UNITED STATES INTERNATIONAL TRADE COMMISSION

SILICON METAL FROM RUSSIA
Investigation No. 731-TA-991 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3584, MARCH 2003)

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SILICON METAL FROM RUSSIA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] 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 Russia of silicon metal,[3] provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to imports of silicon metal from Russia that are subject to Commerce's affirmative critical circumstances determination.

BACKGROUND

The Commission instituted this investigation effective March 7, 2002, following receipt of a petition filed with the Commission and Commerce by Globe Metallurgical Inc., 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. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of silicon metal from Russia 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 investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 30, 2002 (*67 FR 61351*). The hearing was held in Washington, DC, on February 5, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Chairman Okun did not participate in this investigation.

[3] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "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."

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of silicon metal from Russia that are sold in the United States at less than fair value ("LTFV").[4]

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."[5] 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."[6] 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 . . . ."[7]

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.[8] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[10] 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 subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[11]

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[4] Chairman Okun did not participate in this final determination.

[5] 19 U.S.C. §1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] 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).

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

[10] 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 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.").

[11] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like

(continued...)

B. Product Description

Commerce's final determination defines the imported merchandise within the scope of this investigation as:

> 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.[12]

A small percentage of silicon metal is used in the production of solar and electronic silicon and generally contains over 99.999 percent silicon. This type of silicon metal, which is also known as semiconductor-grade silicon metal, is not within the scope of this investigation.[13]

C. Domestic Like Product

Petitioners[14] argue that the Commission should find a single domestic like product comprised of silicon metal, consistent with the scope of this investigation.[15] Respondents[16] did not make any domestic like product arguments in their briefs or at the hearing.

Silicon metal is usually sold in lump form typically ranging from 6 inches x ½ inch to 4 inches x 1/4 inch.[17] The three categories, or grades, of silicon metal covered by the scope of this investigation are ranked in generally descending order of purity as: (1) chemical grade; (2) a metallurgical grade used to

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[11] (...continued)
product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[12] 68 Fed. Reg. 6885, 6886 (February 11, 2003).

[13] CR at I-7, n.12; PR at I-6, n.12.

[14] 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").

[15] Petitioners' Prehearing Brief at 4-5.

[16] Respondents are SUAL Holding ("SKU"), ZAO Kremny ("ZAO Kremny"), General Electric Silicones LLC ("GE Silicones"), and Bratsk Aluminum Smelter/RUAL Trading Limited ("Bratsk") (hereinafter collectively called "Respondents").

[17] CR/PR at I-6.

produce primary aluminum; and (3) a metallurgical grade used to produce secondary aluminum. The silicon metal content for all three grades of silicon metal is typically at least 98.5 percent.[18]

Silicon metal is used in the chemical industry to produce silanes and in the primary and secondary aluminum industries as an alloying agent.[19] Silicon metal of the same grade is considered interchangeable.[20] Higher grade silicon metal is sometimes shipped to a purchaser with a lower specification requirement because of market factors such as excess product availability and low shipping costs.[21] The vast majority of U.S.-produced silicon metal is sold directly to end users in all customer segments.[22] Silicon metal is produced from mined quartzite, which is washed, crushed and screened.[23] Although the more refined grades of silicon metal call for an oxidative refining step that is not required to produce secondary aluminum, in practice, U.S. producers usually subject all the silicon metal they produce to oxidative refining and "sell down" the higher-grade silicon metal to secondary aluminum customers even though they have less stringent purity specifications.[24] Silicon metal prices in all segments are adjusted based on the secondary aluminum price.[25]

In light of the record evidence, petitioners' arguments that we should find only one like product, and respondents' lack of objection, we do not find any basis for separating the silicon metal covered by Commerce's scope into two or more domestic like products. 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, regardless of grade, consistent with Commerce's scope.[26]

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[18] CR at I-7 to I-8; PR at I-6 to I-7.

[19] CR at I-8; PR at I-7.

[20] CR at I-11; PR at I-9.

[21] CR at I-7 to I-8; PR at I-6 to I-7.

[22] CR at I-13; PR at I-11; Petitioners' Prehearing Brief at 11.

[23] CR at I-8; PR at I-7.

[24] CR at I-9; PR at I-8.

[25] Petitioners' Prehearing Brief at 12. Based on U.S. producer price data for the period examined, silicon metal sold primarily to chemical producers was on average $0.10 per pound more expensive than silicon metal sold primarily to primary aluminum producers, and silicon metal sold primarily to primary aluminum producers was on average $0.05 per pound more expensive than silicon metal sold primarily to secondary aluminum producers. CR at V-7; PR at V-4.

[26] In its prior silicon metal investigations, the Commission has defined the domestic like product to be "all silicon metal, regardless of grade, having a silicon metal content of at least 96.00 percent but less than 99.99 percent of silicon by weight, and excluding semiconductor grade silicon." The Commission based its finding on similarities in physical characteristics, production processes, common manufacturing facilities and employees, and channels of distribution, as well as the complete substitutability of the higher grade product for the lower grades and the minor differences in price for all grades of silicon metal as well as in the overall pricing of the end product. Silicon Metal from the People's Republic of China, Inv. No. 731-TA-472 (Final), USITC Pub. 2385 at 10 (June 1991); Silicon Metal from Brazil, Inv. No. 731-TA-471 (Final), USITC Pub. 2404 at 6-9 (July 1991); Silicon Metal from Argentina, Inv. No. 731-TA-470 (Final), USITC Pub. 2429 at 5-8 (Sept. 1991); and Silicon Metal from Argentina, Brazil and China, Inv. Nos. 731-TA-470-472 (Review), USITC Pub. 3385 at 5 (January 2001).

D. Domestic Industry

In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[27]

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.

II. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS[28]

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[29] 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.[30] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[31] 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.[32] 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."[33]

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from Russia found to be sold in the United States at LTFV.

A. Conditions of Competition

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

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[27] See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (CIT 1994), aff'd, 96 F.3d 1352 (Fed. Cir.1996).

[28] The statutory provision for negligible imports, 19 U.S.C. § 1677(24), does not apply in this investigation because imports from Russia account for more than three percent of the volume of all silicon metal imported into the United States in the most recent twelve-month period for which data are available preceding the filing of the petition. See CR/PR at Table IV-2.

[29] 19 U.S.C. § 1673d(b).

[30] 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).

[31] 19 U.S.C. § 1677(7)(A).

[32] 19 U.S.C. § 1677(7)(C)(iii).

[33] Id.

1. Demand and Supply

Demand for silicon metal is dependent on the demand for the products in which it is used, specifically aluminum products and certain chemical products.[34] The three major markets for silicon metal in the United States are chemical producers, primary aluminum producers, and secondary aluminum producers.[35] The largest customer market for silicon metal produced by the domestic industry is the chemical market, which represented *** percent of U.S. producers' domestic shipments in 2001, followed by 20.4 percent for the secondary aluminum market and *** percent for the primary aluminum market.[36]

U.S. importers of the subject product also sell silicon metal from Russia to all three customer groups, but in different proportions than the domestic industry. In 2001, the chemical market accounted for *** percent of U.S. shipments of subject imports, the secondary aluminum market, *** percent, and the primary aluminum market, *** percent. During the POI, the largest market for silicon metal from Russia was the secondary aluminum market. However, the percentage of domestic shipments of silicon metal from Russia made to chemical customers has increased substantially, from *** percent in 1999 to *** percent in 2001.[37] [38]

Apparent U.S. consumption increased slightly from 324,202 short tons in 1999 to 329,502 short tons in 2000 before declining to 278,197 short tons in 2001. Apparent U.S. consumption was 208,615 short tons in interim (Jan.-Sept.) 2001 and 204,876 short tons in interim 2002.[39] U.S. producers reported that demand generally decreased during 1999-2002. According to U.S. producers, the decline in demand has been evident in both the aluminum and chemical sectors of the market, although not necessarily at the same time. *** reported that overall demand was very strong through 1997 but that the trend reversed in 1998. Six of ten importers that provided usable comments on demand changes reported that the demand for silicon metal in the U.S. market has remained flat or decreased throughout the POI, while the remaining four importers reported that demand has improved primarily because of new aluminum applications in the automotive industry. In general, both U.S. producers and importers agreed that the declines in demand were due to poor economic conditions in the United States.[40]

Three firms, Elkem, Globe, and SIMCALA, currently produce silicon metal in the United States. A fourth producer, American Silicon Technologies (AST), ceased production operations in September

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[34] CR at II-4; PR at II-2.

