

UNITED STATES INTERNATIONAL TRADE COMMISSION

SILICOMANGANESE FROM INDIA, KAZAKHSTAN AND VENEZUELA

Investigation No. 731-TA-929-931 (Final)

DETERMINATIONS AND VIEWS OF THE COMMISSION

(USITC Publication No. 3505, May 2002)

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SILICOMANGANESE FROM INDIA, KAZAKHSTAN, AND VENEZUELA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India, Kazakhstan, and Venezuela of silicomanganese, provided for in subheading 7202.30.00 or statistical reporting number 7202.99.5040 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 these investigations effective April 6, 2001, following receipt of a petition filed with the Commission and Commerce by Eramet Marietta Inc. (Marietta, OH) and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of silicomanganese from India, Kazakhstan, and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations 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 November 29, 2001 (66 FR 59596).² The hearing was held in Washington, DC, on April 2, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² On January 14, 2002, the Commission published in the *Federal Register* a notice of revised schedule (67 FR 1783).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 16, 2002. The views of the Commission are contained in USITC Publication 3505 (May 2002), entitled Silicomanganese from India, Kazakhstan, and Venezuela: Investigations Nos. 731-TA-929-931 (Final).

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is materially injured by reason of imports of silicomanganese from India, Kazakhstan, and Venezuela that are sold in the United States at less than fair value (“LTFV”).

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether 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.”¹ 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.”² 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”³

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 characteristics and uses” on a case-by-case basis.⁴ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁵ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁶ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁷

¹ 19 U.S.C. § 1677(4)(A).

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10).

⁴ 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).

⁵ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁶ Nippon, 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 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.”).

⁷ 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 determination of six domestic like products in investigations where Commerce found five classes or kinds).

B. Product Description

Commerce's final determination defines the imported merchandise within the scope of these investigations as:

the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040 . . .

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorous, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.5040.⁸

Silicomanganese is used primarily by the steel industry as a source of both silicon and manganese. Manganese is a steel desulfurizer and deoxidizer, and silicon is a deoxidizer.⁹

C. Domestic Like Product

In the preliminary phase of these investigations, the Commission found one like product consisting of silicomanganese.¹⁰ The only like product issue concerned the treatment of low-carbon silicomanganese, a product not produced domestically.¹¹

Commerce subsequently excluded low-carbon silicomanganese from the scope.¹² None of the parties in the final phase of these investigations opposed a like product definition coextensive with the scope of the investigations and no new evidence has been obtained in this final phase that would call into

⁸ See 67 Fed. Reg. 15531 (India), 15535 (Kazakhstan), and 15533 (Venezuela) (Apr. 2, 2002).

⁹ Confidential Report ("CR") at I-5; Public Report ("PR") at I-4.

¹⁰ Silicomanganese from India, Kazakhstan, and Venezuela, Inv. Nos. 731-TA-929-931 (Preliminary), USITC Pub. 3427 at 4-5 (May 2001) ("Preliminary Opinion"). Commerce's notice of initiation had not contained the language excluding low-carbon silicomanganese. 66 Fed. Reg. 22209 (May 3, 2001).

¹¹ Indian respondent Indsil Electrosmelts, Ltd. ("Indsil") argued that low-carbon silicomanganese should be a separate like product from other silicomanganese, but did not propose what domestically-produced product would be most similar to low-carbon silicomanganese.

¹² 67 Fed. Reg. 15531 (India), 15535 (Kazakhstan), and 15533 (Venezuela) (Apr. 2, 2002) see also Commerce's preliminary determinations at 66 Fed. Reg. 56644 (India), 56639 (Kazakhstan), and 56635 (Venezuela) (Nov. 9, 2001).

question such a like product definition. Consequently, we find a single domestic like product consisting of all forms, sizes, and compositions of silicomanganese, except low-carbon silicomanganese.

D. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a [w]hole 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”¹³ In defining the domestic industry, the Commission’s general practice has been to include producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.¹⁴

Based on our like product determination, we determine that there is a single domestic industry consisting of all domestic producers of silicomanganese, excluding low-carbon silicomanganese.^{15 16}

II. CUMULATION

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.¹⁷ In assessing whether subject imports compete with each other and with the

¹³ 19 U.S.C. § 1677(4)(A).

