. Elkem maintains its corporate headquarters in Pittsburgh, PA. ***.[1] According to a company official, ***.

Kerr-McGee Chemical Corporation (KMCC)

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

U.S. PRODUCTION CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

As the only two producers of manganese metal in the United States, Elkem and KMCC opted to adopt different operating strategies to cope with changing market conditions during recent years. In

[1] ***. (Elkem's response to part I, item I.8, of the Commission's producers' questionnaire, Aug. 21, 1995.)

1990, Elkem chose to discontinue operations on 1 of its 4 manganese metal cell lines. As a result, the firm has been utilizing only about *** percent of its theoretical capacity of *** ST. Elkem asserts, however, that ***.[2] For it to do so, however, the firm would need to purchase certain cell room consumables (that is, anodes, cathodes, and cell blocks) at a cost of about $***.[3] At the risk of accumulating abnormally high inventory levels, KMCC adopted the strategy of operating at high capacity utilization partly because of high fixed costs and of its inability to easily reduce labor costs.[4]

Neither firm produces products other than manganese metal on the same equipment and machinery used in the production of manganese metal. Both firms, however, internally transfer a portion of their production of manganese metal for use in the production of a downstream product.[5] That downstream product for both firms is manganese-aluminum briquettes, which consist of between 75 and 85 percent manganese, with the remainder being aluminum powder and/or granules.[6] These internal transfers in Elkem's case ranged from *** percent to *** percent of its manganese metal production between 1992 and 1994 and accounted for *** percent of its production in interim 1995. For KMCC, such transfers ranged from *** percent to *** percent of that firm's production between 1992 and 1994 and represented *** percent of its production in interim 1995.

Data on U.S. producers' manganese metal production capacity, production, and capacity utilization are presented in table III-1. The combined production capacity of Elkem and KMCC fluctuated insignificantly between 1992 and 1994, averaging slightly more than *** ST annually, and remained virtually unchanged at about *** ST between January-June 1994 and January-June 1995. As can be seen from the table, KMCC accounted for *** (about *** percent) of the two firms' combined capacity during the period for which information was requested. U.S. production of manganese metal increased *** percent from 1992 to 1994, rising from *** ST in 1992 to *** ST in 1994, and fell by *** percent between January-June 1994 and January-June 1995. The industry's capacity utilization rose by

Table III-1
Manganese metal: U.S. capacity, production, and capacity utilization, by firms, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

[2] See confidential submission of petitioners dated Sept. 15, 1995; see also Elkem's supplemental questionnaire response dated Aug. 24, 1995.

[3] Confidential submission of petitioners dated Sept. 15, 1995.

[4] Confidential written testimony of Mr. David W. Ezell, business director, electrolytic/specialty products, KMCC, presented at the Commission's preliminary conference. Also see conference TR, p. 17.

[5] In the Commission's producer questionnaire, Elkem and KMCC were asked to what extent products other than manganese metal may be substituted for manganese metal in the production of the downstream products; the response of both firms was that no other product is a substitute for manganese metal in the production of the downstream product.

[6] To produce manganese-aluminum briquettes, manganese metal flake is first ground to a powder form and then mixed with aluminum powder and/or granules. Although manganese metal powder is sold commercially, Elkem reported having such sales ***.

nearly *** percentage points from 1992 to 1994, increasing from *** percent to *** percent, but dipped slightly between the interim periods. KMCC operated at *** of capacity throughout the period for which the Commission requested information; Elkem's capacity utilization ranged between *** percent and *** percent (see footnotes to table III-1).

U.S. PRODUCERS' SHIPMENTS

U.S. producers' shipments of manganese metal consist of internal transfers for use in the production of manganese-aluminum briquettes and for the conversion of manganese metal flake into manganese metal powder for commercial sales, commercial or open-market shipments of flake and powder to distributors and to end users, and shipments to export markets in Canada and Europe. During the period for which the Commission requested information in this investigation, Elkem and KMCC were involved in certain transactions described by each firm as unusual and extraordinary but which the Chinese respondents characterized as neither.[7] [8] ***.[9] KMCC had a similar experience. ***.[10] These transactions, totaling approximately *** ST, KMCC alleges were entered into in order to reduce its inventory levels and to avoid a reduction in its capacity utilization.

Data on U.S. producers' shipments of manganese metal are presented in table III-2 and figures III-1 to III-3. With the exception of company transfers, the volume of all other components of U.S. producers' total shipments increased steadily from 1992 to 1994 and then decreased from interim 1994 to interim 1995. The quantity of U.S. producers' domestic (open-market) shipments rose by *** percent from 1992 to 1993 and again by nearly *** percent from 1993 to 1994. Overall, such shipments increased from *** ST, valued at $***, in 1992 to *** ST, valued at $***, in 1994.[11] Between the interim periods, U.S. producers' domestic shipments fell by *** percent in terms of quantity and by *** percent in terms of value. Although the special transactions mentioned played some role in the 1993-94 increase and the decrease that occurred between the interim periods, as an official with KMCC explained to Commission staff, a general improvement in market conditions was also a significant factor in U.S. producers' increased shipments between 1992 and 1994.[12]

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[7] Hearing TR, pp. 46, 47, and 99-102.

[8] ***.

[9] Petitioners' postconference brief, p. 23; petitioners' Aug. 24, 1995, response to letter from Commission's staff dated Aug. 22, 1995.

[10] Ibid., pp. 10 and 11.

[11] Petitioners argue that Elkem's unusual, one-time sale of *** ST to *** in 1994, and KMCC's sale of *** ST to *** in the same period, should be excluded from the Commission's trend analysis. Excluding these transactions, U.S. producers' domestic open-market shipments would show a decrease of *** percent between 1993 and 1994 and an overall increase of *** percent from 1992 to 1994.

[12] Sept. 8, 1995, telephone discussion between Woodley Timberlake of the Commission's staff and ***, ***, KMCC.

Table III-2
Manganese metal: U.S. producers' shipments, by types and by firms, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Figure III-1
Manganese metal: Producers' open-market and company transfer shipments as a share of the quantity of total U.S. shipments, 1992-94, and Jan.-June 1995

* * * * * * *

Figure III-2
Manganese metal: Producers' open-market shipments as a share of the quantity of total U.S. shipments, by firms, 1992-94, and Jan.-June 1995

* * * * * * *

Figure III-3
Manganese metal: Powder vs. flake as a share of the quantity of producers' total open-market shipments, 1992-94, and Jan.-June 1995

* * * * * * *

Unit values of U.S. producers' shipments are also shown in table III-2. The unit value of U.S. producers' export shipments rose in all periods, increasing from $*** per short ton in 1992 to $*** per short ton in 1994 and rising to $*** per short ton in interim 1995. All other unit values (that is, company transfers, domestic and U.S. shipments, and total shipments) declined from 1992 to 1994 and then increased from interim 1994 to interim 1995.

As shown in figure III-1, U.S. producers' domestic open-market shipments of manganese metal as a share of the quantity of total U.S. shipments increased from *** percent in 1992 to *** percent in 1994 but dropped to *** percent in interim 1995. Moving in the opposite direction, U.S. producers' company transfers as a share of total U.S. shipments fell from *** percent in 1992 to *** percent in 1993 and *** percent in 1994, but then increased to *** percent in interim 1995. The declining trend between 1992 and 1994 may have resulted, in part, from ***.[13] As shown in figure III-2, the percentage point difference between Elkem's and KMCC's domestic open-market shipments as a share of each firm's total U.S. shipments ranged between *** and *** percentage points between 1992 and 1994 and was *** percentage points in interim 1995.

[13] According to ***'s witness at the Commission's hearing, ***. (Hearing TR, p. 125.)

As stated previously, both Elkem and KMCC consume manganese metal internally for use in the production of manganese-aluminum briquettes.[14] Grinding manganese metal flake into powder is an intermediate step in this process. Some of the powder resulting from this grinding process is marketed commercially for use primarily in the welding-rod industry.[15] As shown in figure III-3, manganese metal flake comprised the bulk of both firms' domestic open-market shipments during the period for which information was requested, accounting for *** percent of such shipments in 1992, *** percent in 1993, *** percent in 1994, and *** percent in interim 1995.

U.S. PRODUCERS' INVENTORIES

Data on U.S. producers' inventories of manganese metal are shown in table III-3. After rising by *** percent from yearend 1992 to yearend 1993, the combined inventories of Elkem and KMCC fell by *** percent from yearend 1993 to yearend 1994 and declined by *** percent from interim 1994 to interim 1995. Such inventories rose from *** ST in 1992 to *** ST in 1993, fell to *** ST in 1994, and dropped from *** ST in interim 1994 to *** ST in interim 1995. On an individual firm basis, Elkem experienced *** inventory levels throughout the period, while KMCC's experience was one of ***, particularly between yearend *** and yearend ***, which KMCC attributes to ***.

Table III-3
Manganese metal: End-of-period inventories of U.S. producers, by firms, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Indicative of improved market conditions, the ratio of U.S. producers' inventories to production and the ratio of inventories to shipments declined during the period for which information was requested. The ratio of inventories to production fell from *** percent in 1992 to *** percent in 1994 and dropped from nearly *** percent in interim 1994 to about *** percent in interim 1995. The ratio of inventories to total shipments declined similarly, falling from *** percent in 1992 to *** percent in 1994 and dropping from nearly *** percent in interim 1994 to *** percent in interim 1995.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Those production and related workers (PRWs) employed by Elkem and by KMCC in the production of manganese metal are used exclusively for that purpose and are not involved in the production of other products produced in the respective firms' reporting establishments.[16] Such PRWs employed by Elkem are covered under a union contract, whereas those employed by KMCC are not.

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[14] ***.

[15] Conference TR, p. 36.

[16] In its response to the Commission's questionnaire, KMCC noted that ***.

In the Commission's questionnaire, U.S. producers were asked whether they had reduced the number of PRWs producing manganese metal by at least 5 percent, or 50 workers, during the period for which information was requested. KMCC reported ***. Elkem, on the other hand, reported ***.

Employment data as reported by Elkem and KMCC are shown in table III-4. Comparatively, the employment trends for *** fluctuated less and tended to be somewhat more stable than those for ***. While the number of PRWs employed by *** and the number of hours worked by such PRWs remained fairly constant during the period for which information was requested, the number of PRWs employed by *** and the number of hours worked by such workers fluctuated downward from 1992 to 1994 but then stabilized between the interim periods. Both firms experienced increased labor costs, as measured by wages and total compensation paid to PRWs. For ***, such costs rose steadily throughout the period, increasing by *** percent from 1992 to 1994 and by *** percent between the interim periods. Conversely, wages and total compensation paid to *** PRWs rose unevenly by *** percent and *** percent, respectively, from 1992 to 1994 and increased by less than *** percent from interim 1994 to interim 1995. In the aggregate, wages paid to PRWs increased steadily by *** percent from 1992 to 1994 and rose between the interim periods by just under *** percent. Similarly, aggregate total compensation paid to PRWs increased unevenly by *** percent from 1992 to 1994 and also increased between the interim periods by *** percent.

Table III-4
Average number of production and related workers producing manganese metal, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by firms, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Average unit labor costs for Elkem and KMCC fluctuated upward by nearly *** percent from 1992 to 1994 and increased by about *** percent between the interim periods. In addition to enjoying *** unit labor costs than its U.S. competitor, *** also benefitted from higher worker productivity. In 1992, ***'s PRWs produced at the rate of *** ST per 1,000 hours worked compared with *** ST per 1,000 hours worked for ***'s PRWs. The gap widened in 1993 to *** ST for ***'s PRWs versus *** ST for those PRWs employed by ***. Although the productivity of ***'s PRWs improved significantly in 1994, their output was still below that of ***'s PRWs.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importers' questionnaires to 32 firms believed to import manganese metal from all sources. Questionnaires were also sent to the 2 U.S. producers. Seven firms did not respond to the questionnaire. Of the 25 firms that did respond, 7 reported that they did not import manganese metal from any source during the period for which information was requested. The remaining 18 firms supplied usable information on their imports of the subject merchandise. Elkem also supplied information on its U.S. imports of manganese metal.

Based on information supplied in questionnaire responses, U.S. importers primarily import manganese metal for resale to U.S. customers.[1] Four firms, *** included, reported that they consume imported South African and Chinese manganese metal internally for use in the production of manganese-aluminum briquettes.[2]

U.S. IMPORTS

Data on U.S. imports of manganese metal based on official statistics of the U.S. Department of Commerce are shown in table IV-1, and data on U.S. imports based on Commission questionnaires are presented in table IV-2. When compared with official statistics, U.S. imports from China based on questionnaire responses represented 69 percent of the total volume in 1992, 86 percent in 1993, 101 percent in 1994, and 139 percent in interim 1995.

Based on official statistics, the quantity and value of U.S. imports of manganese metal from all sources rose steadily from 1992 to 1994, increasing from 15,297 ST, valued at $25.7 million, in 1992 to 22,400 ST, valued at $34.8 million, in 1994 (table IV-1). From January-June 1994 to January-June 1995, however, the quantity and value of such imports declined by 43 and 33 percent, respectively. The average unit value of total U.S. imports dropped from $1,679 per ST in 1992 to $1,553 per ST in 1994 but increased from $1,533 per ST in interim 1994 to $1,791 per ST in interim 1995. As shown in the table, South Africa was the single-largest supplier of manganese metal to the United States between 1992 and 1994 and during the first 6 months of 1995, accounting for no less than 66 percent of total U.S. imports in any one period. Based on questionnaire data, total U.S. imports from all sources increased and decreased similarly, more than doubling in quantity and nearly doubling in value from 1992 to 1994 but decreasing in quantity and value from interim 1994 to interim 1995.

Whether based on official statistics or on questionnaire data, the quantity and value of U.S. imports from China rose steadily from 1992 to 1994 and declined sharply between the interim periods. Based on official statistics, such imports increased from 1,730 ST, valued at $2.5 million, in 1992 to

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[1] All of the firms that supplied usable information on their imports reported that they imported only unwrought manganese metal during the period for which information was requested.

[2] ***.