[35] CR at I-13; PR at I-11.

[36] CR/PR at Table I-2.

[37] CR/PR at Table I-2.

[38] According to petitioners, silicon metal produced in Russia was historically of lower purity than domestic material, and was principally used in metallurgical applications. However, because of quality improvements, imported silicon metal from Russia and U.S.-produced silicon metal currently compete directly in all three major markets for silicon metal, including chemicals, and are interchangeable. According to respondents, Russian producers are excluded, however, from a significant segment of the U.S. primary aluminum market because no Russian producer is qualified to manufacture low-iron silicon metal due to the composition of quartzite deposits in Russia. However, counsel for SKU and ZAO stated 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. CR at I-11 to I-13; PR at I-9 to I-10. In addition, reports provided by the respondents confirm that the quality of the Russian product has improved. Respondents' Posthearing Brief, Vol. II, Exhibit 1, pp.v, 34.

[39] CR/PR at Table IV-5.

[40] CR at II-4 to II-5; PR at II-2 to II-3.

1999.[41] Aggregate capacity of the domestic industry decreased from 243,667 short tons in 1999 to 215,245 short tons in 2000 and 198,363 short tons in 2001; it was 148,123 short tons in interim 2001 and 144,450 short tons in interim 2002.[42] Given the level of apparent U.S. consumption during the POI, it appears that the domestic industry was able to satisfy only a portion of U.S. silicon metal demand, with the balance of demand satisfied by subject and nonsubject imports.

Two U.S. silicon metal producers, Elkem and Globe, also produce ferrosilicon, which is used in the production of steel, especially stainless and heat-resisting steel and cast iron. Producers can switch production between ferrosilicon and silicon metal with varying degrees of cost, downtime, and efficiency loss. It generally is easier for firms to switch from silicon metal production to ferrosilicon production than the reverse because ferrosilicon contains more impurities than silicon metal and tends to contaminate the furnace lining with impurities intolerable in silicon metal production. Typically, when production is switched from ferrosilicon to silicon metal, the furnace must, at a minimum, be relined.[43]

2. Commodity Product/Interchangeability

Silicon metal is generally considered to be a commodity product in that materials of the same grade are interchangeable.[44] All parties agree that silicon metal is interchangeable, whether produced in the United States, Russia, or nonsubject countries.[45] All responding U.S. producers and purchasers reported that silicon metal from different countries, including Russia, is used interchangeably in the same applications. The majority of responding U.S. importers also reported that domestic and Russian silicon metal are interchangeable.[46]

3. Factors Affecting Pricing

The parties agree that price is a primary consideration for purchasers.[47] In their questionnaire responses, purchasers cited price as one of the top three factors in their purchasing decisions.[48]

Questionnaire responses indicated that sales of silicon metal in the U.S. market are made on both a contract and spot basis. All three responding U.S. producers reported that over 95 percent of their sales are made on a contract basis. Importers and purchasers' sales were mixed, with some firms reporting that all or the majority of sales are done on a spot basis and others reporting that all or a majority of sales are on a contract basis. Available information indicates that contracts are somewhat more common in the chemical market segment. While contracts in the chemical segment are likely to be at least one year in duration, contracts in the primary and secondary aluminum markets are often one year or less in duration.[49]

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[41] CR/PR at III-1.

[42] CR/PR at Table III-2.

[43] CR at I-10 to I-11, n.23; PR at I-8, n.23.

[44] CR at I-11; PR at I-9.

[45] Hearing Transcript ("Tr.") at 16 (Perkins); Respondents' Prehearing Brief at 5-7; Hearing Tr. at 100 (Haynes).

[46] CR at II-7; PR at II-5.

[47] Hearing Tr. at 16-17 (Perkins) and 30 (Lutz); Respondents' Prehearing Brief at 9.

[48] CR at II-6; PR at II-4.

[49] CR at V-3; PR at V-2.

Annual contracts are usually negotiated during the fourth quarter of the prior year and often contain approximate, but not fixed, volumes.[50] Petitioners stated that the existence of contracts in the silicon metal market does not necessarily protect the U.S. industry from the effect of subject imports.[51] Producers reported variations in price terms within a contract. *** reported that its contracts fix both price and quantity but that they also contain a pricing mechanism to adjust prices quarterly, semi-annually, or annually based on a published price like *Metals Week* or *Ryan's Notes*. *** reported that its contracts usually contain meet-or-release clauses. *** stated that its contract terms are generally fixed or indexed to prices published in *Metals Week* or *Ryan's Notes* depending on the customer and the duration of the contract. *** also noted that its contracts are negotiated in the fourth quarter and that they generally contain estimated volumes and fixed prices.[52] *** reported having no contracts containing meet-or-release clauses. Importers and purchasers reported that price and quantity are fixed in their contracts, with an average duration of three to 12 months.[53]

The Commission gathered information from purchasers on whether prices were adjusted during the term of contracts. The majority of responding purchasers responded in the negative when asked if prices vary within the duration of a contract in response to changes in spot prices. Five out of five responding purchasers responded in the negative when asked if any suppliers had actually changed prices during the period in which a contract with a meet-or-release clause was in place. When purchasers were asked to describe the relationship between contract and spot prices for silicon metal, three of seven responding purchasers stated that spot prices are a factor in determining contract prices, and that formula prices can change due to fluctuations in spot prices but that there may not be a direct relationship between spot and contract prices.[54]

4. Nonsubject Imports

Nonsubject imports are an important factor in the U.S. market. The level of nonsubject imports, by quantity, decreased overall from 1999 to 2001, from 97,499 short tons to 92,279 short tons, and was higher in interim 2002, at 90,875 short tons, than in interim 2001, at 72,226 short tons.[55] Nonsubject import market shares, by quantity, were 30.1 percent in 1999, 35.5 percent in 2000, 33.2 percent in 2001, 34.6 percent in interim 2001, and 44.4 percent in interim 2002.[56]

Major nonsubject import sources include Brazil, Canada and South Africa.[57] As a result of previous Commerce and Commission investigations, there are currently antidumping duty orders on imports of silicon metal from Brazil and China.[58]

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[50] CR at V-3; PR at V-2.
[51] Hearing Tr. at 24 (Boardwine).
[52] CR at V-3; PR at V-2.
[53] CR at V-3 to V-4; PR at V-2 to V-3.
[54] CR at V-4; PR at V-3.
[55] CR/PR at Table IV-2.
[56] CR/PR at Table IV-5.
[57] CR/PR at Figure I-3.
[58] CR/PR at I-3.

