

UNITED STATES INTERNATIONAL TRADE COMMISSION

SILICON METAL FROM RUSSIA

Investigation No. 731-TA-991 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3502, APRIL 2002)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines,² pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act.

Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

BACKGROUND

On March 7, 2002, a petition was filed with the Commission and Commerce by Globe Metallurgical Inc. (Globe), Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.-C.W.A, AFL-CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5-89), Boomer, WV; and the United Steel Workers of America (AFL-CIO, Local 9436), Niagara Falls, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of silicon metal from Russia that are alleged to be sold in the

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 Vice Chairman Deanna Tanner Okun not participating.

United States at less than fair value (LTFV). Accordingly, effective March 7, 2002, the Commission instituted antidumping duty investigation No. 731-TA-991 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 15, 2002 (67 FR 11709). The conference was held in Washington, DC, on March 26, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Investigation No. 731-TA-991 (Preliminary)

SILICON METAL FROM RUSSIA

Based on the record in this investigation, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Russia that are allegedly sold in the United States at less than fair value (LTFV).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵ In turn, the Act defines “domestic 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”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in

¹ Vice Chairman Okun did not participate in this preliminary determination.

² 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). We note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

³ American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ Id.

⁶ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

The scope of this investigation as defined by Commerce in its notice of initiation covers the following imported merchandise:

*silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (“HTSUS”). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.*¹¹

A small percentage of silicon metal is used in the production of solar and electronic silicon and generally contains over 99.99 percent silicon. This type of silicon metal, which is also known as semiconductor-grade silicon metal, is not within the scope of this investigation.¹²

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (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’”). 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 Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹¹ 67 FR 15791, 15791 (April 3, 2002).

¹² See, e.g., 67 FR 15791 (April 3, 2002); Petition at 10-11.

C. Domestic Like Product

Petitioners¹³ and Respondents¹⁴ agree, for purposes of this preliminary phase of the investigation, that the Commission should define one domestic like product, coextensive with the scope.¹⁵

All silicon metal is usually sold in lump form typically ranging from 6 inches by ½ inch to 4 inches by ¼ inch.¹⁶ Silicon metal of all grades is sold through the same channels of distribution in the U.S. market and the vast majority is sold directly to end users.¹⁷ Chemical grade silicon metal is used by the chemical industry to produce silanes, and metallurgical grades of silicon metal are used in the primary and secondary aluminum industries as an alloying agent.¹⁸ Silicon metal of the same grade is considered interchangeable.¹⁹ Furthermore, higher grade silicon metal is sometimes shipped to a purchaser with lower specification requirements, due to excess product availability and low shipping costs.²⁰ The process for producing all grades of silicon metal is virtually identical.²¹ According to Petitioners, silicon metal prices for each particular market segment tend to be adjusted based on the price fluctuations in the other two market segments.²²

Therefore, based on shared physical characteristics, some overlapping uses, similar channels of distribution, some interchangeability, the same production processes and employees, and relatively minor differences in pricing between the grades of silicon metal, we define the domestic like product as all silicon metal consistent with Commerce's scope, regardless of grade.

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product”²³ In defining the domestic industry, the Commission's general practice has been to include in the industry

¹³ Petitioners are Globe Metallurgical Inc. (“Globe”); SIMCALA, Inc. (“SIMCALA”); the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, I.U.E.-C.W.A., AFL-CIO, C.L.C., Local 693 (“I.U.E.-C.W.A.”); the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-89 (“PACEWIU”); and the United Steel Workers of America, AFL-CIO, Local 9436 (“USWA”) (hereinafter collectively called “Petitioners”).

¹⁴ Respondents are Greenwich Metals, Inc. (“Greenwich”), SUAL Holding (“SUAL”), ZAO Kremny (“ZAO Kremny”), General Electric Silicones LLC (“GE Silicones”), and Bratsk Aluminum Smelter (“Bratsk”) (hereinafter collectively called “Respondents”).

¹⁵ Petition at 18; Conference Transcript (“Conference Tr.”) at 86-87 (Mr. Stein); SUAL/ZAO Kremny Postconference Brief at 6.