Table IV-1
Manganese metal: U.S. imports based on official statistics, by sources, 1992-94, Jan.-June 1994, and Jan.-June 1995

Source	1992	1993	1994	Jan.-June-- 1994	1995
	Quantity (*short tons*)				
China	1,730	2,999	5,309	2,686	1,087
South Africa	12,987	12,764	14,819	8,194	5,486
Other sources	579	738	2,272	1,463	487
Total	15,297	16,502	22,400	12,342	7,060
	Value (*1,000 dollars*)				
China	2,544	4,236	6,942	3,477	1,704
South Africa	21,122	20,467	23,845	13,229	9,539
Other sources	2,012	1,864	4,009	2,219	1,398
Total	25,679	26,567	34,797	18,926	12,642
	Unit value (*per short ton*)				
China	$1,470	$1,412	$1,308	$1,295	$1,568
South Africa	1,626	1,603	1,609	1,615	1,739
Other sources	3,473	2,524	1,765	1,517	2,872
Average	1,679	1,610	1,553	1,533	1,791
	Share of total quantity (*percent*)				
China	11.3	18.2	23.7	21.8	15.4
South Africa	84.9	77.3	66.2	66.4	77.7
Other sources	3.8	4.5	10.1	11.9	6.9
Total	100.0	100.0	100.0	100.0	100.0
	Share of total value (*percent*)				
China	9.9	15.9	20.0	18.4	13.5
South Africa	82.3	77.0	68.5	69.9	75.5
Other sources	7.8	7.0	11.5	11.7	11.1
Total	100.0	100.0	100.0	100.0	100.0

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

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

Table IV-2
Manganese metal: U.S. imports based on questionnaire data, by sources, 1992-94, Jan.-June 1994, and Jan.-June 1995

Source	1992	1993	1994	Jan.-June-- 1994	1995
	Quantity (*short tons*)				
China	1,189	2,566	5,364	2,726	1,505
Other sources	7,625	10,276	14,239	7,686	3,691
Total	8,814	12,842	19,603	10,412	5,196
	Value (*1,000 dollars*)				
China	1,690	3,515	6,943	3,509	2,079
Other sources	13,724	16,088	22,511	12,194	5,981
Total	15,414	19,603	29,454	15,703	8,060
	Unit value (*per short ton*)				
China	$1,421	$1,370	$1,294	$1,287	$1,381
Other sources	1,800	1,566	1,581	1,587	1,620
Average	1,749	1,526	1,503	1,508	1,551
	Share of total quantity (*percent*)				
China	13.5	20.0	27.4	26.2	29.0
Other sources	86.5	80.0	72.6	73.8	71.0
Total	100.0	100.0	100.0	100.0	100.0
	Share of total value (*percent*)				
China	11.0	17.9	23.6	22.3	25.8
Other sources	89.0	82.1	76.4	77.7	74.2
Total	100.0	100.0	100.0	100.0	100.0

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

5,309 ST, valued at $6.9 million, in 1994, and decreased from 2,686 ST, valued at $3.5 million, in interim 1994 to 1,087 ST, valued at $1.7 million, in interim 1995. Using questionnaire data, the quantity and value of U.S. imports from China increased and decreased similarly, rising from 1,189 ST, valued at $1.7 million, in 1992 to 5,364 ST, valued at $6.9 million, in 1994 and then dropping from 2,726 ST, valued at $3.5 million, in interim 1994 to 1,505 ST, valued at $2.1 million, in interim 1995. U.S. imports from all other sources showed similar trends.

APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of manganese metal are presented in tables IV-3 and IV-4.[3] The quantity and value of apparent U.S. consumption of manganese metal, including the quantity and value of U.S. producers' internal consumption, increased by *** percent and by *** percent, respectively, from 1992 to 1994 but declined by *** percent and by *** percent, respectively, between the interim periods (table IV-3). In absolute terms, the quantity and value of apparent U.S. consumption increased from *** ST, valued at $***, in 1992 to *** ST, valued at $***, in 1994, and dropped from *** ST, valued at $***, in interim 1994 to *** ST, valued at $***, in interim 1995.

Table IV-4 shows data on apparent U.S. open-market consumption based on U.S. producers' domestic commercial shipments, that is, excluding the quantity and value of U.S. producers' internal consumption. The quantity and value of apparent U.S. open-market consumption of manganese metal increased annually from 1992 to 1994, rising from *** ST, valued at $***, in 1992 to *** ST, valued at $***, in 1994. Between the interim periods, the quantity and value of such consumption fell by *** percent and *** percent, respectively.

U.S. MARKET SHARES[4]

Market share data for U.S. producers and U.S importers are shown in tables IV-5 and IV-6. In terms of the total U.S. manganese metal market, that is, including U.S. producers' internal consumption, Elkem's and KMCC's combined market share, based on quantity, fell by *** percentage points between 1992 and 1994 from *** percent in 1992 to *** percent in 1994 (table IV-5). However, their combined market share increased sharply between the interim periods from *** percent in interim 1994 to *** percent in interim 1995. Based on value, the two U.S. producers' market share followed a similar trend, falling by *** percentage points from 1992 to 1994 and then increasing between the interim periods. In terms of the U.S. open-market, the market share trends for the two U.S. producers moved in the opposite direction, that is, increasing between 1992 and 1994 and decreasing between the interim periods. U.S. producers' share of the quantity and value of the U.S. open-market increased from *** and *** percent, respectively, in 1992 to *** and *** percent, respectively, in 1994 (table IV-6). U.S. producers' market

[3] Using official Commerce statistics for imports. Consumption data based on U.S. importers' reported shipments of imports are presented in tables A-3 and A-4; consumption data based on U.S. importers' reported imports are presented in tables A-5 and A-6.

[4] Also see appendix tables A-3 through A-6.

Table IV-3
Manganese metal: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 1992-94, Jan.-June 1994, and Jan.-June 1995

Item	1992	1993	1994	Jan.-June-- 1994	1995
	Quantity (*short tons*)				
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	1,730	2,999	5,309	2,686	1,087
South Africa	12,987	12,764	14,819	8,194	5,486
Other sources	579	738	2,272	1,463	487
Total	15,297	16,502	22,400	12,342	7,060
Apparent consumption	***	***	***	***	***
	Value (*1,000 dollars*)				
Producers' U.S. shipments	***	***	***	***	***
U.S. imports from--					
China	2,544	4,236	6,942	3,477	1,704
South Africa	21,122	20,467	23,845	13,229	9,539
Other sources	2,012	1,864	4,009	2,219	1,398
Total	25,679	26,567	34,797	18,926	12,642
Apparent consumption	***	***	***	***	***

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

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

Table IV-4
Manganese metal: U.S. open-market shipments of domestic product, U.S. imports, by sources, and apparent U.S. open-market consumption, 1992-94, Jan.-June 1994, and Jan.-June 1995

Item	1992	1993	1994	Jan.-June-- 1994	1995
	Quantity (*short tons*)				
Producers' domestic commercial shipments	***	***	***	***	***
U.S. imports from--					
China	1,730	2,999	5,309	2,686	1,087
South Africa	12,987	12,764	14,819	8,194	5,486
Other sources	579	738	2,272	1,463	487
Total	15,297	16,502	22,400	12,342	7,060
Apparent consumption	***	***	***	***	***
	Value (*1,000 dollars*)				
Producers' domestic commercial shipments	***	***	***	***	***
U.S. imports from--					
China	2,544	4,236	6,942	3,477	1,704
South Africa	21,122	20,467	23,845	13,229	9,539
Other sources	2,012	1,864	4,009	2,219	1,398
Total	25,679	26,567	34,797	18,926	12,642
Apparent consumption	***	***	***	***	***

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

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

Table IV-5
Manganese metal: Apparent U.S. consumption and market shares, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Table IV-6
Manganese metal: Apparent U.S. open-market consumption and market penetration, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

share deteriorated between the interim periods, falling from *** and *** percent, respectively, in interim 1994 to *** and *** percent, respectively, in interim 1995.

Based on quantity, China's share of the total U.S. market increased from *** percent in 1992 to *** percent in 1994 and dropped from *** percent in interim 1994 to *** percent in interim 1995. In terms of value, China's market share increased and decreased similarly, rising from *** percent in 1992 to *** percent in 1994 and falling from *** percent in interim 1994 to *** percent in interim 1995. Based on apparent U.S. open-market consumption, China's market share increased from *** percent of the quantity and *** percent of the value of such consumption in 1992 to *** and *** percent of the quantity and value, respectively, in 1994. Between the interim periods, China's market share fell by *** percentage points on the basis of quantity and by *** percentage points on the basis of value.

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICE

The price of manganese metal depends on a number of factors, including the quantity purchased, the cost of production,[1] the availability of the product,[2] the producers' inventory levels,[3] whether the purchaser is a distributor, a producer, or an end user, and whether the purchaser is able and willing to bargain.

Transportation Costs to the U.S. Market

Transportation charges from China to the U.S. market are estimated to be 6.8 percent of the total c.i.f. value.[4]

U.S. Inland Transportation Charges

Most purchasers, 24 of 28, reported in their questionnaire responses that the cost of U.S. inland transportation is not a major factor in their purchase decisions. Four purchasers reported that it was important and that transportation costs generally ranged from 1 to 5 percent of the cost of manganese metal.[5]

Commerce LTFV Margins

On November 6, 1995, Commerce published its final determination that manganese metal from China is being or is likely to be sold in the United States at LTFV.[6] Commerce examined the sales of four Chinese exporters of manganese metal, accounting for *** percent of the volume of U.S. imports from China in 1994.[7] The share of 1994 imports from China accounted for by each exporter, the LTFV margin for each firm, and the percentage of the quantity and value of each foreign exporter's U.S. sales are shown in the following tabulation (in percent):

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[1] If the cost of production fell, Elkem would increase production by ***. This would cause the price of manganese metal to fall while profits increased.

[2] The amount of Chinese manganese metal available and its resulting low price have induced the price of the domestic product to fall as well.

[3] KMCC has stated it responded to high inventories by ***.

[4] This estimate is derived from official U.S. import data (under HTS subheadings 8111.00.45 and 8111.00.60) and represents the transportation and other changes included in imports valued on a c.i.f. basis.

[5] *** reported that transportation cost made up *** to *** percent of the total cost of manganese metal.

[6] The petitioners requested a re-evaluation of the margins calculated by Commerce. The new margins were available Nov. 30, 1995.

[7] Commerce received data from 5 exporters. The data from one of these were not creditable and were not used.

Exporter	Share of U.S. 1994 imports from China	LTFV margin	LTFV sales as a share of total sales examined: Quantity	Value
CEIEC	***	11.77	***	***
CMIECHN	***	0.97	***	***
HEID	***	4.60	***	***
Minmetals	***	5.88	***	***
All others	***	143.32	-	-
Total	100.0	-	-	-

Current U.S. Tariff Rate

Imported Chinese manganese metal enters the United States under HTS subheadings 8111.00.45 and 8111.00.60. Imports of Chinese manganese metal powder and flake are subject to a 14 percent duty as unwrought manganese metal. Other than unwrought manganese metal was subject to a 5.5 percent duty in 1994; this fell to a 5.1 percent duty in 1995.[8]

Price Competition

Twenty-five of 29 purchasers reported that the lowest price does not always win the contract and that purchases were also based on quality or origin of the material. Seven purchasers reported that they are willing to pay some price premium to maintain a domestic source of supply. Four purchasers claimed that the lowest price offered would always win the contract. One, ***, only purchased from Elkem. One of these asked for bids on a carefully specified product. One said that the amount it purchased was so low it does not shop but takes the first and thus lowest offer.

Both domestic producers have internal price lists, though unpublished. Nine of the 27 purchasers that responded to this question on the Commission's questionnaire stated that they pay the price set by the supplier. These firms tend to either be distributors for the producers or have a particular seller from whom they purchase. Seventeen responded that terms were negotiable.[9] Domestic producers offered distributors set discounts from the list price; one end user (***) also reported a discount off list price; and another *** received a truckload discount of $*** per pound. Importers of Chinese manganese metal offered a net cash discount to one end user. *** recorded a truckload discount of from $*** to $*** per

[8] Other than unwrought manganese metal from China was not reported by any importer. According to official U.S. import statistics, however, in 1994 over a million kilograms were imported from China under this category at the 5.5-percent tariff rate. In 1995 no Chinese or South African imports of other than unwrought manganese metal have been recorded.

[9] One purchaser took bids quarterly; it is unclear whether these were negotiated.

pound. One firm reported that the Chinese product follows the same basic pricing structure as the domestic product but is usually priced a small percentage less than domestic.

QUESTIONNAIRE PRICE DATA

The Commission collected price and quantity information from U.S. producers and importers of Chinese manganese metal for sale to end users and to distributors for their largest sale of the quarter and for total quarterly sales from January-March 1992 to April-June 1995. The Commission also collected information from purchasers on the prices they paid for domestic and Chinese manganese metal. Pricing data were requested for the following six products:

Product 1: Unwrought manganese metal in powder form, containing not less than 99.7 percent manganese by weight.

Product 2: Unwrought manganese metal in powder form, containing less than 99.7 but not less than 99.5 percent manganese by weight.

Product 3: Unwrought manganese metal in flake form, containing not less than 99.7 percent manganese by weight.

Product 4: Unwrought manganese metal in flake form, containing less than 99.7 but not less than 99.5 percent manganese by weight.

Product 5: Manganese metal other than unwrought, containing not less than 99.7 percent manganese by weight.

Product 6: Manganese metal other than unwrought, containing less than 99.7 but not less than 99.5 percent manganese by weight.