B. Volume of 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."[59]

The quantity of subject imports increased overall by 35.8 percent from 1999 to 2001 and by 38.6 percent from 2000 to 2001, after showing a slight decrease from 1999 to 2000.[60] The continued increase in subject import volume by 57.6 percent between the interim periods resulted in Russia being the largest single source of silicon metal imports in interim 2002.[61] The record shows that the proportion of subject imports destined for the chemical industry sector, where the majority of U.S. product competes, increased sharply from *** percent in 1999 to *** percent in 2001; it was *** percent in interim 2001 and *** percent in interim 2002.[62] It appears that this increase is attributable, at least in part, to quality improvements in Russian silicon metal,[63] which have resulted in more widespread competition between subject imports and domestically produced silicon metal in all three major markets for silicon metal.[64] Moreover, we note that subject import volume increased during the POI despite the inability of Russian producers to manufacture low-iron silicon metal due to the composition of quartzite deposits in Russia.[65]

Subject imports' U.S. market share, by quantity, followed a trend similar to absolute import levels: it increased by 4.5 percentage points, from 7.8 percent to 12.3 percent, between 1999 and 2001, and by 6.0 percentage points from interim 2001 to interim 2002.[66] Subject imports gained market share at the same time that apparent U.S. consumption declined and domestic producers lost market share.[67] Domestic producers' U.S. market share declined from 62.2 percent in 1999 to 57.0 percent in 2000 and 54.6 percent in 2001, and was 39.7 percent in interim 2002 compared to 55.4 percent in interim 2001.[68] We attribute the U.S. producers' loss of market share in significant part to the subject imports, particularly from 1999 to 2001 and from 2000 to 2001, when subject imports outpaced all other imports in gaining U.S. market share. When the interim periods are compared, the U.S. industry continued to lose market share in significant part to subject imports, while losing additional market share to nonsubject imports as well.

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[59] 19 U.S.C. § 1677(7)(C)(i).

[60] By quantity, subject import volume was 25,158 short tons in 1999, 24,643 short tons in 2000, and 34,153 short tons in 2001. The total value of subject imports was $26.2 million in 1999, $25.5 million in 2000, and $35.3 million in 2001. CR/PR at Table C-1.

[61] By quantity, subject imports totaled 32,643 short tons in interim 2002 compared to 20,718 short tons in interim 2001. By value, subject imports were $30.3 million in interim 2002 compared to $22.9 million in interim 2001. CR/PR at Tables C-1 and IV-2.

[62] CR/PR at Tables I-2 and IV-3.

[63] See Respondents' Posthearing Brief, Vol. II, at Exhibit 1, pp.v, 34.

[64] CR at I-11; PR at I-9; Petition at 17-18; Conference Tr. at 11 (Perkins).

[65] See supra n.35.

[66] CR/PR at Table C-1. Subject imports' market share, by quantity, was 7.8 percent in 1999, 7.5 percent in 2000, and 12.3 percent in 2001. Subject imports' market share was 15.9 percent in interim 2002 compared to 9.9 percent in interim 2001. CR/PR at Table IV-5.

[67] Apparent U.S. consumption increased slightly from 324,202 short tons in 1999 to 329,502 short tons in 2000 but then decreased sharply to 278,197 short tons in 2001; between the interim periods, apparent U.S. consumption declined from 208,615 short tons to 204,876 short tons. CR/PR at Table IV-5.

[68] CR/PR at Table IV-5.

The quantity of subject imports relative to domestic production increased from 12.0 percent in 1999 to 12.6 percent in 2000 and 23.5 percent in 2001, and was 38.0 percent in interim 2002 compared to 18.4 percent in interim 2001.[69]

Respondents argue that although subject imports increased over the period examined, they are still below historical levels, citing subject import levels from 1993 to 1998.[70] However, consistent with Commission practice, we analyze the most recent three calendar years of data plus any interim periods, if applicable, in reaching our determination.[71] The record indicates that, for this period, subject import volume was significant.[72] Further, to take into account subject import volume levels during the years preceding the POI without also obtaining relevant data regarding prices and market conditions during the same period would not yield a complete analysis for purposes of our determination.

In this final determination, we find the volume and increase in volume of subject imports, both in absolute terms and relative to apparent domestic consumption and production in the United States, to be significant.

C. Price Effects of the Subject Imports

Section 771(7)(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.[73]

The record in this investigation indicates that domestically produced silicon metal and subject imports are generally substitutable, and that price is a key factor in purchasing decisions.[74] The parties agree that price is very important in purchasing decisions, given the commodity-like nature of the subject

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[69] CR/PR at Tables III-2, IV-2, and C-1.

[70] CR/PR at IV-1, n.3; Hearing Tr. at 108 (Noellert).

[71] The period of investigation consists of the most recent three calendar years, plus interim periods where applicable. See Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 359 (Ct. Int'l Trade 1986). The three year period achieves a balance between the burden on questionnaire recipients and the Commission's need for sufficient information for its analysis of material injury by reason of LTFV imports. Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Invs. Nos. 731-TA-520 and 521 (Final), USITC 2528 at 18, n.57 (June 1992). Moreover, respondents, in their comments on the draft questionnaires, did not request that the Commission collect subject import volume data for the years prior to the POI. See Dewey Ballantine LLP's Comments to Draft Questionnaires dated September 13, 2002; Holland and Knight LLP's Comments to Draft Questionnaires dated September 13, 2002. Respondents also testified at the hearing that they did not expect the Commission to change the period of investigation. Hearing Tr. at 159 (Stein).

[72] Evidence submitted by the respondents themselves confirms the significance of subject import volume during the POI. Respondents' Posthearing Brief, Vol. II, at Exhibit 1, pp. 19, 22, Exhibit 2, p. 30.

[73] 19 U.S.C. § 1677(7)(C)(ii).

[74] CR at I-11, II-6 to II-7; PR at I-9, II-4 to II-5.

product.[75] In addition, silicon metal prices in all three segments key off the secondary aluminum price and exhibit similar trends.[76]

Based on the pricing data, we find underselling to be significant in this investigation.[77] The sales price data collected in this investigation show that Russian silicon metal destined for the primary and secondary aluminum markets undersold domestic product in the vast majority of pricing comparisons.[78] For primary aluminum grade silicon metal (pricing product 1), out of 15 quarterly comparisons, the Russian product was priced below the U.S. product in 13 quarters, with margins ranging from *** to *** percent and averaging 5.2 percent. In the other two quarters, the Russian product was priced above the U.S. product, with margins of *** and *** percent.[79] For secondary aluminum grade silicon metal (pricing product 2), out of 15 quarterly comparisons, the Russian product was priced below the U.S. product in 11 quarters, with margins ranging from *** to *** percent and averaging 5.1 percent. In the other four quarters, the Russian product was priced above the U.S. product, with margins ranging from *** to *** percent and averaging 3.6 percent.[80] There is no pricing data for sales of chemical grade silicon metal because it is internally consumed by the responding importers.[81]

Purchaser price data show underselling by Russian imports in all quarterly comparisons. For primary aluminum grade silicon metal (pricing product 1), Russian product undersold U.S. product in all 11 quarters, with margins ranging from *** to *** percent and averaging 7.5 percent.[82] For secondary aluminum grade silicon metal (pricing product 2), Russian product undersold U.S. product in all 11 quarters, with margins ranging from *** to *** percent and averaging 4.2 percent.[83] For chemical grade silicon metal (pricing product 3), Russian product undersold U.S. product in all 11 quarters, with margins ranging from *** to *** percent and averaging 17.4 percent.[84] All responding purchasers reported that,

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[75] Hearing Tr. at 16-17 (Perkins) and 30 (Lutz); Respondents' Prehearing Brief at 9.

