Silicon Metal From Russia

Investigation No. 731-TA-991 (Final) (Second Remand)

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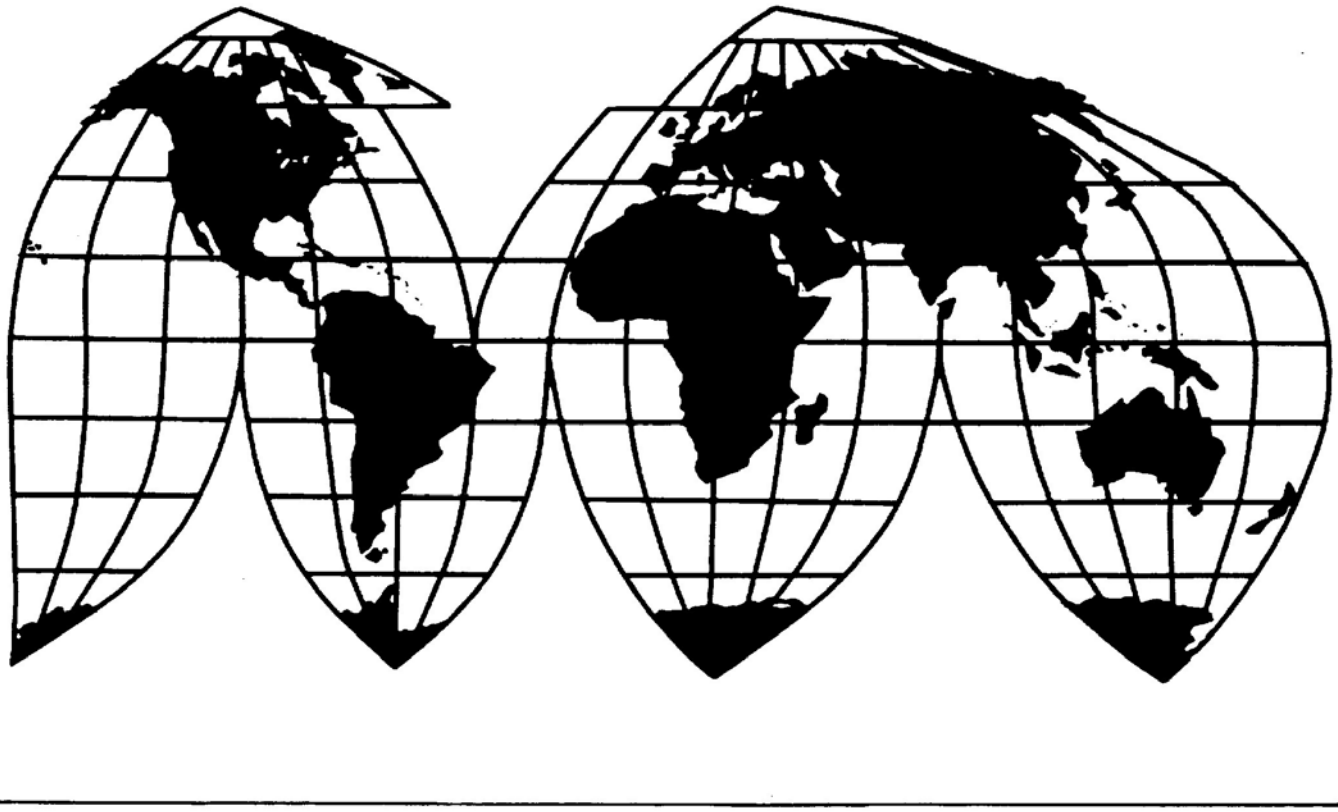

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In March 2003, the Commission determined that an industry in the United States was materially injured by reason of imports from Russia of silicon metal.[1] Respondents Bratsk Aluminum Smelter and Rual Trade Limited ("plaintiffs") appealed the Commission's determination to the U.S. Court of International Trade ("CIT"). On June 22, 2004, the CIT remanded the case to the Commission for further explanation, and on September 15, 2004, the Commission filed its remand determination with the CIT. On December 3, 2004, the CIT affirmed the Commission's remand determination in its entirety and dismissed the case.[2] Plaintiffs appealed the CIT's dismissal to the U.S. Court of Appeals for the Federal Circuit ("CAFC"). On April 10, 2006, the CAFC vacated and remanded the CIT's decision so that the CIT would remand the case back to the Commission to address non-subject imports.[3]

On May 25, 2006, the Commission submitted a petition for rehearing en banc before the CAFC and on July 24, 2006, the petition was denied. On July 28, 2006, the Commission petitioned the CAFC to stay issuance of the mandate to the CIT while the Commission, through the Office of the Solicitor General, considered the filing of a petition for certiorari. On August 7, 2006, the CAFC denied the motion to stay and remanded the case to the CIT. On August 17, 2006, the CIT remanded the case to the Commission. The Commission then filed a motion to stay the remand proceedings at the CIT pending a decision on whether to seek certiorari. On September 22, 2006, the CIT granted the stay. On December 20, 2006, the Commission informed the CIT that it would not be seeking certiorari at this time. On December 22, 2006, the CIT entered an order lifting the stay and instructing the Commission to submit its remand results to the CIT within ninety (90) days.

On remand, the Commission again determines that an industry in the United States is materially injured or threatened with material injury by reason of silicon metal from Russia sold at less than fair value.[4]

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[1] *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final)*, USITC Publication 3584, March 2003. Chairman Okun did not participate in the investigation.

[2] *Bratsk Aluminum Smelter v. United States*, Slip Op. 04-153, CIT 2004, December 3, 2004.

[3] *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369, 1375 (Fed. Cir. 2006).

[4] Commissioner Deanna Tanner Okun is recused from this investigation. Vice Chairman Aranoff and Commissioners Williamson and Pinkert did not participate in the original investigation or first remand determination, but did participate in this remand proceeding.

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

VIEWS OF THE COMMISSION

Upon consideration of the Court of International Trade's remand order that we comply with the United States Court of Appeals for the Federal Circuit's decision in *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369 (Fed. Cir. 2006), we determine that an industry in the United States is materially injured by reason of imports of silicon metal from Russia that the Department of Commerce ("Commerce") has found are sold in the United States at less than fair value ("LTFV").[1]

I. Background

The Commission unanimously determined in March 2003 that the U.S. industry producing silicon metal was being materially injured by reason of subject imports of silicon metal from Russia.[2] In finding that there was "material injury by reason of the subject imports," the Commission analyzed the statutorily mandated factors of the volume of subject imports, their price effects, and their impact on the U.S. industry in light of the conditions of competition, including the presence of non-subject imports in the U.S. market. 19 U.S.C. § 1677(7)(A)-(C).

Sual Holding and another Russian producer of silicon metal, Bratsk Aluminum Smelter,[3] appealed the Commission's determination to the CIT. The CIT affirmed the Commission's opinion in part, but remanded to the Commission for further explanation on two pricing issues.[4] The Commission issued a remand opinion which incorporated its earlier opinion in its entirety and provided further explanation requested by the CIT on the relevant pricing issues.[5] After remand, the CIT affirmed the Commission's determination in its entirety and with respect to all issues briefed and argued by the parties.[6]

Sual Holding appealed the CIT's decision to the Federal Circuit. The sole issue on appeal to the Federal Circuit was the Commission's causation analysis. Specifically, appellants claimed that the Commission failed to properly analyze the presence of non-subject imports of silicon metal under the Federal Circuit's previous decision in *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997). The Federal Circuit found that the Commission is required to analyze not merely whether the subject imports were more than a minimal, tangential, incidental, or trivial cause of the injury, but "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers" in cases where "the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."[7] The Court thus remanded the case, stating as follows:

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[1] Commissioner Deanna Tanner Okun is recused from this investigation. Vice Chairman Aranoff and Commissioners Williamson and Pinkert did not participate in the original investigation or first remand determination, but did participate in this remand proceeding.

[2] *Silicon Metal from Russia*, Inv. No. 731-TA-991 (Final), USITC Pub. 3584 (Mar. 2003).

[3] Bratsk Aluminum Smelter subsequently filed a voluntary notice of dismissal on December 6, 2004, and is no longer a party to the litigation.

[4] *Bratsk Aluminum Smelter v. United States*, Slip Op. 04-75 (Ct. Int'l Trade June 22, 2004). Specifically, the court remanded with respect to the Commission's finding that "spot" prices may affect contract prices and for the Commission to explain the significance or effect of similar pricing trends in the different silicon metal market segments.

[5] *Silicon Metal from Russia*, Inv. No. 731-TA-991 (Final) (Remand), USITC Pub. 3720 (Sept. 2004).

[6] *Bratsk Aluminum Smelter v. United States*, Slip Op. 04-153 (Ct. Int'l Trade Dec. 3, 2004).

[7] *Bratsk*, 444 F.3d at 1375.

> [T]he Commission's summary finding of material injury is insufficiently detailed to comply with the requirements of *Gerald Metals.* We therefore vacate and remand the Court of International Trade's decision so that it may remand the case back to the Commission to specifically address whether the non-subject imports would have replaced subject imports during the period of investigation . . . .The point is that the Commission has to explain, in a meaningful way, why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry.[8]

In turn, the CIT issued a remand order on August 17, 2006, in which it,

> REMANDS the case to the Commission to specifically address whether the non-subject imports would have replaced subject imports during the period of investigation; and it is further
>
> ORDERED that if the Commission finds material injury where fairly traded commodity imports are competitively priced, the Commission must explain, in a meaningful way, why the non-subject imports would not replace the subject imports while continuing to cause injury to the domestic industry.[9]

The Commission reopened the record on remand to seek additional information on non-subject imports in order to comply with the Federal Circuit's decision and to allow the parties an opportunity to comment on the new information as well as the Federal Circuit's decision. Questionnaires were sent to producers of silicon metal in non-subject countries, with a return date of February 1, 2007. Staff also compiled available information from secondary sources on non-subject imports and released the new data to the parties on February 16, 2007.[10] On February 27, 2007, the Commission received two sets of comments, one from domestic producers Globe Metallurgical Inc. and SIMCALA Inc., and the other from Russian producers Sual Holding and Zao Kremny.