¹⁶ See, e.g., Confidential Report, as revised by Memorandum INV-Z-048, April 17, 2002 (“CR”) at I-5; Public Report (“PR”) at I-4.

¹⁷ See, e.g., Petitioners' Postconference Brief at 7; CR at II-1; PR at II-1.

¹⁸ See, e.g., CR at I-6 to I-7; PR at I-5 to I-6.

¹⁹ See, e.g., CR at I-7; PR at I-6.

²⁰ See, e.g., CR at I-6; PR at I-5; Petitioners' Answers to Questions From Staff Conference, April 5, 2002, at 3.

²¹ See, e.g., Petitioners' Postconference Brief at 7.

²² See, e.g., Conference Tr. at 29, 42 (Dr. Button).

²³ 19 U.S.C. § 1677(4)(A).

all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.²⁴

None of the parties disputes that the domestic industry should consist of all domestic producers of silicon metal, coextensive with the scope of the investigation.²⁵ Based on our finding that the domestic like product consists of all grades of silicon metal, consistent with the scope of the investigation, we find that the domestic industry consists of all domestic producers of silicon metal.

III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.²⁶ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.²⁷ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”²⁸ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.²⁹ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁰

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing silicon metal is materially injured by reason of subject silicon metal imports from Russia that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in this investigation.

The demand for silicon metal is derived from the demand for the products in which it is used, namely aluminum products and certain chemical products.³¹ The largest customer market for silicon metal produced by the domestic industry is the chemical market, which represented 60.7 percent of U.S.

²⁴ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁵ See, e.g., Petition at 18; Conference Tr. at 87 (Mr. Waite); SUAL/ZAO Kremny Postconference Brief at 7. None of the parties raised any issue regarding related parties, and there is no related parties issue for us to consider.

²⁶ 19 U.S.C. §§ 1671b(a), 1673b(a).

²⁷ 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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

²⁸ 19 U.S.C. § 1677(7)(A).

²⁹ 19 U.S.C. § 1677(7)(C)(iii).

³⁰ 19 U.S.C. § 1677(7)(C)(iii).

³¹ See, e.g., CR at II-4; PR at II-3.

producers' U.S. shipments in 2001, followed by a fairly even division between the primary and secondary aluminum markets.³² U.S. importers of Russian silicon metal sell product to these three customer groups, but in different proportions than the domestic producers. Over the period of investigation, the biggest market for Russian silicon metal was the secondary aluminum market, although shipments of Russian silicon metal to chemical customers increased significantly during this period from 7.9 percent in 1999 to 30.9 percent in 2001.³³

By quantity, apparent U.S. consumption rose slightly from 328,060 short tons of contained silicon ("short tons") in 1999 to 330,900 short tons in 2000, but then declined over 15 percent to 279,031 short tons in 2001.³⁴ U.S. producers also reported that demand in both the aluminum and chemical sectors generally decreased during the period of investigation, although they differ as to the time-frame for the decline. Four importers also reported in their questionnaire responses that demand for silicon metal in the U.S. market had decreased. In general, both U.S. producers and importers agreed that the declines in silicon metal demand were due to the general decline in U.S. industrial output during the period of investigation.³⁵

There are currently three producers of silicon metal in the United States: Elkem Metals, Inc. ("Elkem"), Globe and SIMCALA. A fourth producer, American Silicon Technologies ("AST"), ceased production of silicon metal in the fourth quarter of 1999.³⁶ Aggregate capacity of the domestic industry decreased from 250,973 short tons in 1999 to 224,262 short tons in 2000, and then to 195,545 short tons in 2001.³⁷ Given the level of apparent domestic consumption during the period of investigation,³⁸ the domestic industry was only able to meet a portion of U.S. total consumption of silicon metal.