Price data for products 1 (powder) and 3 (flake) were received from both producers of manganese metal and from 15 importers of manganese metal from China. Reported pricing accounted for 100 percent of U.S. producers' and 55 percent of importers' open-market domestic shipments of manganese metal from China in 1994. Prices are shown in table V-1 and figure V-1. Price data for either U.S. or Chinese manganese metal or both were also reported by 28 purchasers.[10] Purchaser prices and purchase patterns were usually similar to those reported by the importers and domestic producers. In most cases the average price that purchasers reported was slightly above that reported by the producers and

[10] Some purchasers reported other categories of manganese metal. Two purchasers reported manganese metal other than unwrought; however, the characteristics of the metal they reported indicated that it was flake according to the Commission's definition. Other purchasers reported a lower minimum standard for manganese content, but this represented their minimum standard, not necessarily the actual content of the material they used. The price information these firms provided was included in the price data for flake.

importers. This higher price may reflect the purchase from distributors as well as from producers. Purchasers' prices are shown in figure V-2.[11]

Table V-1
Manganese metal: Average net f.o.b. selling prices and quantities of U.S.-produced and imported flake and powder manganese metal from China, by customer types, by products, and by quarters, Jan. 1992-June 1995

* * * * * * *

Figure V-1
Net U.S. f.o.b. selling prices of manganese metal produced in the United States and imported from China, by form of the product, by type of customer, and by quarters, Jan. 1992-June 1995

* * * * * * *

Figure V-2
Net U.S. purchase prices of manganese metal produced in the United States and imported from China, by form of the product, by type of purchaser, and by quarters, Jan. 1992-June 1995

* * * * * * *

Price Trends

Weighted-average U.S. f.o.b. prices for U.S.-produced manganese metal flake and powder fluctuated between January-March 1992 and April-June 1995, with the final prices above the original prices for domestic manganese metal. In contrast, the price of Chinese manganese metal fell between January-March 1992 and April-June 1995. The f.o.b. prices for sales of U.S.-produced flake to end users fell relatively steadily from $*** to $*** per pound between the first quarter of 1992 and the first quarter of 1994. In 1994, the price of domestic flake to end users stabilized around $*** per pound. In 1995 the price of domestic flake to end users rose to $*** per pound, just above its price in January-March 1992. The U.S. f.o.b. price of imported Chinese flake sold to end users fluctuated much more than domestic flake, falling from $*** per pound, $*** over the domestic price, in January-March 1992 to $*** per pound, $*** below the domestic price, in April-June 1992. The price of Chinese flake rose to $*** per pound in October-December 1992. Throughout 1993, the price of imported Chinese manganese metal flake hovered around $*** per pound, but, in 1994, it fell to around $*** to $*** per pound. In 1995 the price rose to $*** per pound in January-March and then $*** per pound in April-June.

The f.o.b. price for sales of domestic manganese metal flake to distributors rose from $*** per pound in January-March 1992 to $*** per pound in April-June 1995. The price fell to its minimum

[11] The purchasers' prices are the weighted averaged of prices purchasers reported.

level, $*** per pound, in April-June 1993 and oscillated from quarter to quarter until the end of 1994. The price rose above its 1992 levels only in 1995. The price of Chinese flake fell from $*** per pound in January-March 1992 to $*** per pound in the fourth quarter of 1992, rose to $*** in the fourth quarter of 1993, and then fell to around $*** per pound in 1994. The price of Chinese flake rose to $*** per pound in the second quarter of 1995. Unlike prices to end users, the price of imported Chinese flake to distributors in 1995 was $*** below its price in the first quarter of 1992.

The price of U.S.-produced powder sold to end users fell by *** percent between January-March 1992 and July-September 1992 from $*** per pound to $*** per pound. The price then increased and fluctuated between $*** and $*** until October-December 1994, when the price began rising steadily to $*** per pound in April-June 1995. Sales of Chinese powder were reported only for end users. These prices were much more sporadic than domestic prices and were consistently above those of domestic powder. The price of domestic powder sold to distributors was only reported for January 1994-March 1995; it remained between $*** and $*** per pound throughout this period.

Price Comparisons

Most sales reported were for manganese metal flake. There were 14 instances in which price comparisons were possible between U.S.-produced and imported Chinese flake sold to end users as reported by the producers and importers. Chinese flake was priced below the U.S.-produced flake in 13 of the 14 quarters by margins ranging between *** percent and *** percent (table V-2). Chinese flake was more expensive than U.S.-produced flake only during the first quarter of 1992, by a margin of *** percent. The price of Chinese flake sold to distributors was available for 12 quarters. In all of these quarters the Chinese price was below the domestic price by margins ranging from *** to *** percent.

Table V-2
Margins of under (over) selling by importers of Chinese manganese metal relative to average sales prices of U.S. producers, by customer types, by products, and by quarters, Jan. 1992-June 1995

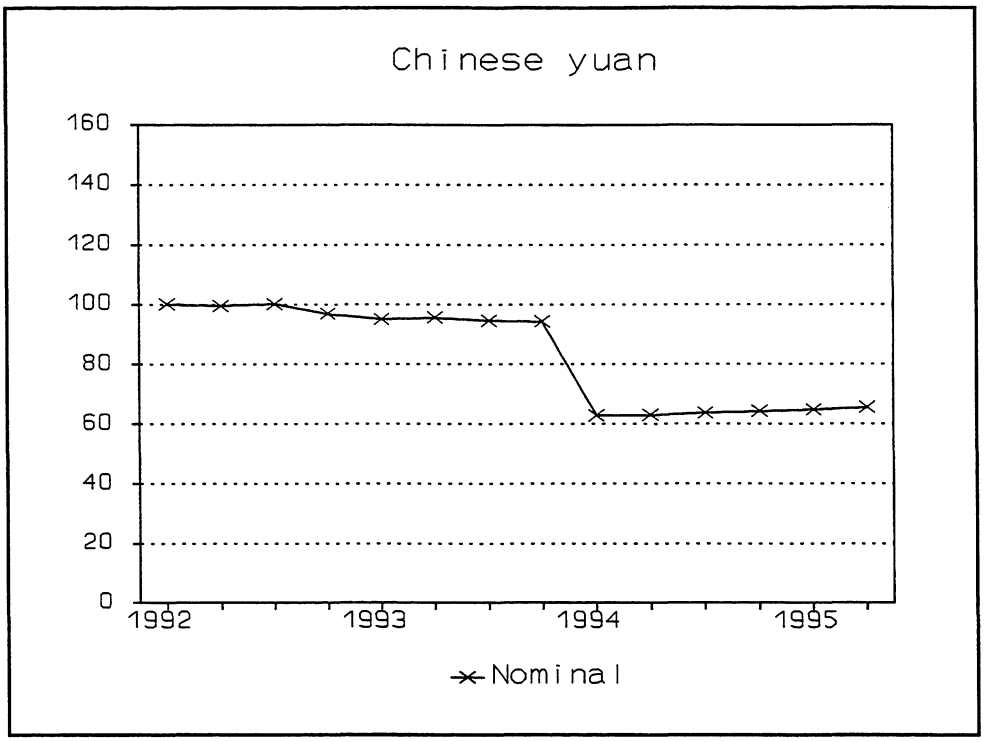
* * * * * * *

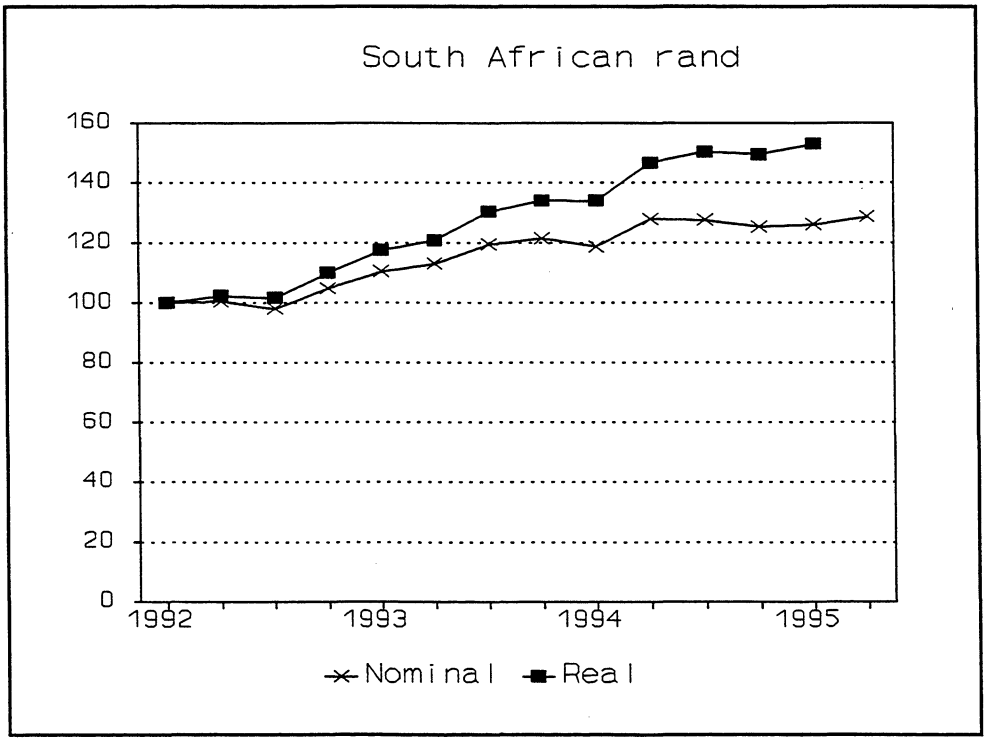
The price of Chinese powder was reported in only four quarters and was only available for sales to end users. In all these quarters, Chinese powder was more expensive than domestic powder; margins ranged from *** percent to *** percent.

EXCHANGE RATES

The nominal value of the Chinese yuan depreciated by 5.8 percent in relation to the U.S. dollar during January 1992-December 1993 (figure V-3). Beginning January 1, 1994, the Peoples Bank of China changed the manner in which the official exchange rate was determined. As a result, in the first quarter of 1994, the reported nominal value of the Chinese yuan fell 31.4 percent lower than in the fourth quarter of 1993. It then increased by 2.6 percent over the rest of the period. Producer price index information for China is unavailable; thus real exchange rates cannot be calculated.

Figure V-3
Exchange rates: Indexes of nominal and real exchange rates between the U.S. dollar and currencies of China and South Africa, by quarters, Jan. 1992-June 1995[1]





[1] Jan.-Mar. 1992 = 100.

Source: International Monetary Fund, *International Financial Statistics*, Aug. 1995.

The nominal value of the South African rand appreciated by 28.6 percent during the investigation period. The real exchange rate for the South African rand appreciated by an even greater amount, 52.9 percent during January 1992-March 1995.[12]

LOST SALES AND LOST REVENUES

The Commission received *** allegations of lost revenue and *** allegations of lost sales from the two U.S. producers, Elkem and KMCC (table V-3). The lost revenue allegations involved approximately *** pounds of manganese metal totaling $***. The lost sales allegations involved *** pounds of manganese metal totaling $***.

Table V-3
Lost sale and lost revenue allegations reported by U.S. producers of manganese metal

* * * * * * *

KMCC alleged lost revenue from sales to *** in ***. *** reported negotiating a long-term contract with KMCC covering the period from *** to ***. In this contract *** agreed to purchase *** percent or more of its manganese metal from KMCC in return for a price advantage. In *** it agreed to a contract price of $*** per pound. The market continued to soften after this time. ***, *** of ***, claimed that this was caused by imports from China. *** noted that the price of a number of metals fell during this period because of imports from China and the Commonwealth of Independent States. The lower published prices were used by *** to negotiate a number of price reductions, beginning with one in *** from $*** to $*** per pound. In ***, *** arranged to have the price reduced from $*** to $***. It purchased *** pounds at this price. In ***, it negotiated a reduction from $*** to $*** on purchases of *** pounds.

KMCC alleged lost sales to *** in ***. ***'s purchasing agent, ***, verified much of the lost sales allegation from KMCC. *** purchased *** pounds of manganese metal from China between *** and ***. Chinese metal was purchased to average their cost down. Chinese metal was purchased at prices from $*** to $ *** per pound. Domestic manganese metal was priced from $*** to $*** per pound between *** and ***. *** also purchased *** pounds of manganese metal from South Africa, and this amount covers most the discrepancy between the alleged quantity of sales lost and the amount of Chinese manganese metal they purchased.

Elkem cited *** of *** in two lost sales in ***, and one lost revenue allegation in ***. ***, ***'s purchasing agent, provided quantity and domestic price data which agreed with the lost sale and lost revenue information provided by Elkem. He would give no information about other prices offered in *** or report if the price Elkem offered had fallen. In the lost sale allegation against ***, *** was unwilling to divulge either the source of the manganese metal it purchased or its price.

In the other allegation of lost revenues (***, in ***), the purchaser ***, the purchasing agent claimed that he did not purchase the domestic product, but instead purchased nonsubject imported

[12] South African producer price indexes were not available for the second quarter of 1995.

manganese metal. In the other allegations of lost sales (*** in May-September ***, *** in January 1992-September ***, and *** in June ***), the purchasers purchased either domestic or nonsubject imported manganese metal.[13]

[13] *** of *** reported that he purchased South African manganese metal from *** and ***. *** of *** reported he purchased manganese metal solely from Elkem. *** of *** reported he purchased nonsubject manganese metal priced at $*** per pound rather than the Chinese manganese metal offered at $*** per pound.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

Both producers of manganese metal--Elkem and KMCC--provided financial information on their overall establishment operations, their operations on trade-only sales of manganese metal, and their trade and transfer sales of manganese metal. Elkem's data were verified by Commission staff on September 12 and 13, 1995. As a result (1) Elkem's ***; (2) the company ***; and (3) ***.

As discussed in the preliminary investigation and elsewhere in this report, *** of the manganese metal produced by KMCC and Elkem is not sold in the merchant market but is internally transferred to produce manganese-aluminum briquettes. Such transfers accounted for *** percent of net sales quantities during 1992, 1993, 1994, interim 1994, and interim 1995, respectively. Consistent with our practices in previous investigations where company transfers have been significant, we are presenting profit-and-loss data on both trade-only sales of manganese metal and on combined trade and transfer sales of manganese metal.

OVERALL ESTABLISHMENT OPERATIONS

KMCC produces manganese metal at its Hamilton, MS, plant, along with sodium chlorate and manganese-aluminum briquettes. A little less than *** of establishment net sales (trade and transfer) in every period were attributable to manganese metal. Elkem produces manganese metal along with manganese-aluminum briquettes, ferrochrome, silicomanganese, and ferromanganese at its Marietta, OH, facility. About *** percent of sales in every period (trade and transfer) were those of manganese metal.

The data on Elkem's and KMCC's overall establishment operations are shown in table VI-1. Net sales and all levels of profitability decreased from 1992 to 1993. Although net sales rebounded in 1994 and surpassed 1992 levels, profits were only comparable to 1993 results. Interim 1995 net sales and profitability were marginally better than corresponding interim 1994 results.

Table VI-1
Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein manganese metal is produced, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995[1]

* * * * * * *

TRADE-ONLY SALES OF MANGANESE METAL

Profit-and-loss data for KMCC's and Elkem's aggregate trade-only sales of manganese metal are shown in table VI-2. Results in 1993 were markedly better than those posted in 1992, the result of increased sales and profit margins. Net sales quantities and value both increased by over *** while the $*** per ton decrease in the unit cost of goods sold (COGS) was $*** more than the $*** decrease in unit sales value. As a result, the industry turned its operating loss into a small profit.