II. Issues on Remand

The Federal Circuit directed the Commission on remand to undertake an "additional causation inquiry" whenever certain triggering factors are met: "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market." The additional inquiry required by the Court, which we refer to as the *Bratsk* replacement/benefit test, is "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."[11]

The Federal Circuit also remanded for further explanation, stating that "[w]hile there may be support for the Commission's ultimate determination of material injury in the record here, we find that the

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[8] *Bratsk*, 444 F.3d at 1376.

[9] *Bratsk Aluminum Smelter v. United States*, Order, Consol. Ct. No. 03-00200 (Ct. Int'l Trade Aug. 17, 2006) ("CIT Remand Order") at 2. The CIT stayed the remand order pending a decision on whether the Commission would seek certiorari. After a decision was made in consultation with the Office of the Solicitor General not to file a petition for certiorari at this time, the CIT, on December 22, 2006, issued an order lifting the stay and ordering the Commission to submit its remand determination within 90 days, or by March 22, 2007. *Bratsk Aluminum Smelter v. United States*, Order, Consol. Ct. No. 03-00200 (Ct. Int'l Trade Dec. 22, 2006).

[10] *See* Memorandum INV-EE-015 (Feb. 16, 2007).

[11] *Bratsk*, 444 F.3d at 1375.

Commission did not sufficiently explain its decision in this regard."[12] The Federal Circuit noted, as an area requiring further explanation, that even though subject imports undersold the domestic product, non-subject imports from Brazil, Canada, Saudi Arabia, and South Africa generally undersold the domestic product as well, suggesting that "the elimination of the subject imports from the domestic market might simply have increased the market share of the non-subject imports."[13] The Federal Circuit further noted evidence cited in the Commission's opinion that, when imports from Russia left the U.S. market after Commerce's preliminary affirmative determination, spot prices increased and prices for 11 domestic contracts increased. Again, the court found that, while this evidence may be "pertinent to the causation question," the Commission failed "to address directly the causation issue in detail as required by *Gerald Metals*" and "did not explain how much the spot prices increased, the significance of that increase, or the significance of the eleven contracts for the domestic market."[14]

> The Federal Circuit also stated, in a passage quoted by the CIT in its remand order:
> We do not suggest that the mere existence of fairly traded commodity imports at the competitive prices precludes the Commission from finding material injury. For example, it may well be that non-subject importers lack capacity to replace the subject imports or that the price of the non-subject imports is sufficiently above the subject imports such that the elimination of the subject imports would have benefitted the domestic industry.[15]

While the remand orders thus do not compel a negative determination, the implication of *Bratsk* is that causation is lacking and a negative determination is warranted if we should conclude that the non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.

III. Legal Standard for Causation

As described above, the sole issue on appeal to the Federal Circuit was the Commission's causation analysis – whether there was material injury to a domestic industry *by reason of* the subject imports. We recognize, as the Court has pointed out in *Gerald Metals*, that if the Commission finds there are causes other than subject imports which fully explain the injury suffered by the domestic industry, or these other causes render the impact of the subject imports minimal or tangential, the causation standard is not satisfied.[16] The Commission in its original determination considered non-subject imports in light of *Gerald Metals* and made an affirmative determination. The Court in *Bratsk*, however, has requested additional discussion of non-subject imports, which we provide in this opinion.

On remand, we apply the replacement/benefit test fashioned by the Federal Circuit to our analysis of causation because the Federal Circuit and CIT have ordered us to do so.[17] However, we continue to

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[12] *Bratsk*, 444 F.3d at 1375.

[13] *Bratsk*, 444 F.3d at 1375.

[14] *Bratsk*, 444 F.3d at 1375-76.

[15] CIT Remand Order at 2, citing *Bratsk*, 444 F.3d at 1376.

[16] *See, e.g., Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997); *Nippon Steel Corp. v. USITC*, 345 F.3d 1379, 1381 (Fed. Cir. 2003).

[17] Chairman Pearson observes, consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia*, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final), USITC Pub. 3884 (Sept. 2006) at 51, that while he agrees with the Commission that the Federal Circuit's opinion suggests a replacement/benefit test, he also finds that the Federal Circuit's opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports. *See* Separate and Additional Views of Chairman Daniel R. Pearson.

believe that the *Bratsk* replacement/benefit test is not required by the statute. As discussed below, the Commission's assessment of causation determines whether there is a link between the subject imports and the material injury to the domestic industry. The Commission evaluates the data to ensure that it does not attribute to subject imports injury caused by other market factors, including non-subject imports.

In antidumping and countervailing duty investigations, Congress has charged the Commission to determine whether a domestic industry is materially injured by reason of the subject imports. The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A). The statute requires the Commission to consider the volume, price effects, and impact of the subject imports and, for many aspects of the Commission's analysis, provides the Commission with specific and detailed direction. 19 U.S.C. § 1677(7)(B) and (C).

The Commission interprets the provisions of section 1677(7)(B) and (C) as establishing the requisite considerations for its statutory determinations of whether an industry in the United States is materially injured or threatened with material injury by reason of subject imports. Therefore, in considering whether a domestic industry is materially injured by reason of subject imports, the Commission construes the statute as mandating that it consider the volume and price effects, if any, as well as the adverse impact, if any, that are by reason of the subject imports. These factors, set forth in section 1677(7), are the exclusive elements of the causation analysis that the statute requires the Commission to undertake in its investigations.[18]

Beyond these factors, the statute, however, does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[19] In construing the "by reason of" language, the Commission has looked to its context in the statute. The "by reason of" phrase appears in at least three distinct provisions relating to Commission determinations in original antidumping investigations.[20] The first time the language appears with respect to antidumping investigations is in 19 U.S.C. § 1673:

> If–
>
> > (1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than fair value, and

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[18] The Commission's construction of the statutory requirements are buttressed by the legislative history of the Trade Agreements Act of 1979, which repealed the Antidumping Act of 1921 and established the current provisions cited in the text above. *See* S. Rep. No. 96-249 at 86-87 (1979); *see also* H.R. Rep. No. 317, 96th Cong., 1st Sess. at 46-47. Both the reports of the Committee on Finance and the Committee on Ways and Means stated that the Commission's determinations predating the statutory amendments realized by the Trade Agreements Act were, on the whole, consistent with the requirements of the 1979 legislation. Thus, the House Report explained:

> The bill contains the same causation element as present law, i.e. material injury must be "by reason of" the subsidized or less than fair value imports. In determining whether such injury is "by reason of" such imports, the ITC looks at the effects of such imports on the domestic industry.

[19] *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("[T]he statute does not 'compel the commissioners' to employ [a particular methodology] . . . [however] regardless of what approach is used, whether it be the two-step or unitary approach or some other approach, the three mandatory factors must be considered in each case"), *aff'g* 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996). *See also Taiwan Semiconductor Industry Ass'n v. United States*, 59 F. Supp.2d 1324, 1328, n.7, 1350 (Ct. Int'l Trade 1999) (Commission need not weigh causes and need not use a single method of causation analysis or articulate a common causation standard).

[20] Identical language appears in the corresponding provisions of the statute pertaining to countervailing duty investigations. *See, e.g.*, 19 U.S.C. § 1671(a).

(2) the Commission determines that–
(A) an industry in the United States–
(i) is materially injured, or
(ii) is threatened with material injury, or
(B) the establishment of an industry in the United States is materially retarded,
by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,
then there shall be imposed upon such merchandise an antidumping duty . . .

Nearly identical language appears in the provisions relating to the Commission's preliminary and final antidumping determinations, 19 U.S.C. §§ 1673b(a) and 1673d(b). While, as noted, only the term "material injury" is later specifically defined in the statute, *see* 19 U.S.C. § 1677(7)(A), other provisions in section 1677(7) set forth the considerations that the Commission must undertake in making the determinations required by the aforementioned provisions of section 1673 in preliminary and final investigations. Thus, section 1677(7)(B) expressly directs that:

[i]n making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission in each case,--
(i) shall consider–
(I) the volume of imports of the subject merchandise,
(II) the effect of imports of that merchandise on prices in the United States for domestic like products, and
(III) the impact of imports of such merchandise on domestic producers of domestic like products but only in the context of production operations within the United States; and
(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

The Commission identifies a causal link, if any, between subject imports and material injury to the domestic industry by examining the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. Section 1677(7)(C) provides additional direction to the Commission as to what it must consider in evaluating the required statutory factors relating to volume, price and impact. In examining whether the volume of subject imports is significant, the Commission considers their absolute quantity, their shares of the U.S. market relative to the domestic product and other imports, and any increases in absolute quantity and market share over the period investigated. 19 U.S.C. § 1677(C)(i). In examining price, the Commission considers whether the subject imports, as well as other imports, undersold the domestic product, and whether U.S. prices were depressed or suppressed to a significant degree. 19 U.S.C. § 1677(C)(ii). In examining impact, the Commission considers, in the context of the business cycle and conditions of competition, all the relevant factors that bear on the state of the U.S. industry, including, but not limited to, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. 19 U.S.C. § 1677(C)(iii). It examines the state of the U.S. industry in relation to trends in the volumes and prices of the subject imports to determine whether it can attribute to a significant degree any adverse aspects of, or changes in, the domestic industry's condition during the period examined to the subject imports.

The Commission's analysis of causation is thus integral to its consideration of the statutorily mandated factors of volume, price, and impact. The Commission draws reasonable inferences from the data before it, including, but not limited to, trends and relationships. The courts have agreed that

mathematical precision is not required,[21] but that substantial evidence must support the Commission's ultimate determination.[22] The Commission thus interprets the "by reason of" language in a manner that implements the statutory requirement of finding a causal, not merely a temporal, link between the subject imports and the material injury to the domestic industry.