Two U.S. silicon metal producers also produce ferrosilicon, which is used in the production of steel, especially stainless and heat-resisting steel and cast iron.³⁹ U.S. producers note that, although it is "fairly easy, rather quick, and relatively inexpensive to convert a furnace from silicon metal production to ferrosilicon production," it is harder, takes longer, and costs more to convert a furnace from the production of ferrosilicon to silicon metal production.⁴⁰ Globe converted two silicon metal furnaces at its Beverly, OH, facility to ferrosilicon production in 2000 and converted one silicon metal furnace at its facility in Niagara Falls, NY, to ferrosilicon production in August 2001. The Niagara Falls ferrosilicon facility was subsequently shut down. According to industry sources, no ferrosilicon furnace in the U.S.

³² See, e.g., CR/PR at II-1 and Table III-4.

³³ See, e.g., CR/PR at II-1 and Table IV-3.

³⁴ See, e.g., CR/PR at Table IV-4.

³⁵ See, e.g., CR at II-4; PR at II-3; Petitioners' Answers to Questions From Staff Conference, April 5, 2002, at 22-23. Respondents also reported that consolidation in the domestic aluminum industry during the period of investigation resulted in aluminum production being moved offshore, thus reducing domestic demand for silicon metal. Consolidations in the chemical industry and offshore expansions also appear to have reduced domestic demand for chemical grade silicon metal. SUAL/ZAO Kremny Postconference Brief at 29-30.

³⁶ See, e.g., CR at I-12 n.37; PR at I-9 n.37.

³⁷ See, e.g., CR/PR at Table III-2.

³⁸ See, e.g., CR/PR at Table IV-5.

³⁹ See, e.g., CR at I-10; PR at I-8.

⁴⁰ See, e.g., CR at II-2 to II-3; PR at II-1 to II-2.

was converted to silicon metal production during the period of investigation.⁴¹ Silicon metal producers have high fixed costs and thus need to maintain a high level of capacity utilization in order to remain profitable.⁴² Capacity utilization by the domestic industry declined over the latter portion of the period of investigation.⁴³

Petitioners and Respondents do not dispute that some level of imports is necessary to satisfy domestic demand.⁴⁴ Data compiled from questionnaire responses indicate that silicon metal was imported not only from Russia but also nonsubject countries including Brazil, South Africa, Saudi Arabia, Canada, France, and China during the period of investigation.⁴⁵

Generally, within the same grade most silicon metal available in the U.S. market has the same chemical specifications and can be used for similar applications.⁴⁶ The parties generally agree on the commodity nature of the product, the interchangeability between U.S.-produced and subject silicon metal, and the importance of price in purchasing decisions.⁴⁷

Petitioners acknowledge that there is a qualification process for silicon metal, although they claim that all of the domestic silicon metal and most imports of silicon metal already are qualified for sale to most purchasers. Once suppliers are qualified, the purchaser chooses a supplier based principally

⁴¹ See, e.g., CR at I-10 n.30; PR at I-8 n.30; See also, Petitioners' Answers to Questions From Staff Conference, April 5, 2002, at 27-31 and Exhibit 8.

⁴² See, e.g., CR at VI-5 to VI-6; PR at VI-1; ***, ***, ***.

⁴³ Average capacity utilization of the domestic industry was 83.4 percent in 1999, 87.2 percent in 2000, and 74.3 percent in 2001. See, e.g., CR/PR at Table III-2. U.S. production by the domestic industry declined 6.6 percent between 1999 and 2000, while average production capacity declined 10.6 percent, thus resulting in the increase in capacity utilization evidenced during this period. Between 2000 and 2001, U.S. production by the domestic industry declined 25.7 percent while average production capacity declined 12.8 percent, thus resulting in the decline in capacity utilization evidenced over the latter portion of the period of investigation. CR/PR at Table C-1.

⁴⁴ Petitioners argued that the required volume of silicon metal imports depends on fluctuations in total U.S. demand and the U.S. price level of silicon metal. Petitioners' Answers to Staff Questions at 24. Respondents argued that at least fifty percent of domestic demand of silicon metal must be satisfied by imports. Conference Tr. at 92 (Mr. Appleby).

⁴⁵ See, e.g., CR/PR at Table IV-1.