Table VI-2
Income-and-loss experience of U.S. producers on their trade-only sales of manganese metal, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Net sales continued to rise sharply in 1994, increasing by about *** over 1993 levels. However, the increased sales did not translate into higher earnings. The reason was that the gross profit margin decreased by about *** as unit COGS increased moderately while unit sales values remained flat. Despite a *** percent decrease in net sales from interim 1994 to interim 1995, the two companies posted their largest profits by far. Key to these improved results was the $*** per ton increase in unit sales value.

Selected profit-and-loss data for KMCC's and Elkem's trade-only sales of manganese metal are shown in table VI-3. Both companies had *** in 1993 and 1994, and both had *** the first 6 months of 1995 compared to the same period in 1994. ***.

Table VI-3
Income-and-loss experience of U.S. producers on their trade-only sales of manganese metal, by firms, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

While KMCC's manganese metal operations ***, Elkem ***. The key difference between the two companies is their cost structure. Elkem's unit COGS was ***. Thus, while ***.

In the preliminary investigation and during this final investigation, Elkem has argued that ***. ***.

In order to measure the effect of *** Elkem's financial performance, we requested revenues and costs associated with the transactions. Its estimate of the revenues and costs involved, together with summary tables of Elkem's and the U.S. industry's manganese operations without *** transactions, are presented in appendix D. Excluding the Elkem-*** transactions has *** on the profit-and-loss experience of the U.S. manganese metal producers. With respect to trade-only sales (table D-2), the net sales value still increases from 1993 to 1994, albeit at a much lower rate than that indicated in table VI-2. On the other hand, the 1994 operating loss is ***, and instead of sales declining by *** from interim 1994 to interim 1995, the decline is about *** percent. With respect to trade and transfer sales (table D-4), net sales values taper off from 1993 to 1994 instead of increasing as shown in table VI-6 (see page VI-4); however, net sales values increase by about *** from interim 1994 to interim 1995 instead of dwindling.

A comparison of Elkem's and KMCC's manganese metal costs is shown in table VI-4. Although the data differ to some degree (KMCC reported *** while Elkem reported ***) and the comparisons are not necessarily exact, the differences are not large enough to preclude comparison. Each producer reported raw materials costs, direct labor costs, and other costs. Raw materials were further broken down to manganese source (ore or slag) costs, process chemical costs, and natural gas costs. Other costs were further broken down to 7 cost categories, most notably power, maintenance, and period expenses.

Table VI-4
Comparison of Elkem's and KMCC's manganese metal costs on a per-ton basis, 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

There are several noticeable differences between the producers' raw materials costs. The first ***. Since Elkem's manganese source (shotted slag, a by-product of its high-carbon ferromanganese

operation) has a lower manganese content than the ore used by KMCC, it needs additional processing. Beyond needing more chemicals to begin with, Elkem ***.[1]

The second ***.

The next cost category is direct labor. Both producers experienced *** from 1992 to interim 1995. However, ***. *** explain some of the difference (the total hourly compensation it paid its workers was ***), but not all.

The final cost category is other costs. Three components--power, maintenance, and period expenses--comprise about *** percent of other costs every period. Power costs, which are the cost of the electricity used in the electrolytic process, were *** and *** for both producers every period. There were notable differences in ***, as Elkem's ***. Similarly, there were *** between the two producers' period expenses (salaries and fringes of support departments, taxes, insurance, utilities, and unallocated expenses). Elkem's period expenses *** from 1992 to 1994 before *** in the first half of 1995, while KMCC's *** every period. As a result, Elkem's period costs ***.

At the hearing, Chairman Watson noted the cost differences between the two companies and requested Elkem to explain why its costs *** than KMCC's. Petitioners' posthearing brief argued that Elkem's costs ***. Counsel further contends that ***.

This might all prove to be true. However, Elkem ***.

Another possible problem is that ***. Beyond that, ***. Finally, Elkem ***. Given all of the above, ***.

Table VI-5 presents the variance analysis of the results of the U.S. producers' operations on trade-only sales of manganese metal. The analysis shows that changes in revenues and costs were overwhelmingly due to changes in volume. However, since the volume component of the net sales, COGS, and SG&A expenses variances tended to ***, changes in profitability can generally be traced back to changes in the price, cost, or expense component of the variance.

Table VI-5
Variance analysis of U.S. producers on their trade-only sales of manganese metal, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

TRADE AND TRANSFER SALES OF MANGANESE METAL

Profit-and-loss data for KMCC's and Elkem's aggregate trade and transfer sales of manganese metal are shown in table VI-6. When compared with table VI-2, the extent of manganese metal transfers to the producers' briquetting operations becomes evident. The industry's lackluster performance worsened a bit in 1993 as flat sales and decreased profit margins combined to deepen the existing operating loss. The $*** per ton decrease in unit sales values was *** the $*** decrease in unit COGS, resulting in virtual break-even operations at the gross profit level. Despite a *** increase in net sales in 1994, the operating results were virtually the same. Again, small profit margins at the gross profit level prevented the companies from covering their SG&A costs.

[1] George Grammas, petitioners' counsel, telephone conversation with John Ascienzo of the Commission's staff.

Table VI-6
Income-and-loss experience of U.S. producers on their trade and transfer sales of manganese metal, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Predominantly because of a large increase in unit sales value, operating results were up sharply during the first 6 months of 1995 compared with results during the comparable period in 1994. Even though sales volume and net sales value were both down, the increased unit sales value resulted in a $*** per ton improvement in operating income and enabled the industry to register its first operating profit during the period for which data were gathered.

Selected profit-and-loss data for KMCC's and Elkem's trade and transfer sales of manganese metal are shown in table VI-7. In the full-year periods, increased trade sales generally more than displaced decreased transfer sales, resulting in increased total net sales. In the interim periods, the situation was reversed--increased transfer sales could not keep up with decreased trade sales, resulting in total net sales decreasing. Elkem ***. The operating results for both companies *** in interim 1995 relative to interim 1994; Elkem ***.

Table VI-7
Income-and-loss experience of U.S. producers on their trade and transfer sales of manganese metal, by firms, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

As with trade-only sales, the key difference between the two companies was their cost structure. Elkem's ***. The disparity ***. Since the unit COGS are virtually the same as those for trade-only sales, the previous discussion on the differences between the cost structures of the two companies is still pertinent.

Table VI-8 presents the variance analysis of the results of the U.S. producers' operations on trade and transfer sales of manganese metal. Changes in volume were generally the determining factor in changes in net sales values and COGS, while increases in cost were responsible for most of the changes in SG&A expenses.

Table VI-8
Variance analysis of U.S. producers on their trade and transfer sales of manganese metal, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

INVESTMENT IN PRODUCTIVE FACILITIES

The value of property, plant, and equipment and total assets for the U.S. producers, together with their return on total assets, is presented in table VI-9. The original cost of KMCC's fixed asset base is *** as Elkem's.

Table VI-9
Value of assets and return on assets of U.S. producers' establishments wherein manganese metal is produced, by products and by firms, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENDITURES

Capital expenditures and research and development expenditures for the two producers are shown in table VI-10. ***'s expenditures were *** than ***'s in almost every period. Both producers reported large increases in expenditures in 1994; the increases were necessary to comply with environmental regulations. ***.

Table VI-10
Capital expenditures by and research and development expenses of U.S. producers of manganese metal, by products and by firms, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

CAPITAL AND INVESTMENT

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

PART VII: THREAT CONSIDERATIONS

INFORMATION PRESENTED IN THIS SECTION

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of manganese metal from China is presented in the sections entitled "U.S. Imports, Apparent Consumption, and Market Shares" and "Pricing and Related Data," respectively, and information on the effects of imports of manganese metal from China on U.S. producers' existing development and production efforts is presented in appendix E. Information on the manganese metal industry in China, including the potential for "product-shifting;" inventories of U.S. imports of manganese metal from China; and any other threat indicators, if applicable, is presented in this section of the report.

In the early 1990s, manganese metal from China was the subject of a European Union antidumping investigation initiated by the then French producer, Pechiney. However, because Pechiney ceased production and exited the market, the investigation never reached a conclusion. There is no indication that manganese metal from China has been the subject of any other import relief investigations in the United States or in any other countries.

THE INDUSTRY IN CHINA

This section of the report is based on the testimony of witnesses on behalf of petitioners and respondents, on information submitted by counsel on behalf of six Chinese producers and of five Chinese exporters of the subject merchandise,[1] and on information provided through the American Embassy in Beijing by the China Chamber of Commerce for Import and Export of Metals, Minerals and Chemicals (Chamber).

World manganese metal production is principally dominated by three countries: China, South Africa, and the United States.[2] One producer, Manganese Metal Company, dominates the industry in South Africa, while petitioners fully comprise the industry in the United States. In China, the exact number of producers is unknown but estimates run as high as 50 producing plants.[3]

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[1] CEIEC, CMIECHN, HIED, Hunan Golden Globe Import and Export Co. (HGG), Minmetals, Xupu Da Jian Kou Coal Mine (Xupu), Xiang Tan Manganese Mine (Xiang Tan), Jishou Chemical Plant (Jishou), Hunan Special Metal Material Plant (HSMM), Xiang Tan Hunan Yu Metallurgical Product Plant (Xiang Tan Yu), and Pushi Chemical Plant (Pushi). CEIEC, CMIECHN, HIED, HGG, and Minmetals reported that they export but do not produce manganese metal; HSMM, Jishou, Pushi, Xiang Tan, Xiang Tan Yu, and Xupu reported that they produce but do not export the subject merchandise.

[2] Data published by the U.S. Department of Interior, Bureau of Mines, reported world manganese metal capacity at 76,000 metric tons (MT) annually in 1985 and it was estimated to be about the same in 1992, Dr. Thomas S. Jones, U.S. Department of Interior, Bureau of Mines, *Manganese 1992, Annual Report.*

[3] Petitioners' posthearing brief, p. 1.

Information on Selected Chinese Producers and Exporters

Information supplied by Chinese producers and exporters in response to the Commission's questionnaire is summarized below. Six of these entities produce only and are not engaged in any export activities, whereas the remaining five export the subject merchandise and have no production of their own.

CEIEC

CEIEC exports manganese metal produced by ***. Manganese metal accounted for *** percent of its total overall establishment sales in CEIEC's most recent fiscal year. Manganese metal in flake form accounts for about *** of its manganese metal sales. The firm began exporting to the United States in 1993, and its exports to the United States in that year *** its exports to all other markets. In 1994, however, exports to the United States accounted for about *** percent of the firm's total exports, with the bulk of the exports going to ***. CEIEC estimates that its manganese metal exports, all of which are comprised of unwrought manganese metal with an average manganese content of 99.7 percent, by weight, account for about *** percent of the total exports from China.

HIED

Although manganese metal represented only about *** percent of HIED's overall establishment sales in its most recent fiscal year, the exporter estimates that its exports of manganese metal to the United States accounted for about *** percent of all Chinese exports to the United States in 1994. HIED exports only unwrought manganese metal, *** percent of which is manganese metal flake, produced by the *** plant located in Hunan province. In 1994, HIED's exports to the United States represented *** percent of its total manganese metal exports; it projects that such exports will diminish in 1995 and halt altogether in 1996. Its other major export markets include ***.

CMIECHN

CMIECHN exports manganese metal produced at two factories in China, ***. All of its exports of manganese metal consist of unwrought manganese metal, *** percent of which is manganese metal flake and the remaining *** percent of which is manganese metal powder. As a share of its total exports, exports to the United States were *** percent in 1992, *** percent in 1993, and *** percent in 1994. Exports to the United States fell to *** in the first 6 months of 1995 and are expected to equal that in 1996. Its other principal export markets include Japan and the European countries.

HGG

HGG also exports manganese metal produced by ***. Its exports consist entirely of manganese metal flake containing at least 99.7 percent manganese, by weight. HGG reported having exports to the

United States in only one period, 1994, and those exports represented less than *** percent of its total exports, which went mainly to ***.

Minmetals

Minmetals exports manganese metal to the United States and to European countries. It estimates that its exports to the United States in 1994 represented about *** percent of China's total manganese metal exports to that market. The firm reported that it had no exports to the United States in the first 6 months of 1995 and that it expects to have none in 1996. In 1994, such exports represented *** percent of its total exports.

Xupu

Xupu produces 100 percent of its manganese metal in flake form and has no production of products other than manganese metal. It estimates that its production of manganese metal in 1994 accounted for *** percent of all manganese metal produced in China. Based on information supplied in its questionnaire response, it produced at *** percent of capacity in all periods for which information was requested, and it projects that it will continue at that rate through 1996.

Xiang Tan

*** percent of Xiang Tan's overall establishment sales in its most recent fiscal year was represented by sales of manganese metal, all of which was comprised of manganese metal flake. Using the same equipment and machinery that is used to produce manganese metal, the firm also produces manganese dioxide, which represents *** percent of overall establishment sales. As a result of adding another production line in 1993, Xiang Tan's capacity increased by *** percent to *** MT (*** ST); it is projected to remain at that level through 1996.

Jishou

Jishou's production efforts are devoted solely to manganese metal in flake form, usually containing between 99.5 percent and 99.7 percent manganese, by weight. It estimates that its 1994 production represented *** percent of the total production of manganese metal in China in that year. By increasing the number of operating hours per week, the firm's capacity increased by *** percent in 1993 over 1992. It also operated at *** capacity utilization throughout the period for which information was requested.

HSMM

In its questionnaire response, HSMM identified itself as a powder processor, meaning that it acquires manganese metal flake from other sources and then transforms the flake material into powder. This is its only production activity.

Xiang Tan Yu

Xiang Tan Yu also identified itself as a powder processor. It started operations at the beginning of 1993 and, as of 1994, was operating at only *** percent of capacity.

Pushi

Manganese metal accounted for *** percent of Pushi's overall establishment sales in its most recent fiscal year. The firm produces manganese metal in flake form only and does not produce any other products using the same equipment and machinery that is used to produce manganese metal. It estimates that its production accounted for about *** percent of China's total manganese metal production in 1994. Both its production and capacity were stable between 1992 and 1994 and between the interim periods.