There are several situations in which this causation standard would not be satisfied. The Commission may not arrive at affirmative material injury determinations in cases where subject imports are a minimal or tangential cause of material injury to the domestic industry.[23] Alternately, if the Commission finds that there are other causes that fully explain the injury suffered by the domestic industry, or that these other causes render the impact of the subject imports minimal or tangential, the causation standard is not satisfied.[24] The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but does not require the Commission to isolate the injury caused by other factors from injury caused by unfair imports.[25] Within these guidelines, however, implementation of the "by reason of" standard in antidumping and countervailing duty cases is not reliant on precise applications of statistical analysis, given the complexity of the analyses involved.[26]

Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[27] Accordingly, the question of whether one out of

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[21] *See Altx, Inc. v. United States*, 370 F.3d 1108, 1121-22 (Fed. Cir. 2004).

[22] *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350, 1358-59 (Fed. Cir. 2006) (explaining the meaning of the substantial evidence standard of review, noting that the issue is merely whether the Commission's determination was reasonable, not whether the court would itself have made the same decision).

[23] *See, e.g. Vector Supercomputers From Japan*, Inv. No. 731-TA-750 (Remand), USITC Pub. 3166 (May 1999) at 5, 8 (The "by reason of" test requires more than a *de minimis* (i.e., minimal or tangential) contribution to material injury or threat thereof . . . it is appropriate to consider significant, non-subject import economic factors that also may contribute to material injury or threat of material injury. "[I]n our view, we are not required to determine that subject imports contribute as much or more than any other economic factors. Rather, we understand the Court's opinion and the other legislative and judicial authority . . . to mean that the Commission may not analyze subject imports in a vacuum. Instead, we fully consider other significant economic factors in determining that subject imports themselves contribute in a more than *de minimis* way to material injury or threat"); *Tin and Chromium-Coated Steel Sheet From Japan*, Inv. No. 731-TA-860 (Final)(Second Remand), USITC Pub. 3674 (Feb. 2004) at 61 (under the statutory standard, the issue in an antidumping or countervailing duty proceeding "is not whether the subject imports are a cause of injury that is more important than, or even equal to any effect of nonsubject imports, but rather whether the subject imports have caused more than a minimal or tangential amount of injury").

[24] *See, e.g., Gerald Metals, Inc. v. United States*, 132 F.3d at 722; *Nippon Steel Corp.*, 345 F.3d at 1381.

[25] *Statement of Administrative Action ("SAA") on Uruguay Round Agreements Act*, 103d Cong., H.R. Doc. 103-316, Vol. I at 851-52 (1994) ("[T]he Commission need not isolate the injury caused by other factors from injury caused by unfair imports. . . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."). By law, the SAA is "an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application." 19 U.S.C. § 3512(d). *See also Stainless Steel Bar From France, Germany, Italy, Korea and the United Kingdom*, Inv. No. 701-TA-413 (Final) and Inv. Nos. 731-TA-913-916 and 918 (Final), USITC Pub. 3488 (Feb. 2002) at 21, nn.102 and 103 (the statute does not require the Commission to "subtract out" the injurious effects of other causes, such as non-subject imports).

[26] *See Zenith Radio Corp. v. United States*, 437 U.S. 443,458-59 (1978) (upholding Commerce's construction of countervailing duty statute as reasonable and rejecting arguments that it was premised on false economic assumptions); *see also Altx, Inc. v. United States*, 370 F.3d at 1121-22 (affirming Commission's discretion to refuse to abide by a theoretical economic model: "it alone is not a substitute for considering the factors specified in the statute and the data on the record.").

[27] *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005).

several possible causes of injury exceeds the minimal or tangential threshold and is an independent cause of material injury to the domestic industry is left to the expertise of the Commission, subject to review under the substantial evidence standard. Congress has delegated these factual findings to the Commission because of the agency's institutional expertise in resolving injury issues.[28]

The statutory scheme clearly contemplates that an industry may be facing difficulties from a variety of sources, including non-subject imports and other factors, but the existence of injury caused by other factors does not compel a negative determination if the subject imports themselves are making more than a minimal or tangential contribution to material injury.[29] The legislative history further clarifies that dumped imports need not be the "principal" cause of material injury and that the "by reason of" standard does not contemplate that injury from dumped imports be weighed against other factors, such as non-subject imports, which may be contributing to overall injury to an industry: "Any such requirement has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports."[30] Thus, once the Commission establishes the existence of a causal link between subject imports and material injury, the existence of other concurrent causes is legally irrelevant to its determination.

Similarly, the statute does not permit the Commission to reach a negative determination based on the likely ineffectiveness of an order relative to market penetration or any other standard of effectiveness. The purpose of the statute is not to bar or eliminate subject imports from the U.S. market or award subject import market share to U.S. producers, but is meant instead to "level[] competitive conditions" by imposing a duty on subject imports and thus enabling the industry to compete against fairly traded imports.[31] Indeed, the dumping of subject imports may have no impact on respective market shares, but rather may affect the domestic industry's selling price and profitability.

The statutory scheme in fact contemplates that subject imports may remain in the U.S. market after an order is imposed and even that the industry afterwards may continue to suffer material injury.[32] Congress noted that in five-year reviews the Commission should consider whether the industry remains in a weakened state "due to the possible ineffectiveness of the order."[33] Thus, the statute contemplates that not all orders will be effective in removing injury to the domestic industry relative to market penetration or any other standard and does not ask the Commission to perform an additional inquiry to predict the future impact of import relief. As the Commission has previously explained,

> [N]othing in the statute or case law requires (or allows) us to consider the likely effectiveness of a dumping order in making our injury determination. The possibility that non-subject imports will increase in the future after an antidumping order is imposed is . . . not relevant to our analysis of whether subject imports are currently materially injuring the industry.[34]

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[28] *Nippon Steel Corp*., 458 F.3d at 1350, citing *U.S. Steel Group v. United States*, 96 F.3d 1352, 1357 (Fed. Cir. 1996).

[29] *See SAA* at 851-52, 885.

[30] H.R. Rep. No. 317, 96th Cong., 1st Sess. at 47 (1979); *see also Nippon Steel Corp*., 345 F.3d at 1381 ("[D]umping need not be the sole or principal cause of injury.").

[31] *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1380 (Fed. Cir. 2003).

[32] *SAA* at 883-85, 889-90.

[33] *SAA* at 885.

[34] *Wooden Bedroom Furniture From China*, Inv. No. 731-TA-1058 (Final), USITC Pub. 3743 (Dec. 2004) at 27, n.222.

Thus, the Commission has a well established approach to addressing causation. However, we apply the replacement/benefit test to our analysis because the Court has ordered us to do so, notwithstanding that, in our considered view, this test is not required by the statute. Further, it is not consistent with the discretion accorded this agency under the statutory scheme.[35]

IV. Material Injury to U.S. Industry By Reason of Subject Imports

A. Adoption of Original and First Remand Views

We adopt and incorporate in their entirety into these second remand views the Commission's original views and first remand views which found material injury to the domestic industry by reason of subject imports of silicon metal from Russia.[36] Vice Chairman Aranoff and Commissioners Williamson and Pinkert, who were not members of the Commission at the time of the original investigation or first remand determination, have reviewed the entire record of this proceeding and adopt the Commission's original and first remand views in their entirety.

The Commission's original views and first remand views provide a comprehensive analysis of all the statutory factors we are required to examine with respect to: the domestic like product and domestic industry; conditions of competition; the volume of subject imports; the price effects of subject imports; and the impact of subject imports.

B. Application of *Bratsk* Replacement/Benefit Test

Having reached an affirmative determination of present material injury upon application of the statutorily mandated factors, we now apply the *Bratsk* replacement/benefit test as ordered by the Court on remand: "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."[37] [38]

In applying the test, we consider all the evidence on the record of this investigation, including the evidence gathered and added to the record during this remand proceeding. We determined to reopen the record on remand in order to seek additional information on non-subject imports and to consider the parties' comments on any new information obtained and on the Court's holding in *Bratsk*. During the course of this remand, the Commission sent questionnaires to silicon metal producers in 17 non-subject countries and received responses from foreign producers in four countries and from seven U.S. embassies. The Commission also incorporated information from secondary sources on silicon metal production in non-subject countries during the original period of investigation.

Application of the *Bratsk* replacement/benefit test requires the Commission to attempt to obtain considerable data from non-subject producers in countries not under investigation in order to determine whether these countries are capable of exporting sufficient quantities of the product at issue so as to replace the subject imports, thereby eliminating any benefit of an antidumping duty order to the domestic

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[35] In this regard, we disagree with respondents' statement that "[t]he causation question raised in *Gerald Metals* was essentially this: if the elimination of subject imports during the POI would simply have resulted in non-subject imports filling the void left by the subject imports, then how can the injury to the domestic industry be 'by reason of' subject imports?" Sual Holding and Zao Kremny's Remand Comments at 3. The implication of respondents' analysis is that subject and non-subject imports cannot each be a cause of material injury to the domestic industry – *i.e.*, that subject imports alone or principally must be shown to be *the* cause of material injury for the domestic industry to be entitled to relief. That implication is clearly contrary to what Congress intended.

[36] USITC Pub. 3584, USITC Pub. 3720.

[37] *Bratsk*, 444 F.3d at 1375.

[38] *See* Separate and Additional Views of Chairman Daniel R. Pearson.

industry. This includes data on non-subject producers' excess capacity, third-country markets, trends in their home markets, pricing, and other indicia. Such producers, who are not parties to the proceeding, have no incentive to provide such data to the Commission, and the statute, at 19 U.S.C. § 1677e(b), does not allow the Commission to take adverse inferences against such non-cooperating persons because they would not be "interested parties" under the statute. Arguably, the imposition of an order against imports from the subject country could be advantageous to non-subject producers, and non-subject producers therefore may have little incentive to provide information. In the instant case, the Commission's attempt to gather such data, was, as would be expected, only partially successful but at considerable expense to the Commission,[39] as well as to U.S. embassies in the non-subject countries, which attempted to assist the Commission in collecting the information.