⁴⁶ See, e.g., CR at II-5; PR at II-4.

⁴⁷ See, e.g., CR at II-5 to II-6; PR at II-4; CR/PR at Tables II-1, II-2. Respondents testified at the conference that Russian producers are excluded from a significant segment of the U.S. primary aluminum market because no Russian producer is qualified to manufacture low iron silicon metal (less than 0.35 percent iron) due to the composition of quartzite deposits in Russia. However, the record indicates that, except for those applications that require low-iron grades of silicon, the various grades of silicon metal produced in Russia are of sufficient variety and purity that the Russian material is competitive in virtually all U.S. markets and applications. See, e.g., Conference Tr. at 68 (Dr. Magrath), 76-77 (Mr. Appleby); CR at I-7 to I-8; PR at I-6; Staff conversation with Frederick Waite, Esq., counsel for SUAL Holding and ZAO Kremny, April 11, 2002.

on price.⁴⁸ The data gathered in this investigation indicate that there are no substantial differences among silicon metal produced in the United States, Russia, and nonsubject countries, other than price.⁴⁹

B. Volume of the Subject Imports

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁵⁰

After a slight decrease from 1999 to 2000, the quantity of subject imports rose between 2000 and 2001 by over one-third.⁵¹ The record further shows that the proportion of subject imports destined for the chemical industry sector, where the majority of U.S. product competes, also increased sharply from 7.9 percent in 1999 to 30.9 percent in 2001.⁵² It appears that this increase is attributable, at least in part, to quality improvements in Russian silicon metal, which have resulted in more widespread competition between subject imports and domestically produced silicon metal in all three major markets for silicon metal.⁵³ Moreover, we note that the increase in subject imports took place even though Russian producers are not able to manufacture low iron silicon metal due to the composition of quartzite deposits in Russia.⁵⁴

Subject imports’ U.S. market share, by quantity, followed a trend that was similar to import levels: after experiencing a slight decrease from 1999 to 2000, it increased sharply by 4.8 percentage points in 2001.⁵⁵

In quantity terms, the market share of the domestic industry declined 7.9 percentage points over the period of investigation.⁵⁶ Nonsubject import market share initially rose from 29.7 percent to 35.3 percent during 1999 to 2000, but then decreased to 33.1 percent in 2001.⁵⁷ During the last year of the period of investigation, subject and nonsubject import market share moved divergently, with subject import market share increasing by 4.8 percentage points and nonsubject market share decreasing by 2.3

⁴⁸ See, e.g., Conference Tr. at 40 (Mr. Perkins, Mr. Boardwine and Dr. Button); Petitioners’ Answers to Questions From Staff Conference, April 5, 2002, at 20-22.

⁴⁹ See, e.g., CR/PR at Table II-1. A minority of U.S. importers indicated that Russian and U.S.-produced silicon metal are not interchangeable due to differences in iron content and product quality. See, e.g., CR at II-7; PR at II-5.

⁵⁰ 19 U.S.C. § 1677(7)(C)(i).

⁵¹ By quantity, subject imports initially decreased from 25,158 short tons in 1999, to 24,643 short tons in 2000, but then increased to 34,153 short tons in 2001. The total value of subject imports initially decreased from \$26.2 million in 1999 to \$25.5 million in 2001, but then increased to \$35.3 million in 2001. See, e.g., CR/PR at Table IV-2.

⁵² See, e.g., CR/PR at II-1 and Table IV-3.

⁵³ See, e.g., CR at I-7; PR at I-6; Petition at 17-18; Conference Tr. at 11 (Mr. Perkins).

⁵⁴ See, e.g., CR at I-7; PR at I-6; Conference Tr. at 68 (Dr. Magrath), 76-77 (Mr. Appleby).

⁵⁵ See, e.g., CR/PR at Table C-1. Subject imports’ market share, by quantity, declined from 7.7 percent in 1999 to 7.4 percent in 2000, but then increased to 12.2 percent in 2001. See, e.g., CR/PR at IV-5.