¹⁴ See, e.g., DRAMs from Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Inv. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

¹⁵ Eramet Marietta Inc. (“Eramet”) or its predecessor in interest, Elkem, was the sole domestic producer of silicomanganese during the period for which data were collected. CR at III-1, PR at III-1. We note, however, that in February 2002, Highlanders Alloys, LLC began production of silicomanganese in its recently acquired ferroalloy facility in New Haven, WV. CR at III-1, PR at III-1. Highlanders Alloys did not respond in writing to any of the Commission’s requests for information on its operations. In a telephone conversation, Highlanders Alloys told Commission staff that its three furnaces are each capable of producing approximately *** short tons per year, while other sources claim that Highlanders Alloys’ annual capacity is approximately 200,000 short tons. CR at III-1, n.1, PR at III-1, n.1. Therefore, even though Highlanders Alloys is included in the domestic industry, it is not included in the data set given that it began production after the end of the period for which the Commission gathered data.

¹⁶ There are no related parties issues in the final phase of these investigations. In the preliminary determination, the Commission found that *** but concluded that appropriate circumstances did not exist to exclude Eramet. Preliminary Determination at 5-6. Because *** Eramet is not a related party.

¹⁷ 19 U.S.C. § 1677(7)(G)(i).

domestic like product,¹⁸ the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.¹⁹

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.²⁰ Only a “reasonable overlap” of competition is required.²¹

Because the petitions in the investigations concerning silicomanganese from India, Kazakhstan, and Venezuela were filed on the same day, the first statutory criterion for cumulation is satisfied. In addition, none of the four statutory exceptions to the general cumulation rule applies for purposes of these determinations.²² For the reasons stated below, we find that there is a reasonable overlap of competition both among the subject imports from India, Kazakhstan, and Venezuela and between the subject imports and the domestic like product.

B. Analysis

Fungibility. A significant degree of fungibility exists among subject imports and between subject imports and the domestic like product. There is widespread agreement that silicomanganese is a commodity product.²³ Most silicomanganese produced or sold in the United States, including subject imports from Kazakhstan and Venezuela, conforms to American Society for Testing and Materials

¹⁸ The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition,” SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

¹⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

²⁰ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

²¹ See Goss Graphic System, Inc. v. United States, 33 F. Supp. 2d 1082 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); Wieland Werke, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

²² These exceptions concern imports from Israel, countries as to which investigations have been terminated, countries as to which Commerce has made preliminary negative determinations, and countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. 19 U.S.C. § 1677(7)(G)(ii).

²³ Hearing Tr. at 13 (Flygar), at 22 (Pompili), at 29, 33 (Button), at 90 (Reilly), at 200 (Kramer), at 204 (Mowry).

(“ASTM”) specifications for grade B.²⁴ Imports of Silicomanganese from India have a slightly higher phosphorous content (0.3 percent instead of the 0.2 percent in ASTM grade B).²⁵ However, of the 11 importers who compared subject imports from India to the domestic like product, 10 found the products always or frequently interchangeable.²⁶ Generally, importers who compared the domestic like product to subject imports from Kazakhstan or Venezuela, or who compared subject imports to each other, found that the products were always or frequently interchangeable.²⁷

Purchasers view silicomanganese from Eramet and the subject suppliers as comparable for all purchasing factors,²⁸ and the vast majority (16 out of 18) reported that imported and domestic silicomanganese are used in the same applications.²⁹ Although purchasers typically did not view high-phosphorus silicomanganese as interchangeable with silicomanganese with lower phosphorus content, high-phosphorus silicomanganese may be used in up to 85 percent of applications and may be blended with other silicomanganese.³⁰ Among the purchasers with the ability to use high-phosphorus silicomanganese is the largest purchaser, Nucor-Yamato, which can and does utilize Indian silicomanganese unblended.³¹

Geographic Overlap. Domestically-produced silicomanganese is sold throughout the United States.³² The record indicates that subject imports from all three countries entered primarily in the Gulf region, but were sold in a number of states throughout the country.³³ Venezuelan respondents argued that virtually all subject imports from Venezuela are sold in the Gulf region where the U.S. industry does not compete. However, the record indicates that in 2000 Eramet sold silicomanganese in *** states (including Texas), India in ***, Venezuela in ***, and Kazakhstan in ***. About *** percent of silicomanganese from Venezuela was sold in states with minimal (less than 1 percent of sales) Eramet presence (notably ***), as were *** percent of silicomanganese from India and *** percent of silicomanganese from Kazakhstan. However, some *** percent of silicomanganese from Venezuela was sold into Eramet’s top three markets (***), as were *** percent of silicomanganese from India and *** percent of silicomanganese from Kazakhstan. Less than *** percent of silicomanganese from Venezuela

²⁴ CR at I-4, PR at I-3. The majority of subject imports from Venezuela in this investigation are Grade B, in contrast to the 1994 investigation of silicomanganese, wherein a substantial portion of subject silicomanganese imports from Venezuela appeared to be grade C. Silicomanganese from Brazil, the People’s Republic of China, Ukraine and Venezuela, Inv. Nos. 731-TA-671-674 (Final), USITC Pub. 2836 (Dec. 1994) at II-30.