Questionnaire Data

Aggregate data for both producers and exporters are presented in table VII-1. Given that annual production capacity is estimated by petitioners at about *** ST for all of China, the aggregate reported production capacity of the six producers that supplied information would represent about *** percent of that total. Using the estimated capacity data supplied by the Chamber, the aggregate capacity of the 6 firms would account for 58 percent of the 1994 total. As shown in the table, the six Chinese producers that supplied data operated at high capacity utilization rates over the period in which information was requested, and they project their continuing to do so into 1996. Their aggregate production capacity increased from 14,661 ST in 1992 to 18,298 ST in 1993 and remained at that level in 1994. Aggregate production rose steadily from 1992 to 1994, by 24 percent overall, and it is projected to increase slightly for the full year 1995 and increase further in 1996. All of the production of the six producers is sold to agents/exporters in the home market. These agents/exporters in turn sell the product both in the home market and in export markets, primarily consisting of Japan, the United States, and Europe. Exports to the United States as a share of total reported exports were 49 percent in 1992, 42 percent in 1993, and 30 percent in 1994. The share fell from 21 percent in interim 1994 to just 2 percent in interim 1995, and it is expected to drop to zero in 1996.[4]

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[4] As noted by respondents at the Commission's hearing, however, this assumes that antidumping duties will be imposed on imports from China. If such duties are not imposed, exports from China to the United States would "probably" remain at 1994 levels. Hearing TR, pp. 103-104. The Chinese respondents have testified (see, for example, Hearing TR at p. 81) that exports to the United States account for only about 8 percent of total Chinese exports. The latter figure is largely supported by the data submitted by petitioners on total Chinese exports of manganese metal. As noted later in this report (see p. VII-6), exports to the United States as a share of China's total exports of manganese metal rose from 3 percent in 1992 to 7 percent in 1993 and to 10 percent in 1994. Thus, as testified at the hearing, exports by those firms responding to the Commission's questionnaires account for a much larger share of aggregate Chinese exports to the United States than they do of aggregate Chinese exports to all destinations.

Table VII-1
Manganese metal: Production capacity, production, capacity utilization, and shipments of selected Chinese firms, 1992-94, Jan.-June 1994, Jan.-June 1995, projected 1995, and projected 1996

(In *short tons*, except as noted)

Item	1992	1993	1994	Jan.-June-- 1994	Jan.-June-- 1995	Projected-- 1995	Projected-- 1996
Production capacity[1]	14,661	18,298	18,298	9,149	9,149	18,298	18,298
Production[1]	13,999	16,865	17,306	8,543	8,818	17,527	17,637
Capacity utilization (percent)	95.5	92.2	94.6	93.4	96.4	95.8	96.4
Shipments:[2]							
Home market	9,927	8,353	3,095	999	2,422	6,727	6,614
Exports:							
To the United States[3]	1,984	3,553	4,192	1,591	107	107	0
To all other markets	2,088	4,959	10,019	5,954	6,290	10,692	11,023
Total exports	4,072	8,512	14,211	7,544	6,397	10,799	11,023
Total shipments	13,999	16,865	17,306	8,543	8,818	17,527	17,637
End-of period inventories	0	0	0	0	0	0	0
As a share (percent) of total shipments:							
Home market shipments	70.9	49.5	17.9	11.7	27.5	38.4	37.5
Exports to the United States	14.2	21.1	24.2	18.6	1.2	0.6	0
Exports to all other markets	14.9	29.4	57.9	69.7	71.3	61.0	62.5

[1] Based on data supplied by producers Pushi, Xiang Tan, Jishou, HSMM, Xiang Tan Yu, and Xupu.

[2] Based on data supplied by exporters CEIEC, HIED, CMIECHN, HGG, and Minmetals.

[3] In comparison, data submitted by petitioners on total Chinese exports of manganese metal to the United States (see p. VII-6) and official statistics of the Department of Commerce on U.S. imports of such merchandise from China show the following (in short tons):

	1992	1993	1994
Total Chinese exports to the United States	1,033	2,701	5,300
U.S. imports from China	1,730	2,999	5,309

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

Participants' Comments

Petitioners

Petitioners allege that the manganese metal industry in the United States is threatened with material injury by reason of LTFV imports from China. In support of this allegation, petitioners argue that manganese metal production capacity in China nearly doubled from 1992 to 1994, increasing from about 37,000 MT to almost 61,000 MT.[5] Based on ***,[6] petitioners estimate China's current practical production capacity at about 68,000 MT,[7] or 74,957 ST, annually.[8] Furthermore, petitioners note, because numerous township and privately owned enterprises cannot be accounted for in any statistical compilation, China's true practical capacity can be said to be even higher than 68,000 MT. Considering the rapid pace at which power-generating facilities are being built in China, petitioners further contend that China's potential or theoretical annual capacity may be as high as 100,000 MT (110,231 ST).[9] In terms of production, information obtained from ***.[10] Together with production by the unaccounted for township and privately owned enterprises, petitioners estimate that China had total production of about 40,000 MT in 1994. Petitioners argue that China's manganese metal production is export driven and, considering that China's exports to markets in Europe and Japan have had the effect of forcing a withdrawal from the industry by producers in these markets, will likely continue to grow.[11] Other factors cited by petitioners which lead them to conclude that the industry in China is capable of expanding include (1) low capital requirements for new firms wanting to participate in the industry, (2) an unlimited pool of labor at low wages, and (3) the willingness of firms to sell their product at a loss in order to generate cash flow.[12]

In exhibit 15 of their prehearing brief, petitioners submitted data on Chinese exports of manganese metal by country of destination.[13] These data, petitioners contend, show (a) the decline in Chinese export prices during 1992-94,[14] and (b) that export prices to the United States are higher than

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[5] Hearing TR, p. 37.

[6] Official data were obtained from the *** and from an official with ***.

[7] ***.

[8] Petitioners' posthearing brief, p. 14; confidential written hearing testimony of petitioners' witness, ***, p. 4.

[9] *** testimony, p. 5.

[10] Ibid.

[11] Petitioners' posthearing brief, p. 1; *** testimony, p. 6.

[12] Ibid.

[13] Staff requested counsel for the Chinese respondents to also provide data on aggregate Chinese exports of manganese metal, by country of destination, but nothing was submitted. Respondents did not comment upon the Chinese export data used by petitioners in their prehearing brief.

[14] As noted by petitioners at the hearing, "the definition of the category (of exports) has changed after 1991. So the first two years of information can't--cannot necessarily be compared to the last three." Hearing TR, pp. 27-28. Exports to the United States as a share of the total exports shown above amounted to 1 percent in 1990 and 1991, 3 percent in 1992, 7 percent in 1993, and almost 10 percent in 1994.

prices to Japan and Europe (which respondents cite as their traditional markets), thus providing an incentive to increase exports to the United States. These export data are summarized in the following tabulation (quantities shown are in metric tons and average values are in U.S. dollars per pound):

Exports to--	1990	1991	1992	1993	1994
United States:					
Quantity	260	475	937	2,450	4,808
Average value	$0.537	$0.540	$0.611	$0.559	$0.514
Japan:					
Quantity	13,746	13,652	12,159	12,851	16,699
Average value	$0.319	$0.364	$0.485	$0.532	$0.499
Netherlands:					
Quantity	10,223	8,430	10,670	10,812	17,493
Average value	$0.490	$0.468	$0.540	$0.506	$0.471
All other countries:[1]					
Quantity	18,295	12,043	5,624	8,404	11,247
Average value	$0.384	$0.367	$0.525	$0.503	$0.475
Total:					
Quantity[2]	42,524	34,600	29,390	34,517	50,248
Average value	$0.390	$0.393	$0.517	$0.519	$0.485

[1] Includes exports to some 40 countries.

[2] Total exports in 1994 (50,248 MT) are substantially larger than estimated aggregate Chinese production in that year (40,000 MT, or 44,092 ST). None of the firms supplying data to the Commission reported any inventories of manganese metal held in China, or elsewhere.

Respondents CEIEC, CMIECHN, HIED, and Minmetals

Respondents CEIEC, CMIECHN, HIED, and Minmetals argue that, because there are no plans to increase China's existing or unused production capacity, there is little likelihood that China's exports to the United States will increase to any significant degree. Respondents note that Chinese producers are presently operating at near 100 percent of capacity and lack the resources to increase capacity in the short term. Therefore, respondents argue, there is no real threat of material injury to the domestic industry producing manganese metal. Continuing, respondents note that Chinese exports to the United States are a small percentage of China's total manganese metal exports and that no evidence exists to show that such exports will be diverted from other markets to the United States.

Respondents' witness at the Commission's hearing, Ms. Chen Lian Ying, deputy director of the Chamber's foreign affairs department, stated that about 50 firms produced manganese metal in China in 1988, but the number diminished thereafter as a number of smaller producers exited the industry because

of their inability to control quality and for environmental reasons.[15] Through the American Embassy in Beijing, Ms. Ying and the Chamber provided the Commission with a list of 17 firms that the Chamber believes are the major manganese metal producers in China.[16] These producers are reported to be concentrated in Hunan province, near China's manganese ore production base. The Chamber indicated that it was unable to verify the existence of other producers, stating that others were either very small, unknown, or no longer in operation.[17] Aggregate estimated production capacity for the 17 firms on the list supplied by the Chamber increased from 27,600 MT in 1992 to 29,500 MT in 1993 and rose to 31,300 MT in 1994.[18] Both in the aggregate and individually for each of the 17 producers, production was reported to equal capacity in all periods. The Chamber estimates that full year 1995 capacity will remain unchanged from the 1994 level.[19] Ms. Ying noted that 75 percent of China's production of manganese metal is exported while the remaining 25 percent is consumed in the home market by the special steel, ferroalloys, electrodes, chemicals, and other industries.[20] According to Ms. Ying, about 90 percent of Chinese exports go to Japan and Europe; only about 8 percent of the total is exported to the United States.[21] Respondents argue that there are no plans to increase production capacity in the near term because the industry in China lacks the financial and technological resources to expand beyond its current production capacity.[22] China, respondents argue, has no plans to increase exports to the United States for two reasons: first, exports to China's traditional markets, that is, Japan and Europe, have steadily increased since 1992, and second, China expects increased sales in its own market as a result of expanding steel production.[23] Lastly, respondents argue that there are no inventories of manganese metal in China poised to flood the U.S. market, and any inventories of Chinese manganese metal in the United States are insignificant and declining.[24]

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[15] Hearing TR, pp. 79 and 80.

[16] Letter from the Chamber to Mr. Christopher J. Breeds, first secretary, economic section, American Embassy, Beijing, dated Sept. 9, 1995.

[17] Ibid.

[18] Ms. Ying noted that minor producers may account for the 8,700 MT difference between the 1994 aggregate production figure of the 17 firms for which it reported data and the 40,000 MT per year production total estimated by petitioners. (See confidential staff Memorandum to the File, dated Nov. 13, 1995.)

[19] Letter from the Chamber to Mr. Christopher J. Breeds, first secretary, economic section, Amercian Embassy, Beijing, dated Sept. 9, 1995.

[20] Hearing TR, p. 80.

[21] Ibid,, pp. 80 and 81. The data on total Chinese exports of manganese metal show that the share of such exports going to Europe and Japan combined fell from 84 percent in 1992 to 77 percent in 1994. As indicated earlier, exports to the United States rose from 3 percent of the total in 1992 to 10 percent in 1994.

[22] Ibid., p. 85.

[23] Respondents' posthearing brief, pp. 12 and 13.

[24] Ibid., p. 8. The only information available concerning any inventories of manganese metal held in China was submitted by petitioners in their posthearing brief (at p. 1 of appendix 4, Answers). An article apparently reproduced from the Nov. 6, 1995, issue of *Platts' Metals Week* stated that ". . . current sluggish exports to both Japan and Europe and **domestic high stocks** (emphasis added) have forced firms to increase exports to the US, they said."

Respondent Cometals

In his testimony at the Commission's hearing, respondent Cometals' witness, Mr. Jeffrey Kofsky, stated that the Chinese manganese metal industry is largely decentralized and fragmented, making any estimate of capacity subject to a wide margin of error.[25] Mr. Kofsky noted that, based upon his visits to China, Chinese manganese metal producers suffer from chronic and severe electricity shortages, the supply of which is seasonal and sporadic and cannot be relied upon.[26] Because of this worsening supply situation, Mr. Kofsky argues that the Commission should consider China's potential capacity to be significantly lower than petitioners' estimate. Going further, Mr. Kofsky also noted that Chinese producers routinely shut down for 1 month during the spring festival and for 1 to 2 months in the summer for equipment cleaning and maintenance.[27] For these reasons, Cometals argues, the U.S. industry is neither materially injured nor threatened with material injury by reason of LTFV imports of manganese metal from China.

U.S. IMPORTERS' INVENTORIES

Data on U.S. importers' inventories of manganese metal from China and from all other sources combined are shown in table VII-2. The bulk of U.S. importers' inventories was comprised of manganese metal sourced from countries other than China, primarily South Africa and France. U.S. importers' total inventories of manganese metal more than doubled between 1992 and 1994, increasing from *** ST in 1992 to 4,600 ST in 1994. Between the interim periods, such inventories fell sharply, from 3,738 ST in interim 1994 to *** ST in interim 1995. U.S. importers' inventories of Chinese origin material followed a similar pattern during this period, rising from 306 ST in 1992 to 1,409 ST in 1994, and then falling from 941 ST in interim 1994 to *** ST in interim 1995. The ratio of U.S. importers' inventories from all sources to total imports rose unevenly from *** percent in 1992 to 23.5 percent in 1994, and fell from 18.0 percent in interim 1994 to *** percent in interim 1995. The ratio of U.S. importers' inventories of Chinese product to imports rose unevenly from 25.7 percent in 1992 to 26.3 percent in 1994, and increased by less than *** percentage point between the interim periods. The ratio of such inventories to U.S. shipments of imports and the ratio of inventories to total shipments of imports increased similarly between 1992 and 1994, with each rising overall by about 2 percentage points. Between the interim periods, both ratios declined by nearly *** percentage points.

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[25] Hearing TR, p. 67.

[26] Ibid., p. 71.

[27] Ibid., p. 67.