1. Triggering Factors

The Federal Circuit decision states that the replacement/benefit test "is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."[40] Thus, the *Bratsk* test is not required in every investigation, but rather, only in investigations involving a "commodity product" and where "price competitive non-subject imports are a significant factor in the market." The decision thus indicates that the Commission could conclude in certain cases that these criteria are not met and that it therefore does not have to apply the *Bratsk* replacement/benefit test. The CIT remand order further seems to recognize that whether the triggering factors are met is a factual issue for the Commission to decide, as reflected in the CIT's second instruction ("if the Commission finds material injury where fairly traded commodity imports are competitively priced . . ."). [41]

However, based on its reading of findings the Commission made in its original determination, the Federal Circuit appears to have assumed that findings the Commission made in the context of its price effects analysis are equivalent to a finding that the triggering factors are met in the instant case. With respect to the first factor, the Federal Circuit states that "[s]ilicon metal is a commodity product, meaning that it is generally interchangeable regardless of its source."[42] The Commission in its original determination stated that "[s]ilicon metal is generally considered to be a commodity product in that materials of the same grade are interchangeable."[43] The Commission made this finding in the context of addressing price effects. It could not have made the finding in the context of whether the *Bratsk* triggering factor was met, given that the original determination preceded the Court's articulation of the *Bratsk* test. Moreover, the case law is clear that considerations of interchangeability and substitutability differ depending on the purpose of the comparison. It is improper to assume, for example, that simply because goods are generally interchangeable for purposes of the "reasonable overlap of competition" analysis for cumulation, or are interchangeable for purposes of defining the domestic like product, they are "commodities" for purposes of assessing causation, which is the function of the *Bratsk* "test."[44] Simply because the Commission has concluded in one section of its opinion that goods are "generally

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[39] Commission staff (investigative and external relations) spent an estimated $35,500 in attempting to gather additional information for this remand, and this amount does not include the cost of other Commission personnel or U.S. embassy and State Department staff who assisted in this effort. EDIS Document #271057.

[40] *Bratsk*, 444 F.3d at 1375.

[41] CIT Remand Order at 2.

[42] *Bratsk*, 444 F.3d at 1371.

[43] USITC Pub. 3584 at 8.

[44] *Bratsk*, 444 F.3d at 1375.

interchangeable" thus does not logically render such goods "commodities" for purposes of analyzing material injury by reason of subject imports.[45]

Similarly, with respect to the second triggering factor, the Federal Circuit seems to have read the Commission's original findings on price effects as equivalent to a finding that the second factor is met in this case. The Court states that "[n]on-subject imports were present in the U.S. market during the period of investigation and were a significant factor in the U.S. market."[46] With respect to price competitiveness, the Court states that "while the subject imports generally undersold the domestic product, there was evidence that non-subject imports from Brazil, Canada, Saudi Arabia, and South Africa generally undersold the domestic product during the period of investigation."[47] As with the first triggering factor, while the original Commission determination may have recognized the importance of price and of non-subject imports in the U.S. market, it was not in the context of the *Bratsk* test.[48]

As a general matter, whether the triggering factors are met is a factual determination to be made by the Commission based on the record evidence, and is separate from other determinations that the Commission must make. However, given that the record evidence on these issues has not changed, for purposes of our analysis in this remand, we accept the Federal Circuit's apparent assumption that the triggering factors have been met, and we apply the *Bratsk* replacement/benefit test as ordered by the Court.

2. Replacement

We next consider whether non-subject imports would have replaced the subject imports during the period of investigation ("POI"). On the replacement issue, the fact that the imports are commodity products and generally interchangeable might indicate in isolation substitutability or replacement. However, the Federal Circuit noted that the non-subject producers might lack the capacity to fully replace the subject imports in the U.S. market and that "[s]uch a finding would certainly be relevant to the causation analysis under *Gerald Metals.*"[49] Thus, in assessing replacement, we consider not only interchangeability, but the non-subject producers' capacity to fill any void left by subject imports. Other factors might also affect replacement, such as commitments by non-subject producers under long-term contracts, transportation costs, or more attractive third-country markets.

At the end of the original POI, in interim (January-September) 2002, subject imports from Russia were the largest source of imports from any single country, at 26.4 percent of all imports. By volume, subject imports from Russia were 34,153 short tons in 2001, and 32,643 short tons in interim 2002. The next largest sources of imports were Brazil, at 27,953 short tons in interim 2002, South Africa, at 26,731 short tons in interim 2002, and Canada, at 13,046 short tons in interim 2002.[50] The other non-subject sources together accounted for 23,144 short tons in interim 2002. Of these, non-subject sources which

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[45] *See BIC Corp. v. United States*, 964 F. Supp. 391, 397, 399 (Ct. Int'l Trade 1997) ("[L]ike product, cumulation and causation are functionally different inquiries because they serve different statutory purposes . . . . As a result, each inquiry requires a different level of fungibility. Hence the record may contain substantial evidence that two products are fungible enough to support a finding in one context (e.g., one like product), but not in another (e.g., cumulation or causation.").

[46] *Bratsk*, 444 F.3d at 1375.

[47] *Bratsk*, 444 F.3d at 1375.

[48] USITC Pub. 3584 at 8-9.

[49] *Bratsk*, 444 F.3d at 1376.

[50] Original Confidential Staff Report ("CR")/Public Staff Report ("PR") at Table E-2.

each represented more than 1.0 percent of total imports in interim 2002 were Norway, Argentina, China, and Spain.[51]

We find that the evidence is mixed as to whether and to what extent replacement would have occurred. While, as explained below, record evidence on non-subject producers' excess capacity and non-U.S. exports indicates that some replacement would have occurred, other evidence indicates the opposite, including: the existence of antidumping duty orders on imports from Brazil and China during the POI; Argentina's cessation of production in 2001; relatively small and/or declining excess capacity of producers in Canada, South Africa, and Norway; and a focus by producers in China, Norway, and Spain on non-U.S. export markets.

On the one hand, certain evidence on the record indicates that the non-subject imports would have replaced at least a portion of the subject imports. For example, from second quarter to third quarter 2002,[52] the volume of subject imports fell by 12,400 short tons (from 17,573 short tons to 5,173 short tons). The volume of non-subject imports during the same period increased by 9,225 short tons (from 30,076 short tons to 39,301 short tons). This evidence suggests some, although not total, replacement of subject imports by non-subject imports over this limited period.[53]

In addition, non-subject countries theoretically had enough excess capacity and exports to third-country markets to replace the 34,153 short tons of silicon metal from Russia that entered the United States in 2001. In 2001, Brazil had excess capacity of approximately *** short tons and non-U.S. exports of 94,937 short tons; South Africa had excess capacity of *** short tons and non-U.S. exports of *** short tons; Canada had excess capacity of *** short tons and non-U.S. exports of 23,534 short tons; Norway had excess capacity of *** short tons and non-U.S. exports of 159,525 short tons; China had non-U.S. exports of 341,911 short tons; and Spain had excess capacity of *** short tons and non U.S.-exports of 12,875 short tons.[54]

However, the data on non-subject countries' excess capacity and non-U.S. exports in themselves do not establish that producers in any of these countries would have replaced the subject imports with non-subject imports. Indeed, other evidence on the record indicates that at least some of the apparent excess capacity and exports to third-country markets would not have been available for export to the United States.

With respect to Brazil, imports from that country were subject to a U.S. antidumping duty order during the POI. While Brazil continued to export to the United States, the antidumping duty order restrained price competition by these imports, as lower U.S. prices and increased dumping by imports from Brazil would lead to higher dumping margins and deposit rates in future administrative reviews. We note that even Brazilian firms with zero margins would have been subject to the discipline of the order on Brazil during the POI. If these firms were found to be dumping while the order was in effect, Commerce would assess duties through its administrative review process. The existence of the order may also explain the higher unit values for shipments of silicon metal from Brazil to the United States than for shipments from Brazil to Europe; thus, this price differential does not necessarily indicate that the United States would have been a more attractive market than Europe for Brazilian exports. In addition, the record suggests that some of Brazil's reported excess capacity may not have actually been available for Brazilian firms to produce silicon metal. Specifically, data on the record indicate that electricity rationing

[51] INV-EE-015/USITC Pub. 3910 at Table I-1.

[52] The petition was filed on March 7, 2002, and Commerce's preliminary affirmative determination was made on September 20, 2002. While subject imports decreased from the second quarter to the third quarter of 2002, for all of interim (January-September) 2002, the quantity of subject imports was higher than during the same period of 2001. Original CR/PR at Tables E-1, E-2.

[53] Original CR/PR at Table E-1.

[54] INV-EE-015/USITC Pub. 3910 at Tables I-4, I-9, I-10, I-11, I-13, I-15, I-17.

had reduced actual capacity in Brazil to below nameplate capacity and would not have allowed production at full nameplate capacity over the original POI.[55]

Producers in China, like Brazil, were subject to the discipline of a U.S. antidumping duty order during the POI. With a deposit rate of 139.49 percent, the Chinese producers would thus not have been likely to increase significantly their exports to the United States; in fact, they appear to have focused on export markets in Asia.[56] Their exports to the United States declined from 1999 through 2001 and remained a small share of apparent U.S. consumption from 2000 through interim 2002 despite relatively low average unit values ("AUVs").[57] The excess capacity of producers in Canada and South Africa was quite small during the POI.[58] Norwegian producers had declining excess capacity from 1999 through 2001 and a focus on European markets during the POI.[59] Argentina reportedly ceased production of silicon metal in 2000.[60] Producers in Spain exhibited an historic focus on the European market and were not significant participants in the U.S. market during the POI.[61] Although there were relatively low-priced non-subject imports from Saudi Arabia during part of the POI, that country's production of silicon metal was discontinued beginning in 2001 and imports from Saudi Arabia had declined to zero by 2001.[62] [63]

3. Benefit

While the evidence on replacement is mixed, because certain data on the record indicate there might have been some replacement of subject imports by non-subject imports, we next consider whether such replacement would have occurred without any benefit to the domestic industry.