²⁵ CR at I-7 and n.16; PR at I-6 and n.16.

²⁶ See importers questionnaires at III-14.

²⁷ CR at II-12, PR II-8.

²⁸ CR at II-6, PR at II-4.

²⁹ CR at II-16, PR at II-11.

³⁰ CR at II-12-13 and ns.29-30, PR at II-8 and ns.29-30. A large portion of product imported from India is “high phos” silicomanganese. Such silicomanganese has a phosphorus content up to 0.3 percent, compared to 0.2 percent phosphorus in grade B silicomanganese. CR at I-7, n.16, II-1, II-12, PR at I-6, n.16, II-1, II-8. According to importer ***, high phos material is interchangeable with grade B silicomanganese in approximately 85 percent of domestic applications, and *** reported that blending the subject silicomanganese from India with silicomanganese from other sources could make the subject imports from India more acceptable to some users. CR at II-12, PR at II-8. We therefore find a sufficient degree of fungibility between the Indian product and other subject imports as well as the domestic like product, despite the Indian product’s high phosphorous content.

³¹ Indian Respondents’ Posthearing Brief at 3 and Hearing Tr. At 58 (Pompili). See also, questionnaire response of Nucor-Yamato at 3 (indicating that silicomanganese from India accounted for ***).

³² CR at II-1, PR at II-1.

³³ CR and PR Table IV-4.

was sold in the same states as silicomanganese from Kazakhstan, while the overlap between the other subject countries is substantially higher.³⁴ The record suggests, however, that the geographic overlap in sales between silicomanganese from Venezuela and Kazakhstan was higher in 1999.³⁵ Thus, we find that imports from all three subject countries and the domestic like product were present to a significant degree in the same geographic markets during the period examined.

Simultaneous Presence. Silicomanganese produced in the United States was present throughout the period for which data were collected.³⁶ Since at least the second half of 1999, silicomanganese from Eramet and from each of the subject suppliers has been sold in each quarter.³⁷ Silicomanganese from each of the subject sources was directly imported in approximately one-half of the 45 months for which data were collected,³⁸ and U.S. importers tended to hold substantial levels of inventory.³⁹ Although silicomanganese from all three countries was imported in only 6 of the 45 months observed, silicomanganese from at least two subject countries was imported in 25 of the 45 months.⁴⁰ Thus, we find that subject imports from all three subject countries and the domestic like product were simultaneously present in the U.S. market.

Channels of Distribution. The majority of the domestic like product is sold directly to end users, namely steel mills in the United States.⁴¹ Nearly all imports from *** are also sold directly to end users.⁴² In 1999, U.S. importer Considerar shipped *** percent of silicomanganese from Kazakhstan to distributors, but in 2000 and interim 2001, the share of shipments declined to *** percent and *** percent respectively.⁴³ Consequently, we find that there is a reasonable overlap in channels of distribution among the subject imports from each country and the domestic like product.

Conclusion. Subject imports are fungible with each other and with the domestic like product. Imports from all three subject countries and the domestic like product were present to a significant degree in the same geographical markets during the period examined. Subject imports were widely available in the U.S. market throughout most of the period examined. In addition, the widespread presence of subject imports is reflected in the extensive quarterly sales data and in the presence of inventories of subject imports throughout the period examined.⁴⁴ Finally, most silicomanganese is sold, directly or indirectly, to the same type of end users, namely, steel makers. Based on the foregoing, we find that a reasonable overlap of competition exists among subject imports and between subject imports and the domestic like

³⁴ CR and PR Table IV-4.

³⁵ For example, in 1999, *** purchased *** short tons of silicomanganese from Kazakhstan and *** short tons of silicomanganese from Venezuela. Questionnaire response of *** at 3.

³⁶ CR and PR Table IV-8.

³⁷ CR and PR Tables V-1 and V-2.

³⁸ CR and PR Table IV-5.

³⁹ CR and PR Table VII-4 (subject inventory holdings typically exceeded *** percent of annual U.S. shipment volumes during the period examined). Thus it is likely that subject merchandise from all three countries was simultaneously present in the U.S. market throughout the period of investigation.

⁴⁰ CR at IV-8, PR at IV-6.

⁴¹ CR at I-8, PR at I-6.

⁴² CR at I-8, PR at I-6. See also Hearing Tr. at 115 (Reilly).