[76] Petitioners' Prehearing Brief at 12.

[77] In this final phase investigation, the Commission collected sales price data for pricing product 1 (primary aluminum grade silicon metal) and pricing product 2 (secondary aluminum grade silicon metal) from domestic producers and importers for pricing comparisons. CR/PR at Tables V-1 and V-2, Figures V-2 and V-3. The reported price data accounted for virtually all of the quantity of domestically produced commercial shipments of silicon metal in 2001 and 56.2 percent of the quantity of subject imports in 2001. CR at V-6; PR at V-4. Although the Commission collected substantial sales price data for pricing product 3 (chemical grade silicon metal) from domestic producers, the pricing data that it collected for subject imports of that product is more appropriately classified as purchaser price data because the principal importers *** and *** internally consume reported imports. Thus, sales price comparisons for pricing product 3 between the United States and Russia were not possible in this investigation. CR at V-6 to V-7, n.9; PR at V-4, n.9. The Commission also collected substantial purchaser price data for all three pricing products. CR/PR at Tables V-4, V-5, and V-6. Purchaser pricing data accounted for approximately *** percent of the quantity of domestically produced commercial shipments of silicon metal in 2001, *** percent of the quantity of imports of silicon metal from Russia in 2001, and *** percent of the quantity of nonsubject imports of silicon metal in 2001. CR at V-6, n.10; PR at V-4, n.10.

[78] Sales price data were reported as weighted-average f.o.b. selling prices. CR/PR at Tables V-1 to V-2.

[79] Domestic silicon metal undersold Russian silicon metal by *** percent in the first quarter of 1999 and by *** percent in the second quarter of 2002. CR at V-7; PR at V-5; CR/PR at Table V-1 and Figure V-2.

[80] CR at V-7; PR at V-5; CR/PR at Table V-2 and Figure V-3.

[81] CR at V-7; PR at V-5.

[82] CR at V-12; PR at V-7; CR/PR at Table V-4.

[83] CR at V-16; PR at V-7; CR/PR at Table V-5.

[84] CR at V-16; PR at V-8; CR/PR at Table V-6.

although U.S.-produced silicon metal is generally comparable to Russian silicon metal, it is inferior to Russian product in terms of lowest price.[85]

Respondents contend that all imports, not just subject imports, undersell the domestic product, and that imports from Russia have never been the lowest-priced product in the U.S. market.[86] However, purchaser price data for nonsubject imports show that imports from Russia have been priced at lower levels than nonsubject imports.[87] For pricing product 1, imports from Russia undersold Canadian silicon metal in all 10 quarters.[88] For pricing product 2, imports from Russia undersold imports from South Africa in five out of 10 quarters.[89] For pricing product 3, imports from Russia undersold South African silicon metal in all 11 quarters, undersold Brazilian silicon metal in 10 out of 11 quarters, and undersold Canadian silicon metal in five out of 11 quarters.[90]

We find the pricing data collected by Commission staff in this investigation to be the most probative for purposes of our determination, particularly in light of the high coverage of shipments accounted for by that data.[91] Nevertheless, the average unit value (AUV) data reveal that the AUVs of imports from Russia were lower than the aggregate AUVs of nonsubject imports during the POI and were lower than the AUVs of imports from the individual nonsubject countries during each full year of the POI and the interim periods as well.[92]

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[85] CR at II-7 to II-8; PR at II-5.

[86] Respondents' Prehearing Brief at 27; Hearing Tr. at 108-109 (Noellert); Respondents' Posthearing Brief at 1-2, 9. Respondents point in particular to imports from South Africa and Brazil. Respondents' Prehearing Brief at 27-29. Respondents' Posthearing Brief, Responses to Commission Questions at B-15 to B-20.

[87] The top three nonsubject import sources of silicon metal are Canada, South Africa, and Brazil. CR/PR at Figure I-3.

[88] Only two quarters of purchaser price data for South African pricing product 1 were available. In one quarter, South African product undersold U.S.-produced and Canadian silicon metal, but oversold Russian product. In the other quarter, South African product undersold Russian, U.S., and Canadian silicon metal. Only one quarter of purchaser price data for Saudi Arabian pricing product 1 was available. In that quarter, Saudi Arabian product undersold U.S. and Canadian silicon metal but was priced the same as Russian product. CR/PR at Table V-4.

[89] CR/PR at Table V-5.

[90] CR/PR at Table V-6.

[91] See supra n.74.

[92] CR/PR at Table IV-2. The AUVs of imports from Russia during the POI are as follows: $1,036 per short ton in 1999; $1,003 per short ton in 2000; $980 per short ton in 2001; $1,018 per short ton in interim 2001; and $928 per short ton in interim 2002. Comparatively, the AUVs of nonsubject imports, in aggregate, during the POI are as follows: $1,232 per short ton in 1999; $1,145 per short ton in 2000; $1,139 per short ton in 2001; $1,146 per short ton in interim 2001; and $1,129 per short ton in interim 2002. CR/PR at Table IV-2. The AUVs of imports from the individual nonsubject countries were always higher on a full-year and interim year basis than the AUVs of imports from Russia. On a quarterly basis, subject import AUVs were also lower than AUVs for all nonsubject imports except for three quarters when South African AUVs were lower and one quarter when all other nonsubject import AUVs were lower. CR/PR at Table E-1.

Respondents argue that the Commission should have segregated the AUV data of subject and nonsubject imports into two HTS categories in the Staff Report because the AUVs for low content and high content silicon metal vary significantly and imports from Russia are concentrated in the low-content HTS category (i.e., HTS #2804695000). See Final Comments of GE Silicones at 9-10. We note that respondents did not request that the Commission separate AUV data for subject and nonsubject imports into two HTS categories in their comments on the draft questionnaires, choosing instead to raise this issue for the first time after the prehearing report. See Dewey Ballantine LLP's Comments to Draft Questionnaires dated September 13, 2002; Holland and Knight LLP's Comments

(continued...)

The record evidence in this final investigation indicates that 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 POI.[93] In light of subject imports' increasing volumes and their significant underselling of, and high substitutability with, both domestic and nonsubject silicon metal, we find significant price depression by the subject imports.

Consistent with our finding of adverse price effects by reason of the subject imports, there are a number of confirmed lost sales, ***.[94] However, as described previously, prices and price movements in the secondary aluminum sector have an effect on all three sectors.[95] Two sales of silicon metal to *** of *** pounds of silicon metal and *** pounds of silicon metal were lost to subject imports in *** and ***, respectively. A sale to *** of *** pounds of silicon metal lost to subject imports in *** was also confirmed. Three lost revenue allegations were confirmed, including one involving a sale of *** pounds of silicon metal to *** in ***.[96]

Respondents argue that domestic prices declined the most from 1999 to 2000, at the same time that Russian import volume was at its lowest and nonsubject imports were gaining in market share and

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[92] (...continued)
to Draft Questionnaires dated September 13, 2002; Respondents' Prehearing Brief at 34-36. Moreover, the record of this investigation, including importer questionnaire responses, indicates that separately analyzing imports by HTS categories is a somewhat artificial division. The level of impurities rather than silicon content primarily distinguishes products and it thus cannot be assumed that silicon metal imports under HTS subheading 2804.69.10 are necessarily purer than silicon metal imported under HTS subheading 2804.69.50. In addition, product from both HTS categories is sold to chemical, primary aluminum and secondary aluminum purchasers. CR at I-13, n.36; PR at I-11, n.36.