⁵⁶ See, e.g., CR/PR at Table C-1. The domestic industry’s market share by quantity declined from 62.6 percent in 1999 to 57.2 percent in 2000, and then to 54.7 percent in 2001. See, e.g., CR/PR at Table IV-5.

⁵⁷ See, e.g., CR/PR at Table IV-5.

percentage points.⁵⁸ Thus, from 2000 to 2001, subject imports gained market share at the expense of both U.S. producers and nonsubject imports.

For purposes of this preliminary determination, we find the volume of subject imports and the increase in volume, particularly over the latter portion of the period of investigation, to be significant in both absolute terms and relative to U.S. consumption.⁵⁹

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether—

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶⁰

As noted above, the record in the preliminary phase of this investigation shows that silicon metal is a commodity product, sold mainly on the basis of price and that there is a high degree of substitutability between the subject merchandise and the domestic like product.⁶¹

The record indicates that sales of chemical and primary aluminum grade silicon metal in the U.S. market are generally by contract and sales of secondary aluminum grade are on a spot basis.⁶² U.S. producers reported that there are a variety of pricing mechanisms in contracts that adjust prices quarterly, semi-annually, or annually based on a published price such as that found in Metals Week or Ryan's Notes.⁶³ One U.S. producer, ***, reported that its contracts usually contain meet-or-release clauses.⁶⁴

⁵⁸ See, e.g., CR/PR at Tables IV-5 and C-1; The quantity of nonsubject imports increased from 97,499 short tons in 1999 to 116,908 short tons in 2000, but then decreased to 92,279 short tons in 2001. See, e.g., CR/PR at Table IV-2.

⁵⁹ We find the volume of subject imports from Russia to be significant notwithstanding Respondents' argument that the level of Russian subject imports during the 2000-2001 period still remained below historically high levels. For the three-year period examined, the subject imports increased significantly and, as noted, the proportion destined for the chemical industry sector, where the majority of U.S. product competes, grew substantially. See Conference Tr. at 62 (Dr. Magrath); SUAL/ZAO Kremny Postconference Brief at 18-19.

⁶⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁶¹ See, e.g., CR at II-5 to II-6, Tables II-1 and II-2; PR at II-3, Tables II-1 and II-2.

⁶² See, e.g., CR at V-2; PR at V-1; Conference Tr. at 42-43 (Dr. Button and Mr. Perkins).

⁶³ See, e.g., CR at V-2 to V-3; PR at V-1 to V-2. Metals Week and Ryan's Notes publish weekly pricing data for silicon metal. These prices are obtained from surveys with traders and purchasers who are asked to provide the current prevailing price and market trends. See, e.g., CR at V-3 n.1; PR at V-2 n.1; Petitioners' Postconference Brief at 12.

⁶⁴ See, e.g., CR at V-3; PR at V-2. Meet-or-release clauses provide that, if the purchaser is offered a price by another supplier that is lower than the price provided under the contract, the incumbent supplier must lower its price
(continued...)

Petitioners testified that the existence of contracts in the silicon metal industry does not necessarily provide protection to the domestic industry and reported several instances when prices within a given contract had been modified as a result of index pricing, meet-or-release clauses, and other price adjustment mechanisms.⁶⁵

One Respondent, GE Silicones, conducted three reverse internet auctions in the fall of 2001 to purchase *** short tons of silicon metal, or approximately 75 percent of its 2002 requirements.⁶⁶ Other purchasers of silicon metal, including ***, have held internet auctions as well.⁶⁷ In any final phase of this investigation, we intend to examine the effect of these auctions on price-based competition in the market.⁶⁸

The record shows underselling by the subject imports in the vast majority of pricing comparisons. The Commission gathered quarterly pricing data for three silicon metal products. Using the sales price data from primary aluminum and secondary aluminum producers (questionnaire products 1 and 2), there were 24 instances where comparisons between U.S. and Russian prices were possible.⁶⁹ In 20 of the 24 instances, the Russian product was priced below the domestic product, with margins ranging from 0.3 percent to 18.4 percent.⁷⁰ Using the purchase price data from chemical manufacturers (questionnaire product 3), there were 10 instances where price comparisons were possible. The Russian product was priced below the domestic product in 9 of 10 quarters, with margins ranging from 7.9 to 19.4 percent.⁷¹ We find the evidence of underselling by the subject imports to be significant.