⁴³ CR at I-8, n.19, PR at I-6, n.19.

⁴⁴ CR and PR Tables V-1 and V-2 (quarterly sales); CR and PR Table VII-4 (inventories); CR and PR Tables D-1 and D-2 (quarterly purchases).

product. Therefore, we have cumulated subject imports from India, Kazakhstan, and Venezuela for purposes of our material injury analysis.

III. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.⁴⁵ In making this determination, the Commission must consider the volume of the subject 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.⁴⁶ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁷ In assessing whether 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.⁴⁸ 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.”⁴⁹

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from India, Kazakhstan, and Venezuela that are sold in the United States at LTFV.

A. Conditions of Competition

Silicomanganese is used in the making of steel.⁵⁰ Demand for silicomanganese is closely tied to demand for steel.⁵¹ While it can be used by either basic oxygen furnace or electric arc furnace (“EAF”) mills, EAF mills are the primary consumers.⁵² EAF furnaces tend to use silicomanganese in production of long products, such as bars and structural shapes.⁵³ However, silicomanganese represents a relatively small share of the total cost of steelmaking, and the absolute price level of silicomanganese has little effect on steel makers’ demand for silicomanganese.⁵⁴

Overall domestic carbon and alloy steel production fell during 1998, increased during 1999, and then rose above 1998 levels in the first half of 2000 before declining in 2001.⁵⁵ Apparent U.S. consumption of silicomanganese followed a similar path, falling from *** short tons in 1998 to *** short

⁴⁵ 19 U.S.C. § 1673d(b).

⁴⁶ 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).

⁴⁷ 19 U.S.C. § 1677(7)(A).

⁴⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁰ CR at I-5, PR at I-4.

⁵¹ CR at II-5, PR at II-3.

⁵² CR at I-5, PR at I-4.

⁵³ CR at I-5, PR at I-4.

⁵⁴ CR at II-7, PR at II-4.

⁵⁵ See CR at II-5, PR at II-3; see also Conference Tr. at 46 and 48.

tons in 1999, then rising to *** short tons in 2000.⁵⁶ Apparent U.S. consumption was *** short tons in interim 2001 (January-September), substantially lower than interim 2000 when it was *** short tons.⁵⁷

⁵⁶ CR and PR Table IV-7.

⁵⁷ CR and PR Table IV-7.

Eramet purchased Elkem's silicomanganese production facility in July 1999.⁵⁸ While silicomanganese is manufactured in the same facilities used to produce ferromanganese, switching between grades or types of manganese involves significant costs in terms of lost production, reduced productivity, or possible contamination of the high grade product.⁵⁹ Eramet's silicomanganese production furnace in Marietta, OH, has been dedicated to silicomanganese production since the early 1990s.⁶⁰ Because silicomanganese production is capital intensive, it requires high levels of capacity utilization for profitable operations.⁶¹ Even at full capacity, however, Eramet has been able to supply only a portion of domestic demand.⁶²

In February 2002, Highlanders Alloys, LLC re-opened the New Haven, WV, ferroalloy plant previously owned and operated by American Alloys.⁶³ A representative of Highlanders Alloys indicated that the company has three furnaces each capable of producing approximately *** short tons of silicomanganese per year, while other sources claim that Highlanders Alloys' annual capacity is approximately 200,000 short tons.⁶⁴

Silicomanganese is a commodity product, sold largely on the basis of price.⁶⁵ Purchasers named price as one of the top three most important factors in purchasing decisions more often than any other factor, including quality.⁶⁶ Most silicomanganese used by domestic purchasers conforms to ASTM grade B.⁶⁷ Most end users have certification requirements, but once those are met, end users rarely make purchasing decisions based on the origin of the silicomanganese.⁶⁸ Many steel producers in fact are not aware of the source of the silicomanganese they purchase.⁶⁹

Pricing data on silicomanganese are widely and rapidly available through published sources such as Ryan's Notes and Metals Week.⁷⁰ Given the widespread availability of pricing data and the commodity nature of the product, producers must react quickly to price changes in order to remain competitive. Contract sales generally do not provide much protection from market price fluctuations. Most contract sales of the domestic like product are ***.⁷¹

⁵⁸ CR at III-1; PR at III-1. Eramet is affiliated with other silicomanganese producers in Norway, France, and Italy. CR at III-2; PR at III-1.

⁵⁹ CR at I-7, PR at I-5.

⁶⁰ CR at I-7, n.15, PR at I-5, n.15.

⁶¹ Hearing Tr. at 62 (Button).

⁶² CR and PR Table C-1. See also Hearing Tr. at 30 (Button).