While we find combined HTS data most appropriate, we note that the segregated AUV data regarding subject and nonsubject imports are mixed with respect to relative prices of subject and nonsubject imports. The adjusted unit values for HTS #2804691000 show that imports from Russia had the lowest AUVs compared to nonsubject imports in 1999 and interim 2002. The adjusted unit values for HTS #2804695000 show that imports from Russia had the lowest AUVs compared to nonsubject imports in 2001, interim 2001, and interim 2002. See Memorandum INV-AA-023 (March 5, 2003).

[93] As the sales price data for pricing product 1 show, U.S. product was $***/lb and subject imports were $***/lb in the first quarter of 1999, but by the third quarter of 2002, U.S. product was $***/lb and subject imports were $***/lb. CR/PR at Table V-1. Sales price data for pricing product 2 indicate that U.S. product was $0.62/lb and subject imports were $***/lb in the first quarter of 1999, but by the third quarter of 2002, U.S. product was $0.50/lb and subject imports were $***/lb. CR/PR at Table V-2. Sales price data for pricing product 3 show that U.S. product declined from $***/lb in first quarter of 1999 to $***/lb in the third quarter of 2002. As discussed above, the Commission did not have sufficient sales price data for subject imports of pricing product 3 (chemical grade silicon metal). CR/PR at Table V-3; CR at V-6, n.9; PR at V-4, n.9.

Purchaser price data for pricing product 1 show that U.S. product was $***/lb and subject imports were $***/lb in the first quarter of 2000, but by the third quarter of 2002, U.S. product was $***/lb and subject imports were $***/lb. CR/PR at Table V-4. Purchaser price data for pricing product 2 show that U.S. product was $***/lb and subject imports were $***/lb in the first quarter of 2000, but by the third quarter of 2002, U.S. product was $***/lb and subject imports were $***/lb. CR/PR at Table V-5. Purchaser price data for pricing product 3 show that U.S. product was $***/lb and subject imports were $***/lb in the first quarter of 2000, but by the third quarter of 2002, U.S. product was $***/lb and subject imports were $***/lb. CR/PR at Table V-6.

[94] Respondents' Posthearing Brief at 2.

[95] Petitioners' Prehearing Brief at 11-12.

[96] CR at V-19 to V-23; PR at V-9 to V-10; CR/PR at Tables V-8 and V-9. In any event, confirmation of lost sales and lost revenue is not required for an affirmative determination. See, e.g., Acciai Speciali Terni, S.P.A. v. United States, 19 CIT 1051, 1056 (Ct. Int'l Trade 1995).

volume.[97] We recognize that nonsubject imports may have had an independent price depressive effect on domestic silicon metal prices. However, given the significant underselling by subject imports, subject import volume surges during the POI, and the high degree of substitutability between subject imports and the domestic product, we find that subject imports themselves have significantly depressed domestic silicon metal prices in all three customer segments (i.e., chemical, primary and secondary aluminum customers).[98] Silicon metal prices continued to fall after 2000, when subject imports increased the most and nonsubject imports declined (between 2000 and 2001) or increased at a slower rate than subject imports (between the interim periods).[99] The underselling margins of subject imports (based on purchaser data compared to U.S. product), were the highest for chemical grade silicon metal (pricing product 3), the segment where most U.S. product is sold. Further, imports from Russia undersold South African chemical grade product in all 11 purchaser price comparisons and undersold Brazilian chemical grade product in 10 of 11 purchaser price comparisons.[100]

Respondents point to internet auctions for silicon metal as evidence of the absence of price effects by subject imports. GE Silicones contends that, in its internet reverse auctions, the winning bids were nearly identical, regardless of whether Russian suppliers participated or not, and that nonsubject import bids were also below those of domestic producers.[101]

A total of four internet auctions for silicon metal were reported by purchasers for the POI, involving *** short tons valued at $*** in winning bid values. Three of the four auctions were held by GE Silicones for chemical grade silicon metal.[102] The other auction was held by *** for metallurgical grade

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[97] Respondents' Posthearing Brief at 3, 7.

[98] Evidence submitted by the respondents themselves indicate the effects on the U.S. market of Russian silicon metal prices. Respondents' Posthearing Brief, Vol. II, at Exhibit 2, p. 44.

[99] CR/PR at Tables V-1, V-2, V-3, V-4, V-5, V-6 and C-1. Respondents argue that, if Russian suppliers were targeting the chemical sector, as alleged by petitioners, then prices in the chemical sector should have declined more steeply than secondary aluminum prices. However, according to respondents, silicon metal prices in the chemical sector fell by only one-third of the price declines in the secondary aluminum market. Respondents' Posthearing Brief, Responses to Commission Questions at B-11 to B-13. We do not find this argument to be persuasive because, according to the purchaser price data, although Russian silicon metal sold to chemical producers declined by about $***/lb from its highest price in 2000 ($***/lb in second, third and fourth quarters of 2000) to the lowest price in interim 2002 ($***/lb in all three quarters of interim 2002), U.S. product declined by $***/lb from its highest price in 2000 ($***/lb in second quarter 2000) to the lowest price in interim 2002 ($***/lb in second and third quarters of 2002). For purchaser price data of secondary aluminum grade silicon metal, Russian product declined by $***/lb from its highest price in 2000 ($***/lb in third quarter 2000) to the lowest price in interim 2002 ($***/lb in first and second quarters 2002). Comparatively, U.S. product declined by $***/lb from its highest price in 2000 ($***/lb in all four quarters of 2000) to its lowest price in interim 2002 ($***/lb in all three quarters of interim 2002). CR/PR at Tables V-5 and V-6.

[100] CR at V-16; PR at V-8; CR/PR at Table V-6.

[101] Respondents' Posthearing Brief at 2-3; Hearing Tr. at 103 (Haynes).

[102] GE Silicones conducted three auctions in the fall of 2001 for the purchase of just over *** tons of silicon metal, or approximately *** percent of its 2002 requirements. GE Silicones reported that the silicon metal grade specification and commercial terms were established prior to the auctions and firms that were qualified to supply GE Silicones were invited to bid. GE Silicones reported that the duration of these contracts was ***. The auctions were "reverse" auctions where GE Silicones set maximum and target prices; once the auction was opened, qualified bidders could continue to make bids as long as their bid was below the last one made. The auction was closed when no new qualifying bid was received for two minutes.

Petitioners stated that GE Silicones' internet auctions were ***. *** reported that GE Silicones' contract

(continued...)

silicon metal.[103] Of these contracts, *** percent (*** short tons valued at $***) was awarded to imports from Russia, *** percent (*** short tons valued at $***) was awarded to nonsubject imports, and *** percent (*** short tons valued at $***) was awarded to U.S. suppliers. For all four auctions, the firms submitting the lowest final bids won the contracts.[104] Subject import suppliers won the majority of the silicon metal lots offered in these four auctions.

We note that while GE Silicones and *** are substantial purchasers of silicon metal, there are several other purchasers. The total volume at stake in these two purchasers' internet auctions, *** short tons, was only *** percent of total apparent consumption from 1999 to 2001, and only *** percent of apparent domestic consumption in 2001, the year that the auctions in question took place.[105] Thus, the data related to these auctions does not outweigh the other substantial record evidence on price effects. Moreover, the auction results present a mixed picture. ***.[106] Although subject imports did not win every auction, they won a substantial percentage. They also participated in all but one auction, contributing to the lower prices. We cannot conclude that ending prices would have been the same absent Russian participation. Given the significant volume of subject imports, their underselling, and high substitutability, we conclude that they did have a significant effect on prevailing market prices as well as the results of particular auctions.