The evidence gathered in this preliminary phase of the investigation shows that both U.S. and subject import prices of silicon metal sold to all three groups of customers (i.e., chemical, primary and secondary aluminum customers) generally have declined during the period of investigation. Importer pricing data indicate that subject import prices for questionnaire product 1 declined by 30.3 percent and that subject import prices for questionnaire product 2 declined by 20.9 percent during the period of

⁶⁴ (...continued)

to meet the competing offer or the purchaser is free to cancel the contract. See, e.g., Petitioners' Postconference Brief at 13.

⁶⁵ See, e.g., CR at V-3; PR at V-2; Conference Tr. at 27 (Dr. Button).

⁶⁶ For the reverse auctions, GE Silicones sets a maximum and a reserve price. Once the reverse auction is opened, bidders who have been pre-qualified can continue to make bids as long as their bid is below the last one made. The reverse auction is closed if no new qualifying bid is received for two minutes. See, e.g., CR at V-4; PR at V-3; GE Silicones' Postconference Brief at 10-11. See also, Conference Tr. at 72 and 86 (Ms. Haynes).

⁶⁷ See, e.g., CR at V-4; PR at V-3. One U.S. producer, Globe, reported that GE Silicones' contract requirements for the internet auction, ***, were very rigid and that ***. Globe chose not to participate in the internet auction because ***. See, e.g., CR at V-4 to V-5; PR at V-3; See also, Petitioners' Answers to Questions from Staff Conference, April 5, 2002, at 13-14, and Conference Tr. at 72 (Ms. Haynes).

⁶⁸ Respondent, GE Silicones, argued that imports were available for sale at "virtually the same price" as Russian imports during GE Silicones' reverse internet auctions and that even without the presence of Russian imports in the internet reverse auctions, nonsubject imports would have been sold at the same volumes and the same price as, or within fractions of, subject imports. Conference Tr. at 72-73 (Ms. Haynes); GE Silicones Postconference Brief at 12. We intend to explore this issue further in any final phase investigation.

⁶⁹ See, e.g., CR at V-13; PR at V-7; CR/PR at Tables V-1 and V-2.

⁷⁰ See, e.g., CR at V-13; PR at V-7.

⁷¹ See, e.g., CR at V-13; PR at V-7; CR/PR at Table V-4.

investigation.^{72 73} Comparatively, U.S. producers reported that, over the period of investigation, prices for questionnaire product 1 declined by 8.4 percent, prices for questionnaire product 2 declined by 14.2 percent, and prices for questionnaire product 3 declined by 3.4 percent.⁷⁴

We note that evidence regarding lost sales and lost revenue is mixed. However, there are a number of instances of confirmed lost sales, including one involving a sale to *** of *** pounds of silicon metal lost to subject imports in *** and a sale to *** of *** pounds of silicon metal lost to subject imports in ***. Two lost revenue allegations were also confirmed, including one involving a sale of *** pounds of silicon metal to *** in ***.⁷⁵

Given the level and magnitude of underselling by the subject imports as well as their significant volumes and high substitutability with the domestic like product, we find that subject imports have depressed U.S. prices to a significant degree.^{76 77}

⁷² Although importer pricing data were not available for questionnaire product 3, purchaser pricing data show that, after falling by *** percent between the second and fourth quarters of 1999, subject import prices for questionnaire product 3 declined irregularly by *** percent during the remainder of the period of investigation. See, e.g., CR at V-6; PR at V-4; CR/PR at Table V-4. Respondents argued that imports from seven major supplying countries had average unit values lower than Russia in the year 2001. However, data collected from *** show that ***. See, e.g., Conference Tr. at 62 (Dr. Magrath); CR at V-6 to V-7; PR at V-4.