With respect to benefit to the domestic industry, the *Bratsk* opinion indicates that the price of the non-subject imports would be an important consideration: "it may well be that . . . the price of the non-subject imports is sufficiently above the subject imports such that the elimination of the subject imports would have benefited the domestic industry."[64] In other words, if the non-subject imports would have fully replaced the subject imports, but at a higher price than the subject imports (even if the price were lower than that of the domestic product), domestic prices could have increased somewhat, providing some relief to any price depression or suppression and thus a benefit to the domestic industry. Non-price factors, such as availability and technical support, may also be relevant to our analysis of benefit.

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[55] INV-EE-015 at I-36-37, USITC Pub. 3910 at I-23.

[56] INV-EE-015 at I-46, USITC Pub. 3910 at I-30-31.

[57] INV-EE-015/USITC Pub. 3910 at Tables I-1, I-2, I-11.

[58] INV-EE-015/USITC Pub. 3910 at Table I-4.

[59] INV-EE-015 at I-55-56, Tables I-13, I-14, USITC Pub. 3910 at I-36-37, Tables I-13, I-14.

[60] INV-EE-015 at I-32, USITC Pub. 3910 at I-20.

[61] INV-EE-015 at I-69-72, USITC Pub. 3910 at I-44.

[62] INV-EE-015 at I-63, Table I-3, USITC Pub. 3910 at I-40, Table I-3.

[63] We note that certain post-POI data, discussed in the next section, also indicate that any replacement by non-subject imports would not have been total in that U.S. producers were able to negotiate contracts for increased volumes at the end of the POI, after imports from Russia left the U.S. market due to Commerce's preliminary affirmative determination. Globe and SIMCALA's Posthearing Brief at 12, Exhibits 7, 8; GE Silicones' Posthearing Brief at Exhibit B-2. While we do not base our finding of material injury by reason of the subject imports on this post-POI information, it is consistent with our conclusion that the evidence on replacement is mixed and there would not have been total replacement of subject imports by non-subject imports.

[64] *Bratsk*, 444 F.3d at 1376.

The record contains purchaser price data on the largest non-subject import sources – Brazil, Canada, South Africa, and Saudi Arabia – as well as on subject imports and the domestic product.[65] The purchaser price data represent *** percent of the quantity of non-subject imports in 2001, *** percent of the quantity of domestically produced commercial shipments in 2001, and *** percent of the quantity of subject imports in 2001.[66] Brazil, Canada, and South Africa, together with Russia, accounted for 82.3 percent of total imports of silicon metal in 2001.[67] The purchaser price data, which cover all three silicon metal sectors – secondary aluminum, primary aluminum, and chemical – show that the subject imports undersold the non-subject imports in 42 of 56 comparisons, that the subject imports undersold the domestic product in all comparisons, at margins ranging from *** to *** percent and averaging *** percent, and that the non-subject imports undersold the domestic product in 44 of 56 comparisons, at underselling margins ranging from *** to *** percent and averaging *** percent.[68]

While not as reliable as purchaser price data, the AUV data[69] are consistent with what the pricing data show: that the subject imports were generally priced lower than the non-subject imports.[70] These data, which also break out Brazil, Canada, and South Africa, show that the AUVs of imports from the individual non-subject countries were always higher on a full-year and interim year basis than the AUVs of imports from Russia.[71] On a quarterly basis, subject import AUVs were also lower than the AUVs for all non-subject imports, except for four quarters when South African AUVs were lower and one quarter when all other non-subject import AUVs were lower.[72]

The record also contains data on the quantities, prices, and AUVs of both subject and non-subject imports during the POI into the chemical sector, the most important sector for U.S. product.[73] While the portion of imports from Russia into the chemical sector increased substantially over the POI, from *** percent in 1999 to *** percent in 2001, the portion of non-subject imports into this sector, although higher, declined.[74] Moreover, the record shows that the AUVs of the non-subject imports, while below those of the U.S. product, were higher than those of the subject imports throughout the period investigated.[75] The pricing data likewise show that 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.[76]

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[65] Original CR/PR at Tables V-4-6.

[66] Original CR/PR at V-6, n.10.

[67] Original CR/PR at Figure I-3, n.1. Saudi Arabia reportedly ceased production of silicon metal in 2001. INV-EE-015 at I-63, USITC Pub. 3910 at I-40.

[68] Original CR/PR at Tables V-4-6; Staff Table 2.

[69] We are mindful that the use of AUVs for establishing price trends may present product mix issues in that values may reflect different merchandise rather than differences in price. *See Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365, 1373-74 (Fed. Cir. 2002). However, this is less of a concern where, as here, we have applied the *Bratsk* analysis consistent with the Federal Circuit's statement that silicon metal "is generally interchangeable regardless of its source." *Bratsk*, 444 F.3d at 1371.

[70] Original CR/PR at Figure I-3, Table IV-2.

[71] Original CR/PR at Table IV-2.

[72] Original CR/PR at Table E-1.

[73] Original CR/PR at Tables I-2, I-3, V-6.

[74] Original CR/PR at Table I-2.

[75] Original CR/PR at Table I-3. AUVs for U.S. importers' shipments of non-subject imports were higher than those for their shipments of subject imports from Russia in 13 out of 15 comparisons. *Id. See also* INV-EE-015/USITC Pub. 3910 at Figure I-2.

[76] Original CR/PR at Table V-6.

Thus, the record shows that non-subject imports consistently oversold the subject imports from Russia. The data indicate that even if the non-subject imports replaced some of the subject imports, the domestic industry would nonetheless have derived a price benefit from imposition of the order. Higher prices would have provided some relief to the domestic industry from the price depressing and suppressing effects of the subject imports in that domestic producers would have been able to raise their prices to some degree or at least maintain prices rather than suffer price declines.

We therefore find that there would have been a benefit to the domestic industry upon any replacement of subject imports by non-subject imports, given the generally higher prices of the non-subject imports as compared to the subject imports during the POI. We therefore continue to find, in applying the *Bratsk* replacement/benefit test, that the U.S. industry producing silicon metal is materially injured by reason of subject imports from Russia.

As described above, the Federal Circuit also noted evidence cited in the Commission's opinion that, when imports from Russia left the U.S. market after Commerce's preliminary affirmative determination in September 2002, spot prices increased and prices for 11 domestic contracts increased. The Court found that, while this evidence may be "pertinent to the causation question," the Commission failed "to address directly the causation issue in detail as required by *Gerald Metals*" and "did not explain how much the spot prices increased, the significance of that increase, or the significance of the eleven contracts for the domestic market."[77]

As we stated in our original determination, we do not base our finding of material injury by reason of the subject imports on these post-POI data, but we do find that it is consistent with our affirmative determination and with our conclusion above that the domestic industry would have benefited from imposition of an order on the subject imports. We provide here further explanation of the data, in accordance with the Federal Circuit's decision.

The data show that U.S. producers made both spot and contract sales at higher prices and were able to expand their volume of sales after subject imports left the market.[78] For Globe, the data show that *** contracts renegotiated at the end of 2002 for delivery in 2003 represented an *** ton increase in sales volumes and higher prices, ranging from $*** to $*** per pound for 2003, as compared to prices ranging from $*** to $*** per pound for 2002. Globe's *** 2003 contracts likewise showed an increase in volume of *** tons over 2002 volumes and higher prices, ranging from $*** to $*** per pound for 2003 as compared to $*** per pound for 2002. Globe's *** contracts for 2002 showed an increase in volume of *** tons over 2002 levels and higher prices, in the range of $*** to $*** per pound in 2003 as compared to $*** per pound in 2002.[79] The *** contracts alone renegotiated by Globe at the end of the POI for 2003 represented a *** percent increase over its *** contract volumes for 2002. For all contracts that Globe renegotiated at the end of 2002 for 2003, the 2003 volumes were *** percent higher than the 2002 volumes.[80] The increase in value of Globe's total contract sales in 2003 was approximately $***,[81] which represents approximately *** percent of Globe's net sales value in 2001 of $***.[82]

Likewise, SIMCALA reported *** short tons of new *** sales in *** 2002, increasing to *** short tons in *** 2003.[83] These new sales were at prices ranging from $*** to $*** per pound, as

[77] *Bratsk*, 444 F.3d at 1375-76.

[78] Globe and SIMCALA's Remand Comments at 9.

[79] Globe and SIMCALA's Posthearing Brief at Exhibit 7.

[80] Staff Table 1, derived from Globe and SIMCALA's Posthearing Brief at Exhibit 7.

[81] Staff Table 1, derived from Globe and SIMCALA's Posthearing Brief at Exhibit 7.

[82] Original CR/PR at Table VI-2.

[83] Globe and SIMCALA's Posthearing Brief at Exhibit 8.

compared to prices below $*** per pound during the first three quarters of 2002.[84] Furthermore, the rising contract and spot prices and increased sales volumes allowed *** domestic producers to restart furnaces which had been shut down due to lack of orders at prices sufficient to cover operating costs.[85] [86]

Independent industry sources likewise noted the recovery in silicon metal spot prices in the United States at the end of 2002 and the first quarter of 2003 and attributed such recovery to the preliminary antidumping duties on silicon metal from Russia and the exit of Russian product from the U.S. market. They further predicted a rebound in silicon metal output by U.S. producers, notwithstanding some increase in imports to the United States from other suppliers.[87] Thus, the changes in the market that actually occurred after the Commission's preliminary determination and Commerce's consequent suspension of liquidation corroborate our finding that non-subject imports would not have replaced subject imports with no benefit to the domestic industry.

V. Conclusion

Based on the Commission's original and first remand determinations, incorporated herein in their entirety, and after applying the *Bratsk* replacement/benefit test as ordered by the Federal Circuit and the CIT, we find that the domestic industry producing silicon metal is materially injured by reason of subject imports from Russia that Commerce has found to be sold at LTFV.

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[84] Globe and SIMCALA's Posthearing Brief at 12, Exhibit 8.

[85] Hearing Transcript at 20, 28; Globe and SIMCALA's Posthearing Brief at 12; Globe and SIMCALA's Remand Comments at 12.