In sum, we find significant underselling by the subject imports, and given the significant volumes and high substitutability with the domestic like product of the low-priced subject imports, we find that prices have been depressed to a significant degree by the subject imports.

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.[107] These factors include

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[102] (...continued)
requirements were very rigid and difficult and that GE also wanted a ***. ***. CR at V-4 to V-5; PR at V-3 to V-4.

[103] ***. *** also reported participating in the *** auction but dropped out of the bidding when the bid price approached ***'s cash costs. CR at V-4 to V-5; PR at V-3 to V-4.

[104] CR at V-16 to V-17; PR at V-8. A Brazilian supplier submitted the winning bid in the first internet reverse auction held by GE Silicones, in which Russian suppliers did not participate. The Brazilian supplier's winning bid was $*** for *** short tons. *** and a Russian supplier won the second internet reverse auction held by GE Silicones. *** final bid was $*** for *** short tons. The Russian supplier's final bid was $*** for *** short tons. A Russian and Canadian supplier won the third internet reverse auction held by GE Silicones. In that auction, the Russian supplier's final bid was $*** for *** short tons (*** short tons). The Canadian supplier's final bid was $*** for *** short tons. A Russian supplier also submitted the winning bid in the *** auction. CR/PR at Table V-7.

According to petitioners, the Russian supplier caused the U.S. supplier to lose the second GE Silicones auction by undercutting the U.S. supplier's bid. The Russian supplier then forced the U.S. supplier to submit a very low bid in the third auction, as a result of the Russian supplier's competing bids and its bid history in the second auction. Petitioners' Prehearing Brief at 31-33; Petitioners' Posthearing Brief, Response to Commission Questions at 1-2.

[105] CR at V-16 to V-17; PR at V-8. Total apparent domestic consumption from 1999 to 2001 was 931,901 short tons. Apparent domestic consumption in 2001 was 278,197 short tons. CR/PR at Table IV-5.

[106] CR at V-5; PR at V-3; Petitioners' Postconference Brief at 31-32.

[107] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 ("In material injury determinations, the Commission

(continued...)

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."[108] [109]

We find that, as subject import volume increased, particularly from 2000 to 2001, at prices that undersold and depressed U.S. prices, subject imports had a significant adverse impact on the domestic industry. As subject import volume increased and domestic silicon metal prices dropped, the domestic industry suffered declines in prices, sales volume, and most performance and financial indicators. The deterioration in the industry's condition was evidenced by its loss of market share due to declining U.S. shipments, which fell by 24.7 percent from 1999 to 2001 and by 29.7 percent between the interim periods.[110] Declines in the domestic industry's U.S. commercial shipments outpaced declines in U.S. apparent consumption during the POI.[111]

Reduced sales in turn led domestic producers to curtail silicon metal production and capacity.[112] As a result of its losses related to silicon metal production, Globe converted two silicon metal furnaces to ferrosilicon production and idled another silicon metal furnace in 2000. Globe converted one silicon metal furnace at its facility in Niagara Falls, NY, to ferrosilicon production in August 2001, and shut down the remaining silicon metal furnace in December 2001. Globe idled its Selma, Alabama, silicon metal plant in July and August 2001 in exchange for a reduced power rate for the remainder of the year. In all, Globe either shut down or converted four of its seven silicon metal furnaces and periodically idled the remaining three furnaces during the POI.[113] SIMCALA shut down one of its three silicon metal furnaces in August 2001 due to lower volume requirements in a renegotiated contract with a long-term customer and laid off

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[107] (...continued)
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.).

[108] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

[109] 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 final determination, Commerce calculated the following dumping margins: 54.77 percent for Kremny/SKU, 77.51 percent for BAS, and a Russia-wide rate of 77.51 percent. Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from Russia, 68 Fed. Reg. 6885, 6888 (February 11, 2003). Commerce subsequently issued amended dumping margins of 56.11 percent for Kremny/SKU and 79.42 percent for BAS due to ministerial errors in the original final determination. Amended Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal from Russia, 68 Fed. Reg. 12037, 12039 (March 13, 2003).

[110] Tables IV-5 and C-1. Domestic producers' commercial shipments fell from *** short tons in 1999 to *** short tons in 2000 to *** short tons in 2001 and were *** short tons in interim 2001 and *** short tons in interim 2002. CR/PR at Table III-4.

[111] The domestic industry's U.S. shipments, by quantity, declined by 24.7 percent from 1999 to 2001 and by 29.7 percent between interim periods. Apparent U.S. consumption fell by 14.2 percent from 1999 to 2001 and by 1.8 percent between interim periods. CR/PR at Table C-1.

[112] Domestic production of silicon metal fell from 209,376 short tons in 1999 to 195,660 short tons in 2000 and 145,324 short tons in 2001 and was 112,638 short tons in interim 2001 and 85,824 short tons in interim 2002. Production capacity dropped from 243,667 short tons in 1999 to 215,245 short tons in 2000 and 198,363 short tons in 2001 and was 148,123 short tons in interim 2001 and 144,450 short tons in interim 2002. CR/PR at Table III-2.

[113] CR/PR at Table III-2, n.3; Petitioners' Prehearing Brief at 17-18. Petitioners' Posthearing Brief at 6.

one-half of its work force.[114] In August 2001, Elkem shut down one of its five silicon metal furnaces at its Alloy, WV, facility.[115] Due to these furnace closures, the average number of production and related workers and productivity declined throughout the POI.[116] The majority of these closures or conversions took place in 2001, the same year that subject imports registered a 38.6 percentage point increase in volume.[117]

Even as domestic production capacity declined by 18.6 percentage points from 1999 to 2001, domestic producers' average capacity utilization levels, which had increased slightly from 85.9 percent in 1999 to 90.2 percent in 2000, declined to 73.3 percent in 2001.[118] The decline in capacity utilization is significant and adverse for this industry, which has high fixed costs.[119] The ratio of the domestic industry's cost of goods to net sales increased by 12.3 percent from 1999 to 2001 and by 2.1 percent between interim periods, placing the industry in a cost-price squeeze.[120]

Declining sales and increasing costs adversely affected most major financial indicators of the domestic industry. Specifically, the domestic industry's operating income and operating margin declined throughout the POI, with the industry registering a loss in 2001, when subject imports reached their highest volume level during the POI.[121] Domestic producers' operating income, which was $25.2 million in 1999 and $9.2 million in 2000, fell to losses of $10.3 million in 2001, $12.8 million in interim 2001, and $11.8 million in interim 2002. The industry's operating margin declined from 8.6 percent in 1999 to 3.5 percent in 2000 to negative 4.7 percent in 2001 and was negative 8.5 percent in interim 2001 and negative 11.4 percent in interim 2002.[122] SIMCALA states that, after failing to make interest payments due on its bonds in October 2001, it ***.[123] Similarly, Globe's financial losses forced Globe to put itself up for sale in December 2002.[124]

Due to declines in cash flow,[125] the domestic industry's capital expenditures decreased from *** in 1999 to $7.8 million in 2001 and were $5.4 million in interim 2001 and $8.9 million in interim 2002.[126]

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[114] CR/PR at Table III-2, n.4; Petitioners' Prehearing Brief at 15.

[115] CR/PR at Table III-2, n.2.

[116] The average number of production workers fell from 719 in 1999 to 637 in 2000 and 523 in 2001 and was 531 in interim 2001 and 407 in interim 2002. Productivity, measured by short tons per 1,000 hours, increased slightly from 128.3 short tons in 1999 to 133.0 short tons in 2000, but then declined to 120.1 short tons in 2001; it was 116.1 short tons in interim 2001 and 108.2 short tons in interim 2002. CR/PR at Table C-1.