⁶³ CR at III-1 n.1, PR at III-1, n.1.

⁶⁴ CR at III-1 n.1, PR at III-1, n.1.

⁶⁵ Hearing Tr. at 13 (Flygar), at 22 (Pompili), at 29, 33 (Button), at 90 (Reilly), at 200 (Kramer), at 204 (Mowry).

⁶⁶ CR and PR Table II-3.

⁶⁷ CR at I-4, PR I-4.

⁶⁸ Petition at 27-28.

⁶⁹ Hearing Tr. at 13 (Flygar).

⁷⁰ CR at V-3, PR at V-3.

⁷¹ CR at V-3 - V-4, PR at V-3 - V-4.

Historically, South Africa, Australia, and Mexico were the three leading sources of U.S. imports of silicomanganese.⁷² In 2000, South Africa was still the leading source for imports, but Kazakhstan and India replaced Australia and Mexico as the second and third largest foreign suppliers to the U.S.

⁷² Hearing Tr. at 96 (Reilly); CR and PR Table IV-3; Petitioner Prehearing Brief at exhibit 9.

market.⁷³ During interim 2001, Kazakhstan and India were comparable to Australia, and far surpassed Mexico in volume.⁷⁴

B. Volume of the Subject Imports

Section 771(7)(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.”⁷⁵

The volume of subject imports increased overall during the period examined from *** short tons in 1998 to *** short tons in 2000. Subject import volume and market share both declined from 1998 to 1999, at the same time apparent U.S. consumption declined,⁷⁶ but increased sharply between 1999 and 2000, rising *** percent.⁷⁷ Because subject import volume growth from 1999 to 2000 exceeded the *** percent growth in apparent U.S. consumption during that year by a substantial margin, subject import market share grew markedly. In 1998 and 1999, subject imports accounted for *** and *** percent, respectively, of apparent U.S. consumption.⁷⁸ In 2000, subject imports’ share rose to *** percent. In interim 2001, both apparent U.S. consumption and subject import volume declined relative to interim 2000.⁷⁹ However, the subject imports continued to hold *** percent of the U.S. market during interim 2001, despite a decline in subject import volume following the filing of the petition.⁸⁰

By contrast, the domestic industry could increase neither its U.S. shipments nor its market share when demand rose in 2000. U.S. shipments of domestically-produced silicomanganese rose from *** short tons in 1998 to *** short tons in 1999, but then decreased markedly to *** short tons in 2000.⁸¹ Domestic shipments increased from *** short tons in interim 2000 to *** short tons in interim 2001.⁸² Domestically-produced silicomanganese accounted for *** percent of apparent U.S. consumption in 2000, down from *** percent in 1999, and from *** percent in 1998.⁸³

The volume of nonsubject imports declined throughout the period examined, falling from *** short tons in 1998 to *** short tons in 1999, and then to *** short tons in 2000.⁸⁴ Nonsubject imports accounted for *** percent of domestic consumption in 1998, *** percent in 1999, and *** percent in

⁷³ CR and PR Table IV-3; Petitioner Prehearing Brief at exhibit 9.

⁷⁴ CR and PR Table IV-3; Petitioner Prehearing Brief at exhibit 9.

⁷⁵ 19 U.S.C. § 1677(7)(C)(i).

⁷⁶ CR and PR Tables IV-3 and C-1.

⁷⁷ CR and PR Table IV-3.

⁷⁸ CR and PR Table IV-7. Monthly subject import volume data, based on official Commerce statistics, show particularly high volumes from the second quarter of 2000 through the first quarter of 2001. See Petitioner Posthearing Brief at Exhibit 10.

⁷⁹ CR and PR Tables IV-3 and C-1. Subject imports decreased from *** short tons in interim 2000 to *** short tons in interim 2001. CR and PR Table IV-3.

⁸⁰ CR and PR Table IV-7; Petitioner Posthearing Brief at Exhibit 10 (monthly import data).

⁸¹ CR and PR Table IV-6.

⁸² CR and PR Table IV-6. Domestically-produced silicomanganese accounted for *** percent of apparent U.S. domestic consumption in interim 2000 and *** percent in interim 2001. CR and PR Table IV-7.

⁸³ CR and PR Table IV-7.

⁸⁴ CR and PR Table IV-3.