[86] Data provided by GE Silicones, a respondent in the original investigation and a purchaser of silicon metal, do not detract from this conclusion. While the data show an increase in GE Silicones' purchases from non-subject countries in 2003, most notably from ***, and a decline in its purchases of Russian product, the data also show an increase in purchases from domestic producer ***. Although the 2003 price is lower than the 2002 price, the increased volumes mean increased sales value for *** of over $*** in 2003 as compared to 2002. GE Silicones' Posthearing Brief at Exhibit B-2.

[87] Original CR/PR at V-3, n.1 ("Metals Week price data . . . show that silicon metal prices have increased since the filing of the petition. According to ***, independent industry sources attribute the recovery in silicon metal prices to the exit of Russian imports from the U.S. market."); Globe and SIMCALA's Prehearing Brief at Exhibit 21 (***).

SEPARATE AND ADDITIONAL VIEWS OF CHAIRMAN DANIEL R. PEARSON

I. Legal Issues Concerning *Bratsk Aluminum Smelter v. United States*

In the present case, the Court of Appeals for the Federal Circuit reaffirmed that the requisite causal link to subject imports is not demonstrated if such imports contributed only "'minimally or tangentially to the material harm.'"[1] Applying that standard to the underlying investigation involving a commodity product, *i.e.*, silicon metal, and the significant presence of non-subject imports, the Court held that the Commission had not sufficiently explained whether non-subject imports simply would have replaced subject imports during the period of investigation had an antidumping order been in place and continued to cause injury to the domestic industry.[2]

As a threshold matter, it is not immediately clear how I should interpret the *Bratsk* opinion in terms of its effect on my analysis of causation in this remand. I can discern at least two possible interpretations which differ substantially: (1) that *Bratsk* mandates application of an additional test apparently not contemplated by the statute (the so-called "replacement/benefit test"), and (2) that *Bratsk* is a further development of the causation approach prescribed by *Gerald Metals*.

A. Separate Causation Analysis – Replacement/Benefit Test

The statute sets forth specific factors for the Commission to consider in analyzing the volume, price effects and impact of subject imports. 19 U.S.C. § 1677(7). The Uruguay Round Agreements Act Statement of Administrative Action ("SAA") explains further that in analyzing causation the Commission must examine factors other than subject imports to ensure that it is not attributing injury from these sources to the subject imports, but is not required to isolate the injury caused by other factors from injury caused by unfair imports.[3] Beyond this, the statute does not provide any further limitations on how the Commission's causation analysis shall be conducted.

The Court's decision, however, states that the Commission must perform an additional "specific" causation analysis in the form of a replacement/benefit test. Using somewhat varying phrasing, the Court stated that the Commission must determine "whether non-subject imports would have replaced subject imports without any beneficial effect on domestic producers," must "explain why the elimination of subject imports would benefit the domestic industry instead of resulting in the non-subject imports' replacement of the subject imports' market share without any beneficial impact on domestic producers," and must explain "why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry."[4]

Such a "replacement/benefit" test is not among the statutory factors Congress has required the Commission to consider. The statutory scheme contemplates that subject imports may remain in the U.S. market after an order is imposed and even that the industry afterward may continue to suffer material

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[1] 444 F.3d 1369, 1373 (Fed. Cir. 2006), *quoting Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997).

[2] *Bratsk*, 444 F.3d at 1375-1376.

[3] H.R. Doc. No. 103-316, Vol. I (1994) at 851-52 ("SAA"); *Taiwan Semiconductor Industry Ass'n v. United States*, 266 F.3d at 1339, 1345 (Fed. Cir. 2001).

[4] *Bratsk*, 444 F.3d at 1375, 1376.

injury.[5] Thus, the decision in *Bratsk* misconstrues the purpose of the antidumping and countervailing duty laws, which is not to bar subject imports from the U.S. market or award subject import market share to U.S. producers, but instead to "level[] competitive conditions" by imposing a duty on subject imports at a level to offset the amount of dumping or subsidization and thus enabling the industry to compete against fairly traded imports.[6] It is not uncommon for subject imports to remain in the U.S. market in significant quantities even after the issuance of an antidumping or countervailing duty order, as shown by the hundreds of millions of dollars in antidumping and countervailing duties collected every year.

Bratsk, therefore, appears to require that the Commission apply an extra-statutory causation test with respect to non-subject imports and to determine that the domestic industry will benefit from the antidumping duty or countervailing duty order. I respectfully disagree with the Court that such a causation analysis is legally required.[7] However, given this remand, I join my colleagues' interpretation of the *Bratsk* standard and perform the analysis in the Commission's remand views as we once again adopt our affirmative material injury determination.

B. *Gerald Metals* Causation Analysis

Alternatively, I also find support for interpreting the *Bratsk* decision to be reminding the Commission of its obligation under *Gerald Metals* that the Commission may not satisfy the "by reason of" causation requirement by showing that subject imports contributed only "minimally or tangentially to the material harm."[8]

This may be a reasonable interpretation of the *Bratsk* decision as the Court noted that the "sole point of contention in this appeal is whether the Commission established that the injury to the domestic industry was 'by reason of' the subject imports."[9] In explaining its conclusion, the Court emphasized that the Commission had "dismissed" *Gerald Metals* as being factually distinguishable[10] and explained its holdings in *Gerald Metals* and *Taiwan Semiconductor*.[11] Further, the Court noted that:

> *Gerald Metals* thus requires the Commission to explain why – notwithstanding the presence and significance of the non-subject imports – it concluded that the subject imports caused material injury to the domestic industry. While there may be support for

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[5] SAA at 851-52, 885, 889-90. The Commission has indicated that the possibility that an order might not be effective does not preclude a finding of present material injury. The Commission also has concluded that the statute does not provide for the Commission to perform an additional injury test to predict the future effectiveness of import relief:

> {W}e note that nothing in the statute or case law requires (or allows) us to consider the likely effectiveness of a dumping order in making our injury determination. The possibility that non-subject imports will increase in the future after an antidumping order is imposed is . . . not relevant to our analysis of whether subject imports are currently materially injuring the industry.

Wooden Bedroom Furniture From China, Inv. No. 731-TA-1058 (Final), USITC Pub. 3743, n.222 (Dec. 2004).

[6] *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1380 (Fed. Cir. 2003).

[7] The Commission set out in detail its objections to the Court's decision in its petition for rehearing to the Federal Circuit. See Petition for Rehearing en Banc (May 25, 2006), *Bratsk Aluminum Smelter et al. v. United States*, 444 F.3d 1369 (Fed. Cir. 2006)(No. 05-1213) (petition denied July 24, 2006).

[8] *Gerald Metals*, 132 F.3d at 722.

[9] *Bratsk*, 444 F.3d at 1372.

[10] *Bratsk*, 444 F.3d at 1375.

[11] *Bratsk*, 444 F.3d at 1373-1375.

> the Commission's ultimate determination of material injury in the record here, we find that the Commission did not sufficiently explain its decision in this regard.[12]

Therefore, the Court may not have been creating an extra-statutory causation test, but rather was simply reminding the Commission of its existing obligation under the statute, as explained by Federal Circuit precedent. In other words, the *Bratsk* Court's relatively short discussion of the underlying determination may not have established a new and rigid replacement/benefit test. Rather, the Court may have discussed the triggering factors (*i.e.*, commodity product and price-competitive non-subject imports) and the replacement/benefit factors (*i.e.*, whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers)[13] as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports.

The statute requires the Commission to determine whether the domestic industry is "materially injured by reason of" the unfairly traded imports.[14] Thus, the Commission must evaluate the effects of the unfairly traded imports on the domestic industry in order to determine if those imports are causing material injury. In most investigations, there are other economic factors that also may be causing injury to the domestic industry. The statute's legislative history states that the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."[15] The statute is clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury.[16] The Commission must analyze the effects of the unfairly traded imports and other relevant factors in a way that enables the Commission to conclude that it has not attributed the effects of other factors to the subject imports.

If this interpretation of *Bratsk* is correct, then I concur with the Federal Circuit that we are required to identify and assess the competitive effects of subject imports to ensure that they contribute more than "minimally or tangentially to the material harm" of the domestic industry.

II. Application of the *Gerald Metals* Causation Analysis

The CIT approved the Commission's finding that subject import volume was significant[17] and also approved the Commission's finding of significant price effects.[18] Neither the Federal Circuit nor the CIT remanded the Commission's finding that the domestic industry was suffering material injury. I believe that the Commission's original and remand opinions covered in depth the causal link between subject imports and the injury experienced by the domestic industry. I again adopt those views as my own, and add the following.

As the Commission noted in its original views, silicon metal is generally considered to be a commodity product. Materials of the same grade are considered interchangeable by producers and purchasers, regardless of source. Pricing is thus a primary consideration for purchasers. A significant portion of the domestic like product is sold by contract, but the contracts may not fix volumes and may contain mechanisms for price adjustment. Spot prices, such as those published in *Metals Week* or *Ryan's*

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[12] *Bratsk*, 444 F.3d at 1375.

[13] *Bratsk*, 444 F.3d at 1375.

[14] 19 U.S.C. § 1673d(b).

[15] S. Rep. No. 249, 96th Cong., 1st Sess. 46-47 (1979).

[16] S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47.

[17] *Bratsk*, Slip Op. 04-75 at 14 (Ct. Int'l Trade June 27, 2004).

[18] *Bratsk*, Slip Op. 04-153 at 2 (Ct. Int'l Trade Dec. 3, 2004).