[117] CR/PR at Table C-1.

[118] CR/PR at Tables C-1 and III-2.

[119] CR at VI-5 to VI-6; PR at VI-1.

[120] 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 was 85.7 percent in 1999, 90.6 percent in 2000, 98.0 percent in 2001, 100.9 percent in interim 2001, and 103.0 percent in interim 2002 CR/PR at Tables VI-1 and C-1.

[121] CR/PR at Tables VI-1 and IV-2.

[122] CR/PR at Table C-1.

[123] Petitioners' Prehearing Brief at 16; Hearing Tr. at 25-26 (Boardwine).

[124] Hearing Tr. at 18-19 (Perkins).

[125] The domestic industry's cash flow fell dramatically from $23.2 million in 1999 to $7.8 million in 2000 to negative $14.2 million in 2001; it was negative $14.5 million in interim 2001 and negative $5.1 million in interim 2002. CR/PR at Table VI-1.

[126] CR/PR at Table VI-3. According to petitioners, the slight rise in capital expenditures from interim 2001 to interim 2002 was due to replacement of existing equipment, not new capital projects. Research and development expenditures continued to fall from interim 2001 to interim 2002. Petitioners' Prehearing Brief at 44-45.

Domestic producers also indicated that they have had to cancel or delay capital improvement projects and research and development programs as a result of the presence of subject imports.[127]

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

Respondents argue that there is no causal nexus between subject imports and the injury suffered by the domestic industry because of the presence of interchangeable and readily available nonsubject imports.[128] However, subject imports gained more market share than nonsubject imports from 1999 to 2001 and the industry's loss in market share from 1999 to 2001 is attributable to the subject imports.[129] Subject imports registered a 4.8 percentage point market share gain while nonsubject imports lost 2.3 percentage points in market share from 2000 to 2001, the same year that the domestic industry suffered an operating loss for the first time during the POI and idled, closed, or converted many of its silicon metal production facilities. Subject imports continued to capture additional market share between the interim periods, with Russia as the largest single source of silicon metal imports in interim 2002, although we acknowledge that the domestic industry lost market share to nonsubject imports as well, particularly in interim 2002. However, the fact that nonsubject imports may have contributed to the domestic industry's continued deterioration toward the end of the period, along with subject imports, does not negate our finding that subject imports themselves had a material adverse impact on the domestic industry.[130]

We find respondents' arguments that Gerald Metals[131] precludes an affirmative determination in this investigation to be unpersuasive.[132] Regardless of the impact of nonsubject imports on the domestic industry, we find, in this investigation, that the surges in subject import volume at prices that undersold and

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[127] CR at F-3 to F-4; PR at F-3.

[128] Respondents' Posthearing Brief, Response to Commission Questions at A-1 to A-2, B-1. Evidence submitted by the respondents themselves indicates that imports from Russia have had an impact on U.S. production levels. Respondents' Posthearing Brief, Vol. II, at Exhibit 2, p. 17, Exhibit 3, p. ii.

[129] Domestic producers' market share declined by 7.6 percent from 1999 to 2001 and by 15.7 percent from interim 2001 to interim 2002. Russian imports' market share increased by 4.5 percent from 1999 to 2001 and by 6.0 percent between interim periods. Nonsubject imports increased by 3.1 percent from 1999 to 2001 and by 9.7 percent between interim periods. CR/PR at Table C-1.

The quarterly import data show an even more compelling picture of subject import volume compared to nonsubject import volume during 2001 and interim 2002. Russian imports' share of total imports increased dramatically from 7.3 percent in first quarter 2001 to 26.2 percent in second quarter 2001 to 31.4 percent in third quarter 2001 to 40.1 percent in fourth quarter 2001. Russian imports' share of total imports was 31.5 percent in first quarter 2002 and 36.9 percent in second quarter 2002, before declining to 11.6 percent in third quarter 2002. The drop in imports from Russia in the third quarter of 2002 was after the Commission's and Commerce's preliminary determinations in this investigation. CR/PR at Table E-1.

[130] By quantity, nonsubject import volume increased by 25.8 percentage points from interim 2001 to interim 2002 whereas subject import volume increased by 57.6 percentage points during the same period. CR/PR at Table C-1. The quantity of silicon metal imports from the top four import sources in interim 2002 are as follows: Russia, 32,643 short tons; Brazil, 27,953 short tons; Canada, 13,046 short tons; and South Africa, 26,731 short tons. Other nonsubject import sources totaled 23,144 short tons during the same period. CR/PR at Table IV-2.

[131] Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997).

[132] We have considered the evidence on nonsubject imports in this investigation and find, notwithstanding the presence of nonsubject imports, that subject imports themselves caused material injury to the domestic industry and did not simply contribute to the injury in a "tangential or minimal way." Gerald Metals, 132 F.3d at 722; Taiwan Semiconductor Industry Assoc. v. United States, 266 F.3d 1339, 1344 (Fed. Cir. 2001).

depressed domestic silicon metal prices to a significant degree during the POI had a material adverse impact on the domestic industry.[133]

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[133] The respondents cite cases where nonsubject imports were present and the Commission reached negative determinations, including Gerald Metals and Taiwan Semiconductor. Respondents' Prehearing Brief at 63-67. It is well established that Commission investigations are *sui generis* and that prior investigations, even if they involve the same product, do not establish "precedents." e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1169 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). We nonetheless observe that the prior Commission investigations cited by respondents are factually distinguishable from the instant investigation.

The Gerald Metals case involved the Commission's affirmative determination that imports of pure magnesium at less than fair value from Russia, Ukraine, and China injured the domestic industry. See Magnesium from the People's Republic of China, Russia, and Ukraine, Inv. Nos. 731-TA-696-698 (Final), USITC Pub. 2885 (May 1995). With respect to imports from Russia, the Department of Commerce had found dumping margins of 100.25 percent against certain trading companies while finding zero percent dumping margins against other trading companies. 60 Fed. Reg. 16440, 16449 (March 30, 1995). The determination with respect to Ukraine was appealed to the U.S. Court of International Trade, which affirmed the Commission's determination. See Gerald Metals, Inc. v. United States, 937 F.Supp. 930, 942 (Ct. Int'l Trade 1996). It was then appealed to the Court of Appeals for the Federal Circuit, which found that the Commission had failed to adequately consider undisputed facts about fairly-traded imports from Russia given that "other than differences in the trading company, Russian imports, both fairly traded and less than fair value imports, were perfect substitutes for each other, if not the exact same product." Gerald Metals, 132 F.3d at 716, 720. On remand from the U.S. Court of International Trade (Gerald Metals, Inc. v. United States, 8 F.Supp.2d 861 (Ct. Int'l Trade 1998), the Commission found that a domestic industry in the United States was not materially injured or threatened with material injury by reason of pure magnesium imports from Ukraine due in part to the high substitutability of fairly traded imports from Russia for LTFV imports from Russia or Ukraine. Although the volume of fairly traded imports from Russia was ***. Subject import volume had decreased, both in absolute terms and relative to domestic consumption, during the last full year of the POI. These volume trends indicated that the significance of LTFV imports diminished during the POI. Magnesium from Ukraine, Inv. No. 731-TA-698 (Remand), USITC Pub. No. 3113 at 4-5 (June 1998).