2000.⁸⁵ Nonsubject imports' share of apparent U.S. consumption was lower in interim 2001 than in interim 2000.⁸⁶

As stated above, the increase in subject imports during the period examined, particularly between 1999 and 2000, was significantly larger than the increase in apparent U.S. consumption. The additional market share of apparent U.S. consumption gained by subject imports in 2000 came at the expense of both nonsubject imports and the domestic industry.⁸⁷ The subject imports retained most of this market share increase in interim 2001 even as quantities declined. In addition, although the volume of subject imports began to decline in 2001, after the petition was filed, substantial quantities of inventories remained in the U.S. market. Inventories of subject imports increased by 294.6 percent between 1998 and 2000, and remained at 49,855 short tons in interim 2001 as compared to 49,900 short tons for full-year 2000.⁸⁸

We find that both the absolute and relative volume of cumulated subject imports, and the increases in subject import volume, are significant.

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.⁸⁹

As stated above, silicomanganese is a commodity product and is sold largely on the basis of price.⁹⁰ Pricing information is widely disseminated and exerts rapid influence on the market.⁹¹ Indeed,

⁸⁵ CR and PR Table C-1.

⁸⁶ CR and PR Table C-1.

⁸⁷ We have considered the arguments by respondents that Eramet's total sales of silicomanganese *** and that subject import growth did not come at the expense of Eramet. See, e.g., Kazakh Respondents Posthearing Brief at 5-7 and exhibits 5-7; Venezuelan Respondent Posthearing Brief at 3. We find, however, that this argument does not explain the fluctuations in Eramet's production and loss of market share, particularly during 2000. First, the large majority of imports required by Eramet ***. Compare CR and PR at III-1 with CR and PR at Table III-2. Second, in 2000, Eramet sourced *** short tons of imported silicomanganese, primarily in the ***. CR and PR at Table III-2. In that same year, Eramet's capacity exceeded its actual production by *** short tons. Moreover, Eramet's production levels reflect *** short tons of silicomanganese exported, largely in the ***, at the ***, as well as an increase in inventory held by *** short tons. In short, Eramet had the ability to supply substantially more domestically-produced silicomanganese to the U.S. market than it did in 2000, notwithstanding its outside sourcing of the product.

⁸⁸ CR and PR Table VII-4.

⁸⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁰ Hearing Tr. at 13 (Flygar), at 22 (Pompili), at 29, 33 (Button), at 90 (Reilly), at 200 (Kramer) at 204 (Mowry).

⁹¹ CR at V-3, PR at V-3.

while a large percentage of sales of both imported and domestic product are by contract, ***. Moreover, purchasers and producers alike indicated that although the prices obtained by Nucor Yamato are not a benchmark by which other prices in the market are set, they are a general indication of price trends and are closely followed by market participants.⁹² Under these market conditions, underselling is likely to be transitory as producers and sellers quickly adjust to price changes.⁹³

The pricing data collected from questionnaires indicated that prices for domestically-produced silicomanganese generally declined in the second half of 1998 and into 1999, remaining at very low levels through the third quarter of 1999. Prices then increased rapidly in the fourth quarter of 1999 and the first quarter of 2000, edged up in the second quarter of 2000, and then declined sharply through the first quarter of 2001.⁹⁴ Prices for the domestic like product thus stabilized and then declined sharply at the same time that subject import volume and market penetration of the subject imports increased sharply. Because the subject imports are good substitutes for the domestic like product, the import surge during 2000 caused the prices for the domestic like product to fall, even during a period of strong demand.⁹⁵

There was also a much greater frequency of underselling by the subject imports in 2000 and interim 2001, during and after the subject import surge, than during earlier portions of the period examined.⁹⁶ The cumulated subject imports undersold the domestic like product in 14 of 30 quarterly comparisons during 2000 and interim 2001, as compared to 4 of 25 quarterly comparisons during 1998 and 1999.⁹⁷ Given the commodity nature of silicomanganese and the wide and rapid dissemination of pricing information, we find the marked increase in underselling, combined with a substantial increase in subject import volume and market share, to be particularly meaningful.^{98 99 100}

⁹² Hearing Tr. at 58-59 (Pompili).

⁹³ Hearing Tr. at 62-63 (Button).

⁹⁴ CR and PR Tables V-1 - V-2.

⁹⁵ We have considered alternative explanations for observed price trends. Kazakh respondents contend that a “positive correlation” between subject import volume and U.S. prices indicates that prices were responding to economic forces other than imports. Kazakh Respondents Posthearing Brief at 4 and exhibit 4. This argument, however, overlooks the significant share of the U.S. market accounted for by subject imports during the year-long period when U.S. prices declined sharply and remained at low levels (i.e., from the third quarter of 2000 through the second quarter of 2001). Compare CR and PR at Tables IV-3 and IV-7 (subject imports accounted for *** percent of all imports and *** percent of the U.S. market in 2000 and January -September 2001) with CR and PR at Table V-1. Eramet’s contract prices, accounting for ***, fell from the third quarter of 2000 through the first quarter of 2001, and were still only *** per short ton in the second quarter of 2001, but recovered in the third quarter of 2001 (despite depressed demand). We have also considered the suggestion by Indian respondents that conditions in the steel market contributed to observed price trends. Indian Respondents Posthearing Brief at 7-8. We find, however, that reported silicomanganese prices began weakening as early as February 2000, and fell markedly in August and September 2000, while EAF mill production did not noticeably decline until November and December of 2000. See Petitioner Posthearing Brief at exhibit 10.