Notes, can affect contract prices.[19] Nonsubject imports are a significant presence in the U.S. market. Imports from Brazil and China are restrained by antidumping orders. By 2001, Russia had overtaken Canada as the second leading source of silicon metal imports in the U.S. market, while the import volume from South Africa, the leading single source, declined between 2000 and 2001. In interim 2002, Russia was the leading source for silicon metal imports into the U.S. market.[20]

Between 1999 and 2001, domestic production capacity was reduced by 18.6 percent. Production capacity in interim 2002 was 2.5 percent lower than in interim 2001. Domestic production declined even more sharply. Domestic production in 2001 was down 30.6 percent from the 1999 level. In interim 2002, domestic production was 23.8 percent lower than in interim 2001. The domestic industry's share of apparent U.S. consumption in 2001 was 54.6 percent; as recently as 1999, it had been 62.2 percent. U.S. shipments of the domestic like product were 24.7 percent lower in 2001 than in 1999; shipments in interim 2002 were 29.7 percent below interim 2001 levels. The average unit value ("AUV") for those shipments was 5.5 percent lower in 2001 than in 1999; the AUV for interim 2002 shipments was down 3.7 percent below interim 2001 values.[21]

In interim 2002, the domestic industry accounted for only 39.7 percent of apparent U.S. consumption; in interim 2001, it had accounted for 55.4 percent. In 1999, the domestic industry earned an operating income equivalent to 8.6 percent of sales; in 2001, its operating losses were equivalent to 4.7 percent of sales. In interim 2002, operating losses were equivalent to 11.4 percent of sales. The domestic industry registered significant losses in the number of production workers, hours worked, wages paid, the value of net sales, and capital expenditures between 1999 and 2001. Most of those measures were also lower in interim 2002 than in interim 2001.[22] In virtually every measurable category, the domestic industry suffered significant losses over the POI.

The volume of subject imports was significant over the POI.[23] Both the volume and the increase in the volume of subject imports was significant both absolutely and relative to apparent domestic consumption. Subject imports increased relatively, taking market share from the domestic industry. But the volume of subject imports also increased absolutely in volume, despite an overall decline in apparent U.S. consumption. In 2000 the domestic industry lost market share to nonsubject imports; in 2001, both the domestic industry and nonsubject imports lost market share to subject imports.[24]

The volume data thus show that subject import volume increased both absolutely and relatively, that these increases came at least partially at the expense of the domestic industry, and came at a time when overall apparent U.S. consumption was declining. Pricing data suggest that subject imports had significant effects on domestic prices as well. Subject imports consistently undersold the domestic like product. For product 1, sold to primary aluminum manufacturers, subject imports undersold the domestic like product in 13 of 15 quarters; for product 2, subject imports undersold in 11 of 15 quarters. Prices received by the domestic industry declined, as did sales volume. The effect was particularly noticeable for product 2: in the first quarter of 2002, prices were down nearly *** percent, but sales quantity was down *** percent for the domestic like product, but subject import sales had skyrocketed as prices fell and underselling margins generally widened.[25] Subject imports also generally undersold nonsubject

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[19] *Silicon Metal from Russia*, Inv. No. 731-TA-991 (Final), USITC Pub. 3584 (Mar. 2003) at 7-9.

[20] INV-EE-015 at Table I-1, USITC Pub. 3910 at Table I-1.

[21] Original CR/PR at Table C-1.

[22] Original CR/PR at Table C-1.

[23] The CIT specifically found the Commission's finding that the volume of subject imports was significant to be supported by substantial evidence. *Bratsk*, Slip Op. 04-75 at 14 (Ct. Int'l Trade June 27, 2004). The Federal Circuit made no comment on the Commission's finding.

[24] Original CR/PR at Table C-1.

[25] Original CR/PR at Tables V-1 and V-2.

imports in the U.S. market.[26] Domestic producers provided several allegations of lost sales and lost revenue that were substantiated by purchasers.[27]

The domestic industry's shipments declined as the volume of subject imports increased significantly, and the industry lost market share to those subject imports. The record shows that subject imports consistently undersold the domestic like product when those products competed in the same markets. While the record indicates that subject imports were distributed somewhat differently across channels of distribution, it also indicates that some spot prices can affect the prices received for silicon metal of other grades sold in other channels, as those spot prices are among the few prices widely known and published. The domestic industry's performance suffered significantly in the wake of the increase in subject import volume, underselling, and price declines.

The record contains substantial evidence showing that subject imports had a causal connection to the injury experienced by the domestic industry. Record evidence for the period of time after this investigation was instituted and after preliminary affirmative determinations were made further support the finding that subject imports were a cause of material injury to the domestic industry. After preliminary affirmative determinations were made by Commerce and the Commission, the flow of subject imports was cut off. When subject imports were removed from the market, prices for the domestic like product rose significantly; over an eleven-month period prices rose by 22 percent. Domestic producers were not only able to capture significant price increases but were also able to expand sales volume. One domestic producer's increased sales rose by *** percent in the period immediately following preliminary relief; the value of those sales increased from $***.[28]

Nonsubject imports were in the U.S. market throughout the POI. However, as noted both in the original views and in these remand views, nonsubject import volume actually declined between 2000 and 2001, when the domestic industry was beginning to suffer its most significant losses. Subject imports, conversely, were rising, both absolutely and relatively. All available record evidence, including AUVs and purchaser pricing reports, indicates that subject imports generally undersold nonsubject imports as well. Removing subject imports from the U.S. market allowed the domestic industry to capture both higher prices and additional sales volumes; this pattern further suggests that subject imports were a significant factor suppressing and depressing prices over the POI. The post-relief data suggest that subject imports affected the U.S. market and domestic producers somewhat differently than did nonsubject imports.

For those reasons, and those articulated in the Commission's original views and its first remand determination, I find that an industry in the United States is materially injured by reason of subject imports of silicon metal from Russia that are sold in the United States at less than fair value.

[26] Original CR/PR at Tables V-4, V-5, and V-7

[27] Original CR/PR at Tables V-8 and V-9.

[28] Domestic Producers' Remand Comments at 7-12.

INFORMATION GATHERED IN THE REMAND PROCEEDING

BACKGROUND

In March 2003, the U.S. International Trade Commission ("Commission") determined that an industry in the United States was materially injured by reason of imports from Russia of silicon metal.[1] Respondents Bratsk Aluminum Smelter and Rual Trade Limited ("plaintiffs")[2] appealed the Commission's determination to the U.S. Court of International Trade ("CIT"). On June 22, 2004, the CIT remanded the case to the Commission with instructions to: "(1) explain its reasons for accepting evidence that 'spot' prices may affect contract prices while rejecting contradictory evidence; (2) explain the significance or effect of the similar pricing trends of the different market segments; and (3) if the Commission cannot provide sufficient reasons or explanations, to change its determination accordingly."[3]

On September 15, 2004, the Commission filed its remand determination with the CIT. On December 3, 2004, the CIT affirmed the Commission's remand determination in its entirety and dismissed the case.[4] Plaintiffs appealed the CIT's dismissal to the U.S. Court of Appeals for the Federal Circuit ("CAFC"). On April 10, 2006, the CAFC vacated and remanded the CIT's decision so that the CIT would remand the case back to the Commission "to make a specific causation determination and in that connection to directly address whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."[5]

On May 25, 2006, the Commission submitted a petition for rehearing en banc before the CAFC and on July 24, 2006, the petition was denied. On July 28, 2006, the Commission petitioned the CAFC to stay issuance of the mandate to the CIT while the Commission, through the Office of the Solicitor General, considered the filing of a petition for certiorari. On August 7, 2006, the CAFC denied the motion to stay and remanded the case to the CIT. On August 17, 2006, the CIT remanded the case to the Commission. The Commission then filed a motion to stay the remand proceedings at the CIT pending a decision on whether to seek certiorari. On September 22, 2006, the CIT granted the stay. On December 20, 2006, the Commission informed the CIT that it would not be seeking certiorari at this time. On December 22, 2006, the CIT entered an order lifting the stay and instructing the Commission to submit its remand results to the CIT within ninety (90) days, or by March 22, 2007.

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[1] *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final)*, USITC Publication 3584, March 2003, p. 1. The subject product is silicon metal which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight, and 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 was provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States.

[2] Plaintiff-Intervenors included SUAL Holding, ZAO Kremny, and General Electric Silicones LLC.

[3] *Bratsk Aluminum Smelter v. United States*, Slip Op. 04-75, CIT 2004, June 22, 2004, ("Bratsk I").

[4] *Bratsk Aluminum Smelter v. United States*, Slip Op. 04-153, CIT 2004, December 3, 2004, ("Bratsk II").

[5] *Bratsk Aluminum Smelter v. United States*, 444 F.3d 1369, 1375 (Fed. Cir. 2006) ("Bratsk III").

Summary information related to this remand proceeding is presented below.[6]

Date	Action
March 7, 2002	Petition filed with Commerce and the Commission[1]
March 24, 2003	Commission's final determination published in the *Federal Register* (68 FR 14260)
September 15, 2004	Commission's first remand determination of material injury transmitted to the CIT
April 10, 2006	CAFC vacated the CIT's affirmation of the Commission's first remand determination and ordered a second remand
July 24, 2006	CAFC denied Commission's request for rehearing *en banc*
August 17, 2006	CIT ordered second remand
December 22, 2006	CIT lifted stay on remand order
January 10, 2007	Commission issued notice and scheduling of remand proceeding (72 FR 1242)
February 16, 2007	Commission released new information gathered in the remand proceeding to the parties
February 27, 2007	Final comments of parties submitted to the Commission
March 22, 2007	Commission transmitted its second remand determination to the CIT

[1] Petitioners included 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.

COURT ORDERS AND THE COMMISSION'S COMPLIANCE METHODOLOGY

The CAFC's decision In *Bratsk Aluminum Smelter v. United States* requires that the Commission undertake an additional analysis of nonsubject imports if certain preconditions are met. This analysis is triggered "whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market."[7] In those situations, the Commission is directed to address "whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers."[8]

Accordingly, in its August 17, 2006 order, the CIT:[9]

> *REMANDS this case to the Commission to specifically address whether the non-subject imports would have replaced subject imports during the period of investigation; and it is further*

[6] *Federal Register* notices cited in the tabulation are presented in app. A.

[7] Bratsk III, p. 11. In its determination in the final investigation, the Commission found that "(s)ilicon metal is generally considered to be a commodity product in that materials of the same grade are interchangeable" and "(n)onsubject imports are an important factor in the U.S. market." *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final),* USITC Publication 3584, March 2003, p. 9.

[8] Bratsk III, p. 9.

[9] *Bratsk Aluminum Smelter v. United States,* CIT ORDER, Consol. Court No. 03-00200, August 17, 2006, p. 2.