⁷³ We note that subject import prices declined more sharply than apparent domestic consumption, which fell by 14.9 percent during the period of investigation. See, e.g., CR/PR at Table C-1.

⁷⁴ See, e.g., CR at V-6; PR at V-4.

⁷⁵ See, e.g., CR at V-13 to V-18; PR at V-7 to V-9; CR/PR at Tables V-5 and V-6.

⁷⁶ See, e.g., CR/PR at Table V-1, V-2, V-4, and C-1; CR at II-1 and II-5; PR at II-1 and II-3.

⁷⁷ Commissioner Bragg finds that, in particular, pricing data over the latter portion of the period of investigation indicate significant price depression by reason of subject imports. The Commission collected pricing data for three silicon metal products accounting for roughly 94 percent of domestically produced U.S. shipments and 61 percent of subject imports over the period of investigation; coverage for 2001 was even higher, with roughly 96 percent of domestically produced U.S. shipments and 85 percent of subject imports accounted for. CR at V-5 and V-6, PR at V-4. With regard to product 2, the annual weighted average price of subject imports declined by over *** percent between 2000 and 2001, while the annual weighted average price for domestic producers declined by almost *** percent. See CR/PR at Table V-2. Although annual weighted average prices for subject and domestic product 2 were nearly identical in 2000, during 2001 the annual weighted average price of subject product 2 was *** percent lower than that of the comparable domestic product. See id. With regard to products 1 and 3, Commissioner Bragg notes that although the annual weighted average selling price of subject imports of product 1 and the annual weighted average purchase price (selling price was not available) of subject imports of product 3 changed by less than *** percent between 2000 and 2001, U.S. producers' annual weighted average selling price for product 1 and the annual weighted average purchase price for subject imports of product 3 each declined by over *** percent. See CR/PR at Tables V-1 and V-4. Importantly, the annual weighted average price of subject import product 1 was *** percent lower than the comparable domestic product in 2000 and *** percent lower in 2001; similarly, the annual weighted average price of subject import product 3 was *** percent lower than the comparable domestic product in 2000 and *** percent lower in 2001. See id. The price declines sustained by the domestic industry between 2000 and 2001 occurred in the context of a 15.7 percent decline in apparent U.S. consumption, a 19.4 percent decline in U.S. shipments for the domestic industry, a 38.6 percent increase in subject import volume, a 21.1 percent decline in nonsubject import volume, and a 6.8 percent increase in the domestic industry's per unit cost of goods sold. CR/PR at Table C-1. Moreover, as noted previously, silicon metal is a commodity product and subject imports are highly substitutable for the domestic like product. CR at I-7 and II-5, PR at I-6 and II-3. Based upon all the foregoing,

(continued...)

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷⁸ 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.”^{79 80 81}

We find that, as subject import volume increased sharply from 2000 to 2001, at prices that undersold and depressed U.S. prices, subject imports had a significant adverse impact on the domestic industry. Most major financial and performance indicators of the domestic industry declined steadily over the period of investigation. Specifically, the domestic industry’s operating income and operating margin declined from 1999 to 2001 and the industry registered a loss in 2001, when subject imports reached their highest level.⁸² Domestic producers’ operating income in 1999 was \$24.4 million, \$11.1 million in 2000 and negative \$11.2 million in 2001.⁸³ The industry’s operating margin declined from 8.2 percent in 1999 to a negative 5.1 percent in 2001.⁸⁴ Although the industry’s cost of goods sold declined, prices and sales values declined more steeply as subject imports increased and the domestic industry’s cost of goods ratio to net sales increased by 12.3 percent during the period of investigation, placing the industry in a cost-price squeeze.⁸⁵

⁷⁷ (...continued)

Commissioner Bragg finds that significant volumes of lower-priced subject imports, which significantly undersold the domestic like product, caused significant price depression in the U.S. market for silicon metal.

⁷⁸ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” Id. at 885).

⁷⁹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

⁸⁰ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping duty proceeding as part of its consideration of the impact of imports. See 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated an antidumping margin of 97.17 percent for Russian silicon metal. 67 FR 15791, 15793 (April 3, 2002).