⁹⁶ CR and PR Tables V-1 - V-2.

⁹⁷ CR and PR Tables V-1 - V-2.

⁹⁸ For quarters in which subject sources sold 6 barges (8,400 tons) or more, all but two of which occurred between January 2000 and September 2001, subject import underselling occurred in 7 of 14 comparisons (7 of 12 comparisons during the period January 2000 - September 2001). CR and PR at Table V-1.

⁹⁹ We note further that the occurrence of overselling may have been affected by the fact that certain import prices are f.o.b. warehouse and therefore may have included transportation costs from the dock to the warehouse, whereas Eramet’s prices were f.o.b. plant. CR V-7, n.14; PR V-7, n.14. Indeed, at least one importer *** confirmed that

In addition, purchasers have confirmed several lost sales and lost revenue allegations, indicating that direct competition between the domestic like product and subject imports occurred, and that the domestic industry lost sales on the basis of price.¹⁰¹

Finally, we note that Eramet's unit costs (cost of goods sold (COGS) and selling general and administrative expenses (SG&A)) *** during the period for which data were collected.¹⁰² Both the financial data and the pricing data on the record suggest, however, that the domestic industry has not been fully able to recoup costs through sales revenue, despite a rebound in apparent U.S. consumption and generally *** during the period examined. Accordingly, we find that the increasing volume of subject imports, sold at low and declining prices, played a significant role in preventing price increases.

Based on the foregoing, we find that subject imports have suppressed and depressed prices to a significant degree and have had an adverse effect on U.S. prices.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."¹⁰³ 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 industry."^{104 105 106}

its price data was f.o.b. warehouse. Staff Conversation with *** April 5, 2002. It is possible, then, that the disparity in the way prices were quoted may explain certain instances of overselling, particularly where overselling margins were relatively small, *i.e.*, three percent or less. Furthermore, the confirmed lost sales and lost revenue allegations are consistent with underselling by subject imports.

¹⁰⁰ Given the commodity nature of the product, Commissioner Bragg also examined the average unit value ("AUV") data as a probative price indicator (even recognizing the limitations of AUV data), which corroborates the significant price effects of the subject imports over the period examined. In particular, the data show that subject import AUVs were consistently well below domestic AUVs during the period examined. Commissioner Bragg further notes this is less true for Kazakhstan because those imports first were sold to distributors, unlike the other imports, which were sold directly to end-users. Nonetheless, both subject import and domestic AUV's trended downward over the period of investigation (U.S. AUVs declined *** percent and subject import AUVs declined *** percent).

¹⁰¹ CR and PR Table V-4. We give particular weight to the confirmed lost sales allegations reported by Eramet regarding purchasers ***. *Id.*

¹⁰² CR and PR at Table VI-1. Eramet's unit costs fell from *** in 1998 to *** in 1999-2000, and were *** in interim 2001. *Id.*

¹⁰³ 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).

¹⁰⁴ 19 U.S.C. § 1677(7)(C)(iii).

¹⁰⁵ The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of final determination, Commerce reported final weighted-average dumping margins for India to be 15.32 percent for Nava Bharat, 20.42 percent for Universal, and 17.69 percent for all other exporters/manufacturers in India. 67

The sharp increase in subject imports during the period examined, and in particular in 2000, caused domestic production to decline during that year notwithstanding increasing apparent U.S. consumption for silicomanganese. The domestic industry's production and U.S. shipment quantities were lower in 2000 than in either 1998 or 1999.¹⁰⁷ These indicators, however, began to rise again in interim 2001, as compared to interim 2000, coinciding with the filing of the petition in April 2001.¹⁰⁸ During 1998-2000, reported capacity fluctuated in a narrow range; capacity utilization followed trends similar to production.¹⁰⁹ Notwithstanding the drop in production, inventories of the domestic like product increased towards the end of the period examined.¹¹⁰

The number of production workers and hours worked showed *** fluctuations over the period examined.¹¹¹ Hourly wages generally rose.¹¹² Productivity declined from 1998 to 1999, increased from 1999 to 2000, and was higher in interim 2001 than in interim 2000.¹¹³