Table VII-2
Manganese metal: End-of-period inventories of U.S. importers, by sources, 1992-94, Jan.-June 1994, and Jan.-June 1995

Item	1992	1993	1994	Jan.-June-- 1994	1995
	Quantity (*short tons*)				
China	306	829	1,409	941	***
Other sources	***	***	3,191	2,797	996
Total	***	***	4,600	3,738	***
	Ratio to imports (*percent*)				
China	25.7	32.3	26.3	17.3	***
Other sources	***	***	22.4	18.2	13.5
Average	***	***	23.5	18.0	***
	Ratio to U.S. shipments of imports (*percent*)				
China	27.2	40.6	29.6	18.0	***
Other sources	***	***	26.0	22.1	8.8
Average	***	***	27.0	20.9	***
	Ratio to total shipments of imports (*percent*)				
China	27.2	40.6	29.5	18.0	***
Other sources	***	***	25.3	21.6	8.5
Average	***	***	26.4	20.6	***

Note.-- Ratios are calculated using data where both comparable numerator and denominator information were supplied. Part-year inventory ratios are annualized.

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

APPENDIX A

SUMMARY DATA

Table A-1
Manganese metal: Summary data concerning the U.S. market using official statistics for imports, 1992-94, Jan.-June 1994, and Jan.-June 1995

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Table A-2
Manganese metal: Summary data concerning the U.S. open market using official statistics for imports, 1992-94, Jan.-June 1994, and Jan.-June 1995

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Table A-3
Manganese metal: Summary data concerning the U.S. market using questionnaire importer shipments data, 1992-94, Jan.-June 1994, and Jan.-June 1995

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Table A-4
Manganese metal: Summary data concerning the U.S. open market using questionnaire importer shipments data, 1992-94, Jan.-June 1994, and Jan.-June 1995

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Table A-5
Manganese metal: Summary data concerning the U.S. market using questionnaire data for imports, 1992-94, Jan.-June 1994, and Jan.-June 1995

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Table A-6
Manganese metal: Summary data concerning the U.S. open market using questionnaire data for imports, 1992-94, Jan.-June 1994, and Jan.-June 1995

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APPENDIX B

FEDERAL REGISTER NOTICES AND HEARING WITNESS LIST

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–724 (Final)]

Manganese Metal From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–724 (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 the People's Republic of China (China) of manganese metal, provided for in subheadings 8111.00.45 and 8111.00.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this investigation, 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 13, 1995.

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

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of manganese metal from China 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). The investigation was requested in a petition filed on November 8, 1994, by Elkem Metals Company, Pittsburgh, PA, and Kerr-McGee Chemical Corporation, Oklahoma City, OK.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation 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 this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, 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 this investigation will be placed in the nonpublic record on September 29, 1995, 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 this investigation beginning at 9:30 a.m. on October 12, 1995, 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 October 2, 1995. 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 October 4, 1995, 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 the investigation 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 October 6, 1995. 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 October 19, 1995; and the deadline for filing supplemental briefs is November 3, 1995; 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 the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 19, 1995. 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 the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: June 28, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–16581 Filed 7–5–95; 8:45 am]

BILLING CODE 7020–02–P

International Trade Administration

[A-570-840]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China

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

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-4198 or (202) 482-1778.

Final Determination

We determine that manganese metal from the People's Republic of China (PRC) 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 ("the Act"), as amended. The estimated sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination (60 FR 31282, June 14, 1995), the following events have occurred. The Department published an amended preliminary determination correcting a ministerial error (60 FR 37875, July 24, 1995). We conducted verification of the questionnaire responses in the PRC between July 24, 1995 and August 11, 1995, of the following respondents: China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corp. (HIED), China Metallurgical Import & Export Hunan Corporation (CMIECHN/CNIECHN), Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals), and Great Wall Industry Import and Export Corporation (GWIIEC). Case and rebuttal briefs were filed by petitioners and respondents on October 2, 1995, and October 4, 1995, respectively. On October 6, 1995, the Department held a public hearing.

Scope of the Investigation

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

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1994.

Best Information Available

We have based the PRC-wide rate on best information available (BIA). In administrative proceedings involving merchandise from nonmarket economy countries, the Department's consistent practice has been to treat all exporters as part of the government and assign to them the single government rate, known as the country-wide rate, unless an exporter affirmatively demonstrates that it is separate from the government and entitled to its own rate. If a non-market economy exporter does not respond to the Department's request for information, the Department has no basis to treat that exporter separately from the government and, as a result, the government (which includes the exporter) receives a margin based on best information available because one of its entities failed to respond.

In this case, the evidence on the record indicates that the respondents identified during the investigation do not account for all of the exports of the subject merchandise to the United States. As a result, it is reasonable for the Department to conclude that it did not receive responses from all exporters. In the absence of responses from all exporters, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine* (61 FR 16433, March 30, 1995)).

In determining what 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 for those respondents who did not cooperate in an investigation. As outlined in the *Final Determination 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), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this investigation, we are assigning to any PRC company, other than those specifically identified in the "suspension of liquidation" section the PRC-Wide deposit rate of 143.32 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the initiation (*see Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China* 59 FR 61869 (December 2, 1994)).

GWIIEC

The Department has decided to disregard the sales made by GWIIEC to the United States during the POI (*see* Comment 2 below for interested party comments on this issue). The Court of International Trade has stated the if evidence demonstrates to the Department that a respondent has

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$10,000 penalty for Stair Cargo's violation of § 769.2(d)(1)(iv) of the Regulations. See United States Department Of Commerce Reply To Respondent's Appeal From Administrative Law Judge's Order, p. 31, n. 16.

"artificially orchestrated an export scheme involving artificially set prices," the agency has the discretion to disregard the U.S. sales as not resulting from a bona fide transactions. *Chang Tieh Industry Co., Ltd.* v. *U.S.*, 840 F. Supp. 141, 146 (CIT 1993). The timing of these sales relative to the filing of the petition coupled with the fact that the prices were significantly higher than the world market price of this commodity and prices observed in the United States at the time of the sale, led the Department to gather additional information from the U.S. purchaser to determine whether the sales were bona fide transactions. Certain facts asserted by parties to these transactions during this subsequent inquiry did not verify. *See* the October 27, 1995, Confidential Memorandum to File Re: Bona Fide Sales. Based on the totality of the circumstances, viewed in light of the discrepancies found, the Department determines, based on substantial evidence on the record (much of which is proprietary), that these were not bona fide sales for commercial purposes and, therefore, would not provide an appropriate basis for determining GWIIEC's pricing behavior for sales to the United States. Therefore, these sales have been disregarded.

Separate Rates

CEIEC, HIED, CMIECHN, and Minmetals have requested separate antidumping duty rates. In cases involving nonmarket economies, the Department's policy is to assign a rate, separate from the country-wide rate, only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department uses criteria that were developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*) and in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

The business licenses of all respondents being considered for separate rates indicate that they are owned "by all the people." As stated in *Silicon Carbide*, "ownership of a company by all the people does not require the application of a single rate." Accordingly, these respondents are eligible to be considered for a separate rate.

De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22–26).
- *Excerpts from PRC's State Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish "production, management, and operational policies" and the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).
- *Order from MOFERT, No. 4, 1992* and *Temporary Provision for Administration of Export Commodities* (*Export Provisions*) (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and, hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for Certain Commodities* (MOFTEC #140) (Effective April 1994) canceled previous export licenses for certain commodities. Manganese metal was not among these commodities.

In addition to the above laws and regulations, respondents provided the following documents:

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.
- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.
- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

Consistent with *Silicon Carbide*, we determine that the existence of the above-referenced laws and regulations demonstrates that CEIEC, HIED, CMIECHN, and Minmetals are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (*see* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China—93–133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether the respondent companies are subject to central government control over export sales and pricing decisions.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that the export prices of respondents being considered for separate rates are set, or subject to approval, by any governmental authority. It was evident from our examination of correspondence and written agreements and contracts that these respondents have the authority to negotiate and sign contracts and other agreements

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

independent of any government authority. We also noted that the respondents retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that these respondents have autonomy from the central government in making decisions regarding the selection of management, based on our examination of internal management selection documents.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of all respondents being considered for separate rates, we determine that these respondents should receive a separate rate.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise.

The Department has determined that India is the most suitable surrogate for purposes of this investigation (*see* Comment 1). Based on available statistical information, India is at a level of economic development comparable to that of the PRC, and is a significant producer of comparable merchandise.

Fair Value Comparisons

To determine whether sales of manganese metal from the PRC by CEIEC, HIED, CMIECHN, and Minmetals 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

For CEIEC, HIED, CMIECHN, and Minmetals, we based USP on purchase price, in accordance with section 772(b) of the Act, because manganese metal was sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

Where appropriate, we calculated purchase price based on packed, C&F and CIF prices to unrelated purchasers in the United States. We made deductions to these prices for foreign inland freight, foreign inland insurance, brokerage and handling expenses, ocean freight, and marine insurance, as appropriate (*see* Comment 13). Generally, costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on the factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters analyzed in this determination. The factors used to produce manganese metal include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values.

In determining which surrogate value to use for each factor of production, we selected, where possible, an average non-export value which was representative of a range of prices within the POI, or most contemporaneous with the POI, specific to the input in question, and tax-exclusive.

We first note that because business-proprietary treatment was requested by respondents for certain factor inputs, we have named these inputs ("A" through "F"). A key to these letter assignments is provided in the attachments to the October 27, 1995 calculation memorandum.)

With the exception of Factor F, we obtained surrogate values from the following Indian sources: *Chemical Weekly* (September–November 1994), the *Monthly Trade Statistics of Foreign Trade of India*, Volume II—Imports, August 1994, (*Indian Import Statistics*); and the *Indian Minerals Yearbook: 1993* (*see* Comments 4 through 6). For Factor F, we relied upon information submitted by the petitioners (taken from the June–October 1994 *Chemical Marketing Reporter*) for a similar input (*see* Comment 7). We are no longer using the surrogate value for manganese ore which was used at the preliminary determination. We are using a surrogate value for manganese ore from the Indian Minerals Yearbook 1993 because this ore has a manganese content that is comparable to the ore used by the PRC producers and also represents a domestic price in India. We adjusted the value of the manganese ore to reflect a delivered price (*see* Comment 4).

For the reasons outlined in the June 6, 1995 preliminary determination concurrence memorandum, we are using the April 1992 through March 1993 average tax-exclusive price for industrial electricity in India, as provided by the World Bank, to value electricity (*see* Comments 9 and 10). To value PRC labor costs, we used data on Indian wage rates from the *Yearbook of Labor Statistics* (*see* Comment 8). Because indirect labor was not reported by respondents and was not included in the surrogate value for manufacturing overhead, we have added an amount for indirect labor (*see* Comment 9).

We adjusted the factor values, when necessary, to the POI using wholesale price indices (WPI's) published by the International Monetary Fund (IMF). Labor rates have been adjusted using consumer prices indices (CPI's).

To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of material, labor, and energy for industries involved in "Processing and Manufacture—Metals, Chemicals and products thereof," as reported in the September 1994 Reserve Bank of India Bulletin's (RBI Bulletin) (*see* Comment 11). This same source was used to calculate selling, general and administrative (SG&A) expenses as a percentage of cost of manufacturing. Because the calculated SG&A percentage from the RBI was greater than the minimum 10 percent required by the statute, we used the SG&A percentage from the RBI Bulletin for each company (*see* Comment 12). With respect to profit, we used the statutory minimum of eight percent of materials, labor, energy, overhead, and SG&A costs calculated for each factory.

At the verification of certain producers, we learned that there were multiple suppliers of raw materials. In order to calculate the inland freight cost for these inputs, we derived the relative percentages obtained from each source and then, assuming that the input was consumed in these same proportions, used the distances from each of the sources to compute the cost per unit of output.

Interested Party Comments

As discussed above, the Department has not analyzed GWIIEC's sales for this investigation. Therefore, comments specifically related to GWIIEC have not been addressed in this notice.

Comment 1: Cometals, an interested party, argues that based on the criteria set forth in 773(c)(4), India should not be considered the surrogate country in this investigation. First, India is not at

the same level of economic development as China, as reflected in India—s lower per capita gross domestic product measured in terms of purchasing power parity. Second, India should not be considered a market economy given its protected markets and centralized control of economic activity. Third, since a surrogate country must be disqualified if the comparable merchandise is being subsidized, the Department should reject India because —the Indian economy is characterized by heavily protected markets and regulated prices of essential products including energy and industrial inputs." Finally, since ferromanganese (one of two products considered by the Department to be comparable to the subject merchandise) uses high grade ore, in contrast to the subject merchandise which can use lower grade ore, and also is made pursuant to a different production process, it should not be considered comparable to the subject merchandise. According to Cometals, South Africa does fit the Department's criteria pursuant to 773(c)(4) (i.e., it is at a level of economic development similar to the PRC, it is a market economy, and it produces subject merchandise without subsidies); therefore, it should be considered the surrogate country in this investigation.

DOC Position: It is the Department's longstanding practice in selecting surrogate countries to rely on market-exchange-rate-based per capita income figures as a rough indicator of economic development. While some arguments can be made for relying, instead, on purchasing power parity (PPP) per capita income figures, Cometals has not provided information which demonstrates why this measure would be preferable to the data normally relied on by the Department. Therefore, the Department continues to rely primarily on exchange-rate-based per capita income figures and continues to find India (with a per capita income of approximately US$300 in 1993) at a level of economic development comparable to that of China (with a per capita income of approximately US$500 in 1993). The Department also finds on the basis of exchange-rate-based income figures that South Africa (with a per capita income of approximately US$3,000 in 1993) is not at a level of economic development comparable to that of China.

With regard to government involvement in the Indian economy, it has been and remains our longstanding practice to treat India as a market economy under the antidumping law. In antidumping cases involving Indian products, we have accepted Indian prices and costs as market determined. We do not find Cometal's arguments concerning government involvement in India's economy sufficient grounds to reject India as and appropriate surrogate market economy.

With respect to the allegation that the comparable merchandise in India is subsidized, we note that any subsidies which may be provided on the final product generally would be of concern to the Department only if foreign market value is based on export prices of the final product from the surrogate country. Here, foreign market value is not based on exports from India of the final product but rather on domestic input prices in India. There is no evidence on the record indicating that the input prices in the instant investigation are subsidized.

Finally, regarding the comparability of manganese metal and ferromanganese, the Department analyzes the comparability in terms of following four criteria: (1) Manufacturing process, (2) production inputs (3) intensity of input usage and (4) normal end-uses and applications. As noted in a May 5, 1995 Memorandum to Dave Mueller, Director of the Office of Policy, we found that ferromanganese is comparable to manganese metal based on several of the above criteria. This finding of comparability does not mean that the two products are identical in terms of the four criteria. It means that the two products are sufficiently similar that the Department can reasonably assume that commercial production of the merchandise under investigation can occur in the surrogate. Therefore, we do not agree that the possible dissimilarities between manganese metal and ferromanganese described by Cometals are sufficient to render the products non-comparable. Furthermore, the decision to select India as a surrogate country was based on its production of both ferromanganese and electrolytic manganese dioxide (EMD), the latter of which we consider to be another comparable product.