⁸¹ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁸² See, e.g., CR/PR at Tables VI-1 and IV-2.

⁸³ See, e.g., CR/PR at Table VI-1.

⁸⁴ See, e.g., CR/PR at Table VI-1.

⁸⁵ The domestic industry’s cost of goods sold rose in proportion to net sales during the period of investigation. U.S. producers’ ratio of cost of goods sold to net sales increased from 86.1 percent in 1999, to 90.0 percent in 2000, and to 98.4 percent in 2001. See, e.g., CR/PR at Tables VI-1, C-1.

As prices dropped and the volume of subject imports increased by 35.8 percent,⁸⁶ the decline in the industry's condition was evidenced by declines in a number of other performance indicators as well. Domestic producers lost U.S. market share and their U.S. commercial shipments and domestic production fell by *** percent and 30.6 percent, respectively, from 1999 to 2001.⁸⁷ These declines in domestic production and U.S. commercial shipments outpaced a 14.9 percent decline in U.S. apparent consumption.⁸⁸ In part, as a result of its losses related to silicon metal production, Globe converted two silicon metal furnaces at its Beverly, OH, facility to ferrosilicon production in 2000 and converted one silicon metal furnace at its facility in Niagara Falls, NY, to ferrosilicon production in August 2001.⁸⁹ Even as domestic production capacity declined by 22.1 percent from 1999 to 2001,⁹⁰ domestic producers' average capacity utilization levels, which had increased slightly from 83.4 percent in 1999 to 87.2 percent 2000, declined to 74.3 percent in 2001.⁹¹ The decline in capacity utilization is significant and adverse for this industry, which has high fixed costs.⁹² The average number of production and related workers also declined by 27.3 percent throughout the period of investigation.⁹³

Capital expenditures for the domestic industry decreased from \$*** in 1999 to \$7.8 million in 2001.⁹⁴ Domestic producers also indicated that they have had to cancel or delay capital improvement projects as a result of allegedly dumped subject imports.⁹⁵

Given the significant volume of subject imports and the adverse effect on domestic prices, we find, for purposes of this preliminary investigation, that low-priced subject imports have had a significant adverse impact on the domestic industry, as reflected in a number of declining financial and performance indicators during the period of investigation.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing silicon metal is materially injured by reason of subject silicon metal imports from Russia that are allegedly sold in the United States at less than fair value.

⁸⁶ See, e.g., CR/PR at Table C-1.

⁸⁷ See, e.g., Tables IV-5 and C-1. Domestic producers' commercial shipments fell from 202,953 short tons in 1999 to *** short tons in 2000 and *** short tons in 2001. Domestic production declined from 209,376 short tons in 1999 to 195,630 short tons in 2000 to 145,333 short tons in 2001. See, e.g., CR/PR at Tables III-3 and III-2.

⁸⁸ See, e.g., CR/PR at Table C-1.

⁸⁹ See, e.g., CR at I-10 n.30; PR at I-8 n.30. See also, Petitioners' Answers to Questions From Staff Conference, April 4, 2002, at 30-31 and Exhibit 8.

⁹⁰ Domestic production capacity declined from 250,973 short tons in 1999 to 224,262 short tons in 2000, and to 195,545 short tons in 2001. See, e.g., CR/PR at Tables C-1 and III-2. AST closed its silicon metal operations in September 1999. See, e.g., CR at I-12 n.37; PR at I-9 n.37.

⁹¹ See, e.g., CR/PR at Table III-2.

⁹² See, e.g., CR at VI-5 to VI-6; PR at VI-1.

⁹³ See, e.g., CR/PR at Table C-1. Due in part to AST's closure in 1999, the number of production and related workers fell from 719 in 1999 to 637 in 2000, and then to 523 in 2001. See, e.g., CR/PR at Table III-7.

⁹⁴ See, e.g., CR/PR at Table VI-3.

⁹⁵ See, e.g., CR at D-3 to D-4; PR at D-3.