The domestic industry generated a *** operating profit in 1998. In 1999, when apparent U.S. consumption of silicomanganese declined from the levels of the previous year, the industry sustained an operating loss of ***.¹¹⁴ In 2000, apparent U.S. consumption of silicomanganese was above the level of 1998. Nevertheless, as previously discussed, the surge in subject imports in 2000 caused the industry's shipments to decline and depressed prices. Variance analysis confirms that changes in operating income

Fed. Reg. 15531 (April 2, 2002). Final weighted-average dumping margin for Kazakhstan was 247.88 percent for Alloy 2000 S.A. and for all other exporters/manufacturers in Kazakhstan. 67 Fed. Reg. 15535 (April 2, 2002). For Venezuela, Commerce determined the final weighted-average dumping margin to be 24.62 for Hornos Electricos de Venezuela and for all other exporters/manufacturers in Venezuela. 67 Fed. Reg. 15533 (April 2, 2002).

¹⁰⁶ 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 the 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); *Anhydrous Sodium Sulfate from Canada*, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

¹⁰⁷ While U.S. shipments of the domestic like product rose by *** percent in 1999, the AUVs of those shipments dropped by *** percent. In 2000, demand for silicomanganese recovered, with apparent U.S. consumption rising by *** percent in 2000 relative to 1999. Despite this increase, domestic production declined by *** percent and U.S. shipments of the domestic like product declined by *** percent. By the end of the year 2000, the price of the domestic like product also declined *** from its second-quarter peak. The domestic industry's market share peaked at *** percent in 1999 before declining to *** percent in 2000. The domestic industry's capacity utilization rates, which must remain high given the capital-intensive nature of production, were below 1998 levels in 2000. CR and PR Tables C-1 and V-1; see also, CR and PR Table V-2.

¹⁰⁸ CR and PR Tables C-1, V-1, and V-2.

¹⁰⁹ Capacity utilization was *** percent in 1998, *** percent in 1999, and *** percent in 2000. CR and PR Table III-1.

¹¹⁰ CR and PR Table III-1. Inventories dropped from *** short tons in 1998 to *** short tons in 1999, but rose to *** short tons in 2000. Inventories *** between interim 2000 and interim 2001 from *** short tons to *** short tons (but remained above the year end 2000 level). Id.

¹¹¹ CR and PR Table III-1. Petitioner Prehearing Br. Exhibit 2.

¹¹² CR and PR Table III-1.

¹¹³ CR and PR Table III-1.

¹¹⁴ Hearing Tr. at 15 (Flygar), at 200-201 (Kramer); CR and PR Table VI-1; see also, Conference Tr. at 37 (Button).

between 1998 and 2000 were attributable primarily to price variations rather than production or cost

variations.¹¹⁵ In addition, while subject import volume began to decline in 2001, coinciding with the filing of the petition, inventories remained at high levels.¹¹⁶ As a result, the domestic industry continued to suffer poor financial performance. The industry reported an operating loss of *** in 2000, and an operating margin of negative *** percent. Data available for interim 2001 indicate that prices remained at low levels through the first half of the year, resulting in continued operating losses despite improvement in price levels in the third quarter.

In addition, capital expenditures by the domestic industry dropped by more than *** percent in 1999.¹¹⁷ Capital expenditures recovered somewhat in 2000, but remained below 1998 levels.¹¹⁸ They were lower in interim 2001 than in interim 2000.¹¹⁹

The record indicates that because of significant subject import volume and adverse price effects the domestic industry showed poor financial performance and declines in several production related indicators. We thus find that the cumulated subject imports have had a significant adverse impact on the domestic silicomanganese industry.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of silicomanganese from India, Kazakhstan, and Venezuela that are sold in the United States at less than fair value.

¹¹⁵ CR and PR Table VI-3. Respondents raised questions regarding the domestic producer's allocation of costs. We note that at the closed session of the Commission's hearing petitioner refuted respondents' arguments stating: "***." Closed Session Hearing Tr. at 173-174 (Button).

¹¹⁶ Subject import inventories were at 49,855 short tons in interim 2001, as compared to 51,628 short tons in interim 2000, and 49,900 short tons in full year 2000. CR and PR Table VII-4.

¹¹⁷ CR and PR Table VI-4. As previously explained, the Commission did not receive a questionnaire response from Highlanders Alloys; hence, industry capital expenditures reported in questionnaires may be understated.

¹¹⁸ CR and PR Table VI-4.

¹¹⁹ CR and PR Table VI-4.