Comment 2: Petitioners contend that GWIIEC's U.S. sales are not bona-fide and should be excluded from the antidumping calculations. Petitioners argue that GWIIEC's accounting system inhibited the Department from verifying the legitimacy of the suspect terms surrounding GWIIEC's U.S. sales. Also, according to petitioners, *Chang Tieh Industry Co.* v. *United States*, 840 F. Supp 141, 146 (1993) demonstrates that the Department should disregard sales as not resulting from a bona fide transaction if evidence demonstrates that a respondent "orchestrated an export scheme involving artificially set prices for purposes of dumping after the investigative period."

GWIIEC argues that the Department verified the terms of its U.S. sales characteristics of the product sold. GWIIEC also argues that petitioners by conceding that Bureau of the Census import data showed imports of manganese metal in February 1995 from the PRC at a volume and average value consistent with that it reported, confirmed GWIIEC's U.S. sales.

According to respondent, the precedent cited by petitioners in *Chang Tieh* is misstated and actually supports using GWIIEC's U.S. sales. Furthermore, GWIIEC points to the U.S. International Trade Commission preliminary determination which found that "substantial volumes of manganese metal are purchased for non-price reasons, end-users face difficulties in maintaining supplies, atypical transactions are significant in the marketplace, and prices are subject to sharp changes."

DOC Position: As stated above, we have decided to disregard the sales made by GWIIEC (*see*, the *GWIIEC* section of this notice).

Comment 3: With respect to all respondents, petitioners argue that the record on *de facto* control remains deficient because the Department's separate rates questionnaire addressed to the central and provincial governments remains unanswered. Petitioners add that this deficiency is important in light of the National People's Congress' mandate to MOFTEC to "take charge of the foreign trade work in the whole country," and in light of other administrative practices such as foreign exchange targets set by the central or local government.

Respondents CEIEC, HIED, CMIECHN, and Minmetals state that the laws placed on the record establish that the responsibility for managing the business activities of "owned by all the people" companies has been transferred from the central and provincial governments to the companies themselves; *i.e.*, there is an absence of *de jure* control by the central or provincial governments. Additionally, respondents contend that during the course of verification it was demonstrated that the activities of CEIEC, HIED, CMIECHN, and Minmetals "are not subject to governmental control nor direction." Respondents also note that the Department confirmed at verification that they are allowed "to borrow freely, to make independent business decisions regarding the disposition of profit or losses, and have autonomy from the central or provincial

government in making decisions regarding the selection of management."

Finally, these respondents disagree with petitioners— claim that the responses to the government portion of the separate rates questionnaire do not reflect the totality of government knowledge. Respondents note that Department personnel met with PRC government officials and that the Department could have obtained additional information.

DOC Position: We first note that, CEIEC, HIED, CMIECHN, and Minmetals, provided certifications from both MOFTEC and the appropriate municipal authorities stating that the responses to the separate rates questionnaire were accurate. Moreover, based on the test described in *Silicon Carbide*, we have sufficient information on the record to award separate rates to the four analyzed companies.

Notwithstanding MOFTEC's mandate with respect to foreign trade work and the other administrative practices alleged by petitioners, we found no evidence of MOFTEC's or other government agencies' involvement in the export operations of these companies. While statements such as that quoted by petitioners may serve to support a presumption that a single rate should be applied to all exporters in the PRC, the specific evidence in this case rebuts that presumption for the four exporters in question.

Comment 4: The petitioners state that the Department should include an amount for freight between the PRC manganese metal producers and their ore suppliers. According to petitioners, the surrogate value for manganese ore should be viewed as an ex-mine price because there is no factual information in the record that establishes the location of the Goan mine (the Indian mine from which the surrogate value for manganese ore was derived) or its distance from the port. Petitioners also argue that for every other price quote of Indian ore, "FOB" meant FOB plant, which by definition, excludes freight.

Respondents claim that petitioners' argument that the surrogate value is an ex-mine price is not supported by the record. According to respondents, the manganese ore in question was shipped via a "berth," which means the buyer took possession of the goods at the port, not at the plant. Accordingly, the price quoted is FOB port, as opposed to FOB plant. Therefore, the Department would be double counting freight if it were to include the distance between the PRC producers and their suppliers.

DOC Position: We have not used the same source to derive the surrogate value for manganese ore as the one used for the preliminary determination (*see Foreign Market Value* section above). Therefore, the cite by respondents stating that the surrogate value included freight is not relevant. For the reasons stated in the October 18, 1995 Memorandum from team to Susan G. Esserman, we have used a domestic price quote in India taken from the *Indian Mineral Yearbook 1993*. This publication, at page 497, states that price is quoted on a "Free On Rail Mine Siding" basis. Therefore, the Department is adding a freight expense to the surrogate value of manganese ore.

Comment 5: Respondents claim that the Department should use a particular form of Factor B for the surrogate value instead of the form used in the preliminary determination. Respondents argue that the form of Factor B used at the preliminary determination is incorrect because it is not the form used by the PRC producers. Further, respondents note that there is a significant price differential between the two forms of Factor B. Even if the Department uses the correct form of Factor B, respondents claim that it is still necessary to adjust the surrogate value to reflect the content levels of Factor B used by the PRC producers. Respondent suggest that the Department employ the same adjustment methodology it applied to manganese ore in the preliminary determination.

DOC Position: We agree with respondents. We verified that the input actually used by the respondents was a particular form of Factor B. Accordingly, we have used a surrogate value for this particular form. We have also adjusted the surrogate value for this factor to reflect the producer-specific content levels.

Comment 6: Respondents argue that the surrogate values for certain chemicals (Factors C and D) which were based on prices reported in a 1993 *Chemical Weekly* publication and *Indian Import Statistics*, respectively, do not comport with economic reality and, therefore, should not be used in the final determination. Furthermore, respondents note that these values are higher than the delivered factor values in the *Chemical Marketing Reporter*, as submitted by petitioners and should, therefore, be considered aberrational. Respondents suggest that the Department use the values considered reasonable by petitioners, as obtained from the *Chemical Marketing Reporter*.

Petitioners argue that respondents did not provide any information to indicate what "economic reality" is with respect to these surrogate values. Regarding Factor C, petitioners argue that respondents did not correct the reported *Chemical Marketing Reporter* value for content, thereby invalidating their comparison to the *Chemical Weekly*. As regards Factor *D*, petitioners assert that the form of Factor D from the *Chemical Marketing Reporter* cited by respondents is not comparable to the Factor *D* used by the Department, as obtained from *Indian Import Statistics*. Additionally, petitioners note that respondents failed to provide publicly available published information (PAPI) information, which is preferred by the Department for valuing factors, and that the *Chemical Marketing Reporter* represents U.S. prices, as opposed to PAPI from the surrogate country. Finally, petitioners argue that respondents are drawing an unfair comparison between non-delivered prices from the *Chemical Marketing Reporter* and the delivered prices from the *Chemical Weekly* and *Indian Import Statistics*.

Petitioners also argue that the Department incorrectly adjusted the input cost for Factor C for HIED in the preliminary determination.

DOC Position: We do not agree with respondents' claim that the Indian values for Factor C and D are aberrational and do not comport with economic reality. After adjusting the *Chemical Weekly* price for Factor C to account for Indian taxes, it is very close to the price reported in the *Chemical Marketing Reporter*. With respect to Factor D, the *Chemical Marketing Reporter* price suggested by respondents is not for the form used by respondents in the production of subject merchandise, as noted by petitioners. Therefore, we have used the data from the *Chemical Weekly* and the *India Import Statistics* to value these factors.

Finally, we agree with petitioners that we did not correctly adjust HIED's input cost for Factor C in the preliminary determination. We are making the correct adjustment for HIED's specific content level for Factor C, as verified by the Department.

Comment 7: According to respondents, the price of a chemical submitted by petitioners and used by the Department as a substitute for a PRC Factor of production was not properly adjusted at the preliminary determination. Respondents note that petitioners, as producers of subject merchandise, know what prices are reasonable for their industry and cannot be biased in favor of the respondents. Therefore, according to respondents, the adjusted price submitted by petitioners should be used by the Department in the final determination.

Petitioners argue that they did not provide a value for the chemical used by

respondents because this input was never specified. Petitioners assert that the Department should not adjust the price that they submitted because the figures used in their calculations were based on chemicals used in their production process. Accordingly, these values are not applicable to the PRC production process.

DOC Position: Because we have been unable to develop valuation information for the actual chemical used by PRC respondents, we are continuing to use a substitute chemical based on information provided by petitioners. Further, we agree with respondents and have made the necessary adjustments to the price of this substitute chemical to reflect the appropriate concentration level.

Comment 8: Respondents challenge the Department's valuation of skilled labor. Specifically, they argue that the surrogate value for skilled labor should be based on the upper range of the "skilled worker" category instead of being based on the upper range of the "industrial worker" category. Respondents state that "given the fact that the lower range of the industrial category chosen by the Department for unskilled labor corresponds to the lowest monthly wage for the unskilled worker category, it would be logical and fair for the Department to use the lower range of the skilled worker category for determining the average monthly wage for skilled labor." Finally, they state that the Department's decision to use the upper range of the "industrial worker" category is not supported by the record.

Petitioners argue that the "industrial worker" rate should continue to be used by the Department because the production of subject merchandise is an industrial process and "skilled workers" represents a category which includes workers who are not engaged in an industrial process.

DOC Position: As noted in the Foreign Market Value section above, the Department is using Indian labor wages from the *Yearbook of Labor Statistics* to value PRC labor costs (*see* October 17, 1995 memorandum from David R. Boyland, Import Compliance Specialist, to case file). Therefore, because the comments above are concerned with information from a source the Department is no longer using, these comments are moot.

Comment 9: Petitioners argue that respondents incorrectly classified skilled and supervisory labor as indirect labor and did not report indirect labor hours needed to produce the merchandise. Petitioners argue that skilled, supervisory and clerical labor should be considered direct labor because they are directly related to the manufacturing operations. Petitioners support their claim by referring to *Plant Design and Economics for Chemical Engineers (Plant Design)*, and note that according to this source, the cost of direct supervisory and clerical labor should be 15 percent of the cost of unskilled and skilled operating labor.

Additionally, petitioners argue that all respondents, except GWIIEC, under-reported their labor usage. Petitioners state that the respondents' production process is less automated than that of petitioners' and, hence, should reflect higher labor intensiveness. Petitioners suggest that the Department correct for this by using GWIIEC's labor hours for the other respondents.

Respondents argue that for one of the producers, the Department verified that certain workers were not involved in direct labor activities and, hence, only a part of their labor cost should be used to calculate FMV. Further, respondents argue that the skilled and unskilled labor hours were verified by the Department and, as such, should be used in the final determination. According to respondents, *Plant Design* classifies costs based on the fixed or variable nature of a particular expense, with the result that these costs are treated as direct costs. However, a cost accounting approach would define items such as "maintenance and repairs" and supervisory labor as a part of factory overhead. Respondents urge the Department to follow the cost accounting approach. In support of this position, respondents point out that the Department's standard cost of production questionnaire for market economies treats supervisory labor as part of factory overhead.

DOC Position: Because there is no indirect labor component in the Department—s factory overhead surrogate, we reject respondents' argument that only a portion of verified indirect labor hours be included in the FMV. With the exception of GWIIEC, all respondents, as requested by the Department in its questionnaire, reported direct labor hours, as opposed to direct and indirect labor hours. Pursuant to information gathered at verification, the Department was able to quantify some of the indirect labor hours incurred by respondents, as well as identify other indirect labor functions performed. Because we do not have complete indirect labor information for respondents and, as noted above, our factory overhead surrogate does not include a component for indirect labor, we have estimated the amount of indirect labor that was not quantified by the Department and have used this value to calculate FMV (*see* October 27, 1995 calculation memorandum).

While petitioners have argued that total labor is under-reported based on their own experience, we have not rejected the labor component of CEIEC's, HIED's, CMIECHN's and Minmetals' responses in favor of GWIIEC's data. Instead, we have relied on these companies' verified amounts of labor usage adjusted for indirect labor as discussed above in our final determination.

Comment 10: Petitioners argue that electricity consumption for the majority of respondents is unrealistically low. Petitioners claim that the use of certain inputs (*i.e.*, Factor A) does not explain respondents' low electricity consumption and that respondents' electricity consumption should not be less than the minimal amounts indicated as being necessary to produce manganese metal based on the *Kirk-Othmer Encyclopedia of Chemical Technology (2nd Edition) (Kirk-Othmer)*. Additionally, according to petitioners, respondents' less efficient economies of scale should result in higher electricity consumption. Given that the production process employed and the raw materials consumed by each of the respondents are basically the same, petitioners also argue that the wide range of electricity usage rates reported by these respondents indicates that the reported electricity consumption is suspect for all of them. Petitioners contend that the Department should use the electricity consumption reported by GWIIEC's producer for all producers in this investigation since GWIIEC's manganese metal producer reported electricity consumption within minimum operational requirements. Respondents, argue that the electricity consumption extrapolated from *Kirk Othmer* by petitioners is based on the electricity consumption in 1967 of two companies no longer producing manganese metal and should be considered outdated. Therefore, the verified electricity usage of the individual producers should be used by the Department in its final determination.

DOC Position: While the domestic and PRC production processes are fundamentally the same, there are some important differences between the two. For example, the PRC producers use a certain input (Factor A) which improves electricity current efficiencies; *i.e.*, all things being equal, the electrolysis stage of the process requires relatively less electricity in the presence of Factor A.

Given the large number of variables (*e.g.*, different production processes and inputs), it is unknown whether the use of Factor A can fully explain the

difference in the electricity consumption reported by producers and the levels submitted by petitioners. However, based on information supplied by the U.S. Bureau of Mines, we have determined that the electricity usage reported by respondents is not outside the range that would be expected for a producer using Factor A (*see* the October 16, 1995 memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). Therefore, the Department has used the verified amounts of electricity consumption.