In Taiwan Semiconductor, the Court of Appeals for the Federal Circuit affirmed the Commission's redetermination in Static Random Access Memory Semiconductors from Taiwan, Inv. No. 731-TA-762 (Final), USITC Pub. No. 3319 (June 2000) ("SRAMS from Taiwan") that imports from Taiwan of SRAMs had a minimal or tangential, injurious effect on the domestic industry over the period of investigation. Id. at 1339. In SRAMs from Taiwan, the Commission had determined that, throughout the period of investigation, Taiwanese SRAM market share, both by value and by quantity, had remained relatively flat. The domestic industry's market share, by quantity, declined by about 15 percentage points while the market share of nonsubject imports increased by almost *** percentage points. During 1996 and 1997, the years in which the domestic industry suffered its greatest injury, imports from Taiwan frequently oversold U.S. product. SRAMS from Taiwan, USITC Pub. at 2, 3 (See Dissenting Views of Chairman Marcia E. Miller, Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Invs. No. 731-TA-761 and 762 (Final), USITC Pub. 3098 at 32-34 (April 1998).

In Saccharin from China, although subject import market share increased by 3.6 percent from 1991 to 1993, this gain was at the expense of nonsubject imports' market share, which declined by 3.8 percent during the same period. The domestic industry's market share, by quantity and value, had increased by 0.2 percent from 1991 to 1993. Further, despite an increase in subject import volume between interim periods, subject imports' market share, by quantity, declined. Saccharin from China, Inv. No. 731-TA-675 (Final), USITC Pub. No. 2842 at 16 (Dec. 1994).

In Certain Expandable Polystyrene Resins from Indonesia, the Commission determined that subject import volume was very small throughout the POI, whether viewed in absolute or relative terms. Subject imports' market share of the U.S. market rose from 0.2 percent in 1997 to 1.8 percent in 1998, but then fell to 1.3 percent in 1999. Subject imports' market share was 1.3 percent in interim 2000, compared to 0.8 percent in interim 1999. Certain Expandable Polystyrene Resins from Indonesia, Inv. No. 731-TA-961 (Final), USITC Pub. No. 3377 at 9 (Dec. 2000).

The link between subject imports and injury to the U.S. industry is borne out by evidence that, following Commerce's preliminary determination in September 2002 and the subsequent withdrawal of imports from Russia from the domestic market, silicon metal spot prices, as reported by *Metals Week*, have begun to increase.[134] [135] [136] According to petitioners, the improvement in spot prices has allowed domestic producers to negotiate higher prices for at least 11 contracts during the fourth quarter of 2002 for 2003 shipments.[137] Both SIMCALA and Globe restarted idled furnaces in October 2002. [138] [139]

Respondents argue that the domestic industry has shunned the secondary market in favor of higher prices in the other two sectors, that competition in this sector occurs primarily among imports, and that imports from Russia are not the lowest-priced product.[140] We do not find this argument to be persuasive. U.S. producers' share of the secondary aluminum market segment was 47.7 percent in 1999, 45.5 percent in 2000, 37.6 percent in 2001, 44.2 percent in interim 2001, and 19.7 percent in interim 2002, shares which indicate significant participation by the domestic industry in that segment.[141] [142]

Accordingly, for the above-stated reasons, we find that the subject imports have had a significant adverse impact on the domestic industry.

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[134] Although the Commission is required to consider whether changes in volume, price effects, or impact are related to the pendency of the investigation, it is not required to reduce the weight accorded to such information. 19 U.S.C. § 1677(7)(I).

[135] See correspondence (e-mail) from *** dated February 13, 2003, ***--Metals Week and Ryan's Notes prices.

[136] The quantity of imports from Russia increased dramatically from 9,898 short tons in the first quarter of 2002 to 17,573 short tons in the second quarter of 2002, but then declined substantially to 5,173 short tons in the third quarter of 2002. CR/PR at Table E-1. The parties agree that subject imports have completely withdrawn from the domestic market subsequent to Commerce's preliminary determination in September 2002. See Petitioners' Posthearing Brief, Exhibit 2; Respondents' Prehearing Brief at 22, Figure 7.

[137] We ***. Hearing Tr. at 101 (Haynes); Respondents' Posthearing Brief at 12.

[138] Petitioners' Posthearing Brief at 11-12.

[139] As for GE Silicones' claim that the Commission never acted on its request to collect information on 2003 contracts, we note that respondents filed their request in December 2002. See Letter dated December 16, 2002, from Michael H. Stein of Dewey Ballantine LLP to Marilyn R. Abbott. As contracts are usually negotiated during the fourth quarter of the prior year, Commission staff determined that sending out supplemental questionnaires in mid-December 2002 for 2003 contracts would not yield accurate and complete data on 2003 contracts, given that contract negotiations in the fourth quarter of 2002 may not result in finalized contracts until mid- to late January 2003. CR at V-3; PR at V-2. Additionally, Commission staff's collection of the requested data, in light of the schedule of this investigation, may not have been completed prior to the Commission hearing on February 5, 2003. As discussed above, we observe that ***.

[140] Respondents' Posthearing Brief, Responses to Commission Questions at B-18 to B-20.

[141] CR/PR at Table I-2.

[142] GE Silicones argues that it was unable to purchase domestic silicon metal and had to turn to subject imports during the POI in part because it had disqualified *** as a supplier in 1999 due to quality problems. GE Silicones also argues that *** to GE Silicones. Respondents' Prehearing Brief at 47-50; Respondents' Posthearing Brief at 2, 9. SIMCALA disputes GE Silicones' statements, claiming that, although ***. Petitioners' Posthearing Brief, Responses to Commission Questions at 16-17. We find the record evidence on this issue to be inconclusive but note that GE Silicones' purchases of silicon metal comprised *** during the POI. GE Silicones' purchaser questionnaire response dated November 14, 2002, p. 3, Section II-1.

E. Critical Circumstances

In its final determination, Commerce found that critical circumstances do not exist for Russian producers Bratsk, SKU and ZAO Kremny, based on the lack of "massive imports" as shown by six-month shipment data; however, Commerce found that critical circumstances exist for the Russia-wide entity.[143] Because we have determined that the domestic silicon metal industry is materially injured by reason of subject imports, we must further determine "whether the imports subject to the affirmative *** determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued."[144] The SAA indicates that the Commission is to determine "whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order."[145]

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

> (I) the timing and the volume of the imports,
> (II) a rapid increase in inventories of the imports, and
> (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.[146]

Consistent with Commission practice,[147] in considering the timing and volume of subject imports, we consider import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject import producers other than Bratsk, SKU and Zao Kremny. We do not find any significant increase in import volume after the filing of the petition by any entity subject to Commerce's critical circumstances finding because there are no known subject imports from Russian producers other than Bratsk, SKU and ZAO Kremny.[148]

Because the record indicates that there were no subject imports from Russia subject to Commerce's affirmative critical circumstances findings immediately following the filing of the petition, we conclude that the remedial effect of the forthcoming antidumping duty order will not be undermined. Accordingly, we determine that critical circumstances do not exist with respect to the subject imports.[149]

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of imports of silicon metal from Russia that are sold in the United States at less than fair value.

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[143] 68 Fed. Reg. 6885, 6888 (February 11, 2003).

[144] 19 U.S.C. § 1673d(b)(4)(A)(i).

[145] SAA at 877.

[146] 19 U.S.C. § 1673d(b)(4)(A)(ii).

[147] See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777 to 79 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

[148] CR/PR at VII-2; CR/PR at Table VII-1.

[149] We note that petitioners stated at the hearing that, given Commerce's finding, critical circumstances were no longer an issue in this investigation. Hearing Tr. at 82-83 (Kramer).