Comment 11: Respondents argue that indirect material costs were double counted by the Department when it valued minor process chemicals and also included the "stores and spares consumed" category from the RBI Bulletin as a component of factory overhead. Respondents argue that either the "stores and spares consumed" component should be eliminated from the surrogate factory overhead or the Department should avoid directly valuing process chemicals. Respondents also argue that inputs that are considered as "consumables" in the accounting systems of the producers should be treated as indirect materials.

Respondents also disagree with petitioners' interpretation of the term "stores and spares consumed" listed in the RBI Bulletin, arguing that the Department can reasonably assume that the "stores and spares consumed" category includes an element for indirect materials. They point out that the reference to *Plant Design* cited by petitioners distinguishes between "raw materials," which are direct materials, and "catalysts and solvents, which are not direct materials." The chemicals in question, according to respondents, are "catalysts and solvents." Respondents also note that the Department's recognition of variable overhead in market economy cases contradicts petitioners' assertion that all variable inputs must be direct materials. Finally, since the chemicals in question are not physically incorporated into the finished goods or are used in very small quantities (*i.e.*, the antithesis of the cost accounting definition of direct materials), these chemicals should be considered indirect materials which are included in factory overhead.

Petitioners argue that the "stores and spares consumed" line item in the RBI Bulletin should be considered "operating supplies," as the term is used in *Plant Design; i.e.*, "miscellaneous supplies * * * needed to keep the process functioning." Petitioners note that *Plant Design* states that "[r]aw materials are all items that must be supplied in the manufacturing process for each unit of product produced." According to petitioners, to the extent that process chemicals are variable inputs, they must be considered "raw materials" for which surrogate values must be attributed. Therefore, petitioners state that because these items are not included in the surrogate factory overhead in the "stores and spares consumed" line item, the Department should value these chemicals separately from overhead.

DOC Position: Both petitioners and respondents have attempted to explain what the RBI "stores and spares consumed" category contains, but neither side has persuaded us. Based upon our own analysis, we have concluded that only those chemicals used after the metal has been produced or those chemicals used for cleaning purposes unrelated to the actual production process should be included in factory overhead (*see* October 16, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). With respect to the other chemicals in question, while respondents' accounting systems may treat them as an element of factory overhead, these materials are more appropriately considered direct materials because they are required for a particular segment of the production process. Based on this analysis, we have treated certain of the so-called "process chemicals" as indirect materials which are covered by the surrogate value for factory overhead and the remainder have been valued as direct materials.

Comment 12: Petitioners argue that the Department omitted certain expense categories (*i.e*, "selling commission," "rates and taxes," "other provisions," and "financing interest") which should have been included in the surrogate SG&A value. Additionally, if the Department continues to exclude "financing interest" from the SG&A value, it should use "gross operating profit" instead of "operating profit." Finally, according to petitioners, regardless of how PRC producers categorize certain items, costs cannot be assigned to factory overhead or SG&A categories unless the above-referenced RBI Bulletin table attributes the cost to factory overhead or SG&A.

Respondents argue that the Department should not include "rates and taxes" in SG&A because the surrogate input values are exclusive of internal taxes or duties. Also, according to respondents, because the Department does not normally adjust for credit expenses in NME cases, it should not include a value for credit expenses ("financing costs"). Moreover, since the cost of producing manganese metal is determined at the producer level, "selling commissions" should not be included as the producer does not sell the merchandise, only the exporter does. Generally with respect to SG&A, respondents claim that because the Indian surrogate information is for a broad group of industries and India has no manganese metal industry, the Department should include in its surrogate SG&A only those expenses incurred by the PRC producers. As an alternative to determining what should be included in the surrogate SG&A value, respondents suggest that the Department use the statutory minimum of 10 percent. With respect to profit, respondents argue that the Department's normal practice is to use operating profits.

DOC Position: We agree with petitioners that we incorrectly omitted certain SG&A expense categories listed in the RBI table. We have included these amounts in our final determination.

We disagree with respondents that financing costs should be removed from the SG&A. The Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make the adjustment. However, the lack of an adjustment does not mean that these costs should be excluded from FMV. We also disagree with respondents regarding selling commissions. Section 773(c)(1) clearly requires the Department to include an amount for general expenses in the FMV. Therefore, regardless of whether the FMV is being constructed at the producer or exporter level, it is appropriate to add an amount for selling expenses.

Further, we disagree with respondents' argument that we should use only those elements of the surrogate SG&A that correspond to expenses incurred by the PRC producers. It is the Department's consistent practice to use a surrogate amount for the entirety of SG&A as calculated using the RBI Bulletin, as opposed to basing the surrogate SG&A percentage on actual expenses incurred by respondents.

Finally, following our normal practice, we considered operating rather than gross profit. Because this amount was less than 8 percent of COM and SG&A, we used the statutory minimum.

Comment 13: Respondents claim that the Department verified that certain charges deducted in the preliminary determination were not incurred by respondents. Therefore, these amounts should not be deducted for the final determination. Moreover, respondents reject petitioners' claim that it is

common practice in the PRC to include insurance as part of inland freight.

Specifically, for CEIEC, respondents claim that the Department verified that foreign brokerage charges were included in ocean freight and hence, this expense should not be valued separately. Regarding CEIEC's ocean freight, the charges were incurred in U.S. dollars. Therefore, respondents argue that CEIEC's actual shipping should be used.

For HIED, respondents claim that the Department verified that foreign inspection charges were not incurred. Hence, no deduction should be made for this expense in the final determination.

Finally, for Minmetals' ocean freight, respondents ask the Department to take the average amount Minmetals paid in U.S. dollars for shipping on most of its U.S. sales on market carriers and use that amount to value the shipping for its remaining sale.

Petitioners argue that an amount for insurance should be added to foreign inland freight because the Department found numerous situations where insurance was included as part of the freight charges paid by the respondents. Regarding the specific exporters, petitioners generally refute respondents' claims. Much of their discussion is proprietary in nature. Hence, the details are not presented here.

DOC Position: We have made deductions for all expenses incurred in shipping the merchandise to the United States (*see* CFR 353.41(d)(2)(i)). If an expense was not incurred, no deduction was made. With respect to insurance for foreign inland freight, we have made deduction only where we verified that insurance was included in the inland freight charge.

We have not used CEIEC's actual freight because an NME carrier was used. We have made the adjustment by using a surrogate ocean freight which includes brokerage and handling. No additional deduction for brokerage and handling was made. Thus, there is no double counting of brokerage and handling.

For HIED, we disagree that we made any deduction for inspection charges at the preliminary determination. As stated in Comment 12, the Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make an adjustment. Thus, for the final determination, the Department has continued not to make a deduction for this expense for any respondent.

Finally, for Minmetals, we used the shipping rate proposed by respondents for the single U.S. sale where shipping was paid in RMB.

Comment 14: Respondents argue that a type of packing material identified by the Department in its verification report of CMIECHN/CNIECHN's supplier should not be used to calculate FMV because this packing material was not used for POI sales.

DOC Position: The sales in question were not found to be outside the POI, as respondents claim. Therefore, we have calculated the FMV for these sales using the estimated weight of the packing material used for these sales.

Comment 15: According to respondents, both the statute and the Department's regulations require that internal taxes remitted or refunded upon export are to be excluded from the calculation of the constructed value. Further, these respondents argue that the Department verified that the value added tax (VAT) paid by the exporters to the manganese metal producers is reimbursed by the PRC government upon exportation of the merchandise. Therefore, according to respondents, the Department should deduct VAT from all direct material inputs used to determine the cost of manufacture and which were refunded by the PRC government when subject merchandise was exported. The respondents also submit an alternative suggestion for a VAT adjustment in which the Department increases the export price by the amount of the VAT they receive from the PRC government upon exportation of the merchandise.

The petitioners claim that the PRC government does not refund VAT on material inputs, rather, the refund is on the final product. Additionally, the VAT is not incorporated in the FMV calculation, because the inputs are valued using Indian surrogate values which do not incorporate a VAT. Petitioners claim that respondents' alternative to increase the U.S. price is without merit, and that the Department correctly excluded VAT from the U.S. price-to-FMV comparison.

DOC Position: The Department's factors of production calculation uses Indian surrogate values which are exclusive of Indian taxes. Because the FMV is net of taxes, neither a downward adjustment to FMV nor the alternative upward adjustment to USP suggested by respondents is necessary.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of manganese metal from the PRC, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
CEIEC	10.27
CMIECHN/CNIECHN	0.86
HIED	3.72
Minmetals	4.36
PRC-wide Rate	143.32

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury to the industry in the United States, within 45 days. 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 Duty 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.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-27369 Filed 11-3-95; 8:45 am]

BILLING CODE 3510-DS-P

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	:	MANGANESE METAL FROM THE PEOPLE'S REPUBLIC OF CHINA
Inv. No.	:	731-TA-724 (Final)
Date and Time	:	November 1, 1995 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, SW, Washington, D.C.

In Support of Imposition of Antidumping Duties

Gardner, Carton and Douglas
Washington, D.C.
on behalf of

Kerr-McGee Chemical Corporation ("KMCC")
Elkem Metals Company ("Elkem")

William Ferguson, Global Marketing Manager, Special Metals, Elkem Metals Company
David Miller, Staff Engineer, Special Metals, Elkem Metals Company
David Ezell, Business Director, Electorlytic Specialty and New Products, Kerr-McGee Chemical Corporation
James Burrows, President, Economist, Charles River Associates
Jay Agarwal, Vice President Industry Expert, Charles River Associates

W.N. Harrell Smith)
George N. Grammas)--OF COUNSEL
Ute A. Joas)

In Opposition to the Imposition of Antidumping Duties

Dorsey and Whitney
Washington, D.C.
on behalf of

CEIEC-Hunan Company
China Hunan International Economic Development (Group) Corporation
China Metallurgical Import and Export Hunan Corporation
Hunan Golden Globe Import and Export Company
Minmetal Precious and Rare Minerals Import and Export Company (the "Companies")

Chen Lian Ying, Deputy Director, China Chamber of Commerce of Metals, Minerals and Chemicals, Importers and Exporters

Wei Mo Liu, International Trade Analyst, Dorsey and Whitney

Philippe M. Bruno)
)--OF COUNSEL
Karen Zughaib)

Cometals, Incorporated
New York, New York

Jeff Kofsky, Product Manager

APPENDIX C

DESCRIPTION OF *** ELECTROLYTIC MANGANESE METAL MANUFACTURING PROCESSES

A description of the process used by KMCC to produce electrolytic manganese metal is presented below. The feedstock used by Elkem in its electrolytic manganese operations is shotted slag, a by-product of its high-carbon ferromanganese operations. KMCC uses high-quality imported manganese ore as a feed for its operations.

Beneficiation

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

Roasting

In this stage, ***.

Leaching and Purification

***.

Cell Room Operation

***. The cathodes containing the manganese are pulled from the cells, washed with water, dried, and the manganese metal is removed. The cathodes are then cleaned of the residual manganese, washed in water, and returned to the cells.

Production of Flake, Powder, and Briquettes

Once the metal collects along the cathode plate it must be prepared for end use. For both domestic U.S. manganese metal manufacturers, the cathodes holding the plated manganese metal are pulled from the cells, washed with water, and dried. The metal is separated from the cathode plate by manually striking the plate with rubber mallets. The material falling from the plate is termed non-degassed[1] "chip," or "flake."[2] Non-degassed flake may then be packaged and sold, typically to steel producers, or may be sent to a rotary kiln, or degassing facility, where the flake is heated to 1,000° F. to rid the material of hydrogen gas impurities. Once out of the rotary furnace, the "degassed flake"[3] is cooled to make it easier to transport and may be packaged and sold as degassed flake, further processed

[1] Non-degassed manganese has 99.7 percent manganese purity.

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

[3] Degassed manganese has a manganese purity of 99.9 percent.

into powder, or further processed into briquettes.[4] A briquetting facility usually contains both a grinding and a briquetting stand. The grinding stand contains a ball mill, where the flake material is ground into powder, and a screening apparatus that is used to size the powder. This powder may then be packaged and sold directly for use in the manufacture of welding rods, or it may be transferred within the same facility to the briquetting stand where it is blended with aluminum powders, in a ratio of 75 percent manganese and 25 percent aluminum, and compressed into a briquette. Such briquettes are commonly used by the aluminum alloy industry for the manufacture of aluminum canstock.[5]

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

[5] Aluminum alloyers generally produced aluminum canstock using manganese flake until the 1960s, when technical problems with flake favored the use of briquettes. Manganese-aluminum briquettes are, overwhelmingly, the primary form in which manganese metal is used by aluminum alloyers today.

APPENDIX D

CERTAIN SUMMARY PROFIT-AND-LOSS DATA

Table D-1
Revenues and costs associated with certain Elkem's sales of manganese metal to *** in fiscal year 1994 and Jan.-June 1994

* * * * * * *

Table D-2
Summary income-and-loss experience of U.S. producers on their trade-only sales of manganese metal, excluding certain sales by Elkem to ***, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Table D-3
Elkem's income-and-loss experience on its trade-only sales of manganese metal, excluding certain sales to ***, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Table D-4
Summary income-and-loss experience of U.S. producers on their trade and transfer sales of manganese metal, excluding certain sales by Elkem to ***, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

* * * * * * *

Table D-5
Elkem's income-and-loss experience on its trade and transfer sales of manganese metal, excluding certain sales to ***, fiscal years 1992-94, Jan.-June 1994, and Jan.-June 1995

APPENDIX E

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Response of U.S. producers to the following questions:

1. Since January 1, 1992, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product, as a result of imports of manganese metal from China?

Elkem--"***--

***."

KMCC--"***--

***."

2. Does your firm anticipate any negative impact of imports of manganese metal from China?

Elkem--"***--

***."

KMCC--"***--

***."

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

Elkem--"***--

***."

KMCC--"***--

***."

APPENDIX F

"COMPAS" METHODOLOGY AND RUNS

ASSUMPTIONS

The COMPAS model is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on information developed in the investigation, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. manganese metal market. The model uses these estimates with data on market shares, Commerce's margins of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of the subject imports on the U.S. like product industry.

FINDINGS

The COMPAS model estimates that the dumping of imports from China has suppressed revenues in the U.S. manganese metal industry by between *** and *** percent. It further estimates price and volume suppression to range from *** and *** percent to *** and *** percent, respectively. More detailed effects of the dumping and the modelling assumptions used for the full range of scenarios are presented below.

* * * * * * *