ORDERED that if the Commission finds material injury where fairly traded commodity imports are competitively priced, the Commission must explain, in a meaningful way, why the non-subject imports would not replace the subject imports while continuing to cause injury to the domestic industry. . .”

During this remand proceeding, the Commission determined to reopen the record of the original investigation in order to gather additional information and respond to the CIT's order. In that regard, the Commission issued foreign producer questionnaires to 33 firms in 17 countries,[10] sent cables seeking information to U.S. embassies in 17 nonsubject countries, compiled global trade data from secondary-source statistical service providers, and conducted a review of literature published during 2002.

The countries and firms from which the Commission sought information are presented in the following tabulation:

Country	Firm
Argentina	***
Australia	***
Bosnia Hercegovina	***
Brazil	CCBM ***
Canada	***
China	***
France	Ferropem
Germany	***
Hungary	***
Italy	Metalleghe Group
Norway	***
Philippines	***
Saudi Arabia	***
South Africa	Silicon Smelter (Pty) Ltd.
Spain	***
Poland	***
Ukraine	***

The Commission received responses to its foreign producer questionnaires from four of the above identified firms: CCBM, Brazil; Ferropem (successor to INVENSIL SAS), France; Metalleghe, Italy; and Silicon Smelters (Pty) Ltd., South Africa. The Commission also received responses from seven U.S. embassies during this remand investigation: Buenos-Aires, Ottawa, Berlin, Rome, Oslo, Kyiv, and Pretoria.

Information presented in this memorandum relates to capacity, production, inventories, exports, and imports of silicon metal for countries other than Russia, during the original period of investigation: January 1999-September 2002 (and projections for 2002-03 in foreign producer questionnaires). Summary data are presented in appendix C. Because information relating to the pricing of nonsubject imports was contained in the record of the original investigation, the Commission determined that it would not reopen the record on pricing. The information presented in this remand memorandum is

[10] The list of firms and countries queried was developed from information on foreign production of silicon metal provided by *** (e-mail dated September 25, 2006), in conjunction with an analysis of official Commerce U.S. import statistics.

intended for use in conjunction with the confidential staff report issued during the original investigation, INV-AA-017, dated February 24, 2003.

U.S. IMPORTS AND APPARENT U.S. CONSUMPTION

As found by the Commission in its original determination, "major nonsubject import sources include Brazil, Canada, and South Africa."[11] In addition, the Commission noted the existence of outstanding antidumping duty orders on imports of silicon metal from Brazil and China, and the revocation of the antidumping duty order on imports from Argentina on February 16, 2001.[12] Following revocation of the order, U.S. imports of silicon metal from Argentina increased from zero in 1999 and 2000, to 3,079 short tons in 2001.[13] U.S. imports of silicon metal from Argentina were 1,920 short tons between January and September 2001 and 5,340 short tons between January and September 2002. While U.S. imports of silicon metal from Argentina increased during the original period of investigation, the quantities involved were small as a share of U.S. apparent consumption: 2.6 percent at their highest level during the period January to September 2002.

Table I-1 presents a detailed listing of U.S. imports from nonsubject sources (including countries subject to antidumping duty orders) which supplements the information presented in table IV-1 of the staff report in the original investigation. Nonsubject shares of U.S. imports of silicon metal declined by 6.5 percentage points from 79.5 percent to 73.0 percent during 1999-2001, and declined by 4.1 percentage points to 73.6 percent during January-September 2002 when compared to the same period in 2001. Respective shares (percent) of U.S. imports from nonsubject sources with average unit values above and below imports from Russia during the five periods of the original investigation are: ABOVE–83.2, 81.3, 91.5, 86.0, and 93.1 percent; BELOW–16.8, 18.7, 8.5, 14.0, and 6.9 percent (*see* figures I-1 and I-2).

Apparent U.S. consumption and market shares are presented in table I-2. 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 during January-September 2001, and 44.4 percent during January-September 2002. Of the nonsubject sources, imports of silicon metal from South Africa accounted for the largest share of apparent U.S. consumption during 2001, at 12.7 percent, followed by Brazil and Canada at 6.2 percent each.

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[11] *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final),* USITC Publication 3584, March 2003, p. 9.

[12] Ibid., p. 9 and table I-1. In 2001, the Commission determined that revocation of the order on silicon metal from Argentina was not likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time. *Silicon Metal from Argentina, Brazil, and China, Inv. Nos. 731-TA-470-472 (Review),* USITC Publication 3385, January 2001, p. 1. The Commission reached this determination given that the industry in Argentina had been reduced to a single firm whose production (i) was not certified for the U.S. market and (ii) was destined primarily for the European Union. Ibid. The Commission determined that imports from Argentina would have no discernible adverse impact on the U.S. domestic industry.

[13] This 3,079 short tons of material is *** the estimated actual production of silicon metal in Argentina in 2001 according to *** data. *See* tables I-1 and I-3 herein.

Table I-1
Silicon metal: U.S. imports, by source, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Quantity (*short tons of contained silicon*)				
Russia	25,158	24,643	34,153	20,718	32,643
Brazil	12,429	22,385	17,309	14,722	27,953
China	3,237	4,958	4,292	2,876	4,132
Subtotal, Brazil and China	15,666	27,343	21,600	17,598	32,086
South Africa	28,184	40,329	35,305	29,690	26,731
Canada	25,044	27,347	17,281	12,931	13,046
Norway	8,050	3,293	5,114	4,086	7,221
Spain	942	0	3,453	1,092	1,619
Argentina	0	0	3,079	1,920	5,340
Korea	620	8,967	2,395	2,395	741
Saudi Arabia	12,930	7,938	1,182	1,182	981
United Arab Emirates	0	109	1,036	430	562
Germany	190	656	815	247	1,158
Australia	2,216	159	482	285	434
United Kingdom	462	492	369	266	1
Sweden	17	35	80	59	23
Ukraine	306	0	44	0	113
Belgium	0	1	43	43	10
France	2,397	2	1	1	1
All others	475	237	0	0	807
Subtotal, nonsubject	97,499	116,908	92,279	72,226	90,875
Total	122,657	141,551	126,431	92,945	123,519
	Value[1] (*1,000 dollars*)				
Russia	26,201	25,529	35,325	22,936	30,272
Brazil	17,203	29,535	22,650	19,348	36,428
China	2,885	4,029	3,439	2,357	3,146
Subtotal, Brazil and China	20,088	33,564	26,090	21,705	39,575
South Africa	32,195	43,583	36,120	30,278	26,976
Canada	34,064	33,516	19,987	14,943	13,481
Norway	11,967	5,324	7,787	6,206	8,818
Spain	1,043	0	3,503	1,111	1,596
Argentina	0	0	3,043	1,894	5,385
Korea	647	8,510	2,301	2,301	696
Saudi Arabia	13,306	7,784	1,162	1,162	884
United Arab Emirates	0	110	984	416	504
Germany	372	1,002	1,234	390	1,964
Australia	2,929	161	538	315	479
United Kingdom	668	670	522	376	12
Sweden	137	233	527	389	261
Ukraine	345	0	44	5	94
Belgium	0	8	549	549	106
France	3,505	9	22	17	3
All others	967	346	8	8	774
Subtotal, nonsubject	122,231	134,819	104,420	82,064	101,608
Total	148,432	160,349	139,745	105,000	131,881

Table continued on next page.

Table I-1--*Continued*
Silicon metal: U.S. imports, by source, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Unit value (*per short ton*)[2]				
Russia	$1,036	$1,003	$980	$1,018	$928
Brazil	1,253	1,306	1,309	1,314	1,303
China	891	813	801	819	761
Subtotal, Brazil and China	1,178	1,215	1,208	1,233	1,233
South Africa	1,118	1,065	1,039	1,039	1,009
Canada	1,360	1,226	1,157	1,156	1,108
Norway	1,487	1,617	1,523	1,519	1,221
Spain	1,108	([3])	1,015	1,017	986
Argentina	([3])	([3])	989	986	1,008
Korea	1,044	949	961	961	940
Saudi Arabia	1,029	981	983	983	901
United Arab Emirates	([3])	1,009	950	967	897
Germany	1,952	1,527	1,513	1,579	1,696
Australia	1,322	1,012	1,115	1,106	1,105
United Kingdom	1,444	1,360	1,415	1,410	20,625
Sweden	8,005	6,663	6,600	6,642	11,269
Ukraine	1,127	([3])	1,000	16,911	835
Belgium	([3])	5,406	12,692	12,692	10,546
France	1,462	4,165	22,952	18,995	3,243
All others	2,039	1,458	170,915	170,915	959
Subtotal, nonsubject	1,232	1,145	1,139	1,146	1,129
Average	1,191	1,120	1,096	1,117	1,076
	Share of quantity (*percent*)				
Russia	20.5	17.4	27.0	22.3	26.4
Brazil	10.1	15.8	13.7	15.8	22.6
China	2.6	3.5	3.4	3.1	3.3
Subtotal, Brazil and China	12.8	19.3	17.1	18.9	26.0
South Africa	23.0	28.5	27.9	31.9	21.6
Canada	20.4	19.3	13.7	13.9	10.6
Norway	6.6	2.3	4.0	4.4	5.8
Spain	0.8	0.0	2.7	1.2	1.3
Argentina	0.0	0.0	2.4	2.1	4.3
Korea	0.5	6.3	1.9	2.6	0.6
Saudi Arabia	10.5	5.6	0.9	1.3	0.8
United Arab Emirates	0.0	0.1	0.8	0.5	0.5
Germany	0.2	0.5	0.6	0.3	0.9
Australia	1.8	0.1	0.4	0.3	0.4
United Kingdom	0.4	0.3	0.3	0.3	0.0
Sweden	0.01	0.02	0.1	0.1	0.0
Ukraine	0.3	0.00	0.03	0.000	0.1
Belgium	0.0	0.001	0.03	0.05	0.01
France	2.0	0.002	0.001	0.001	0.001
All others	0.4	0.2	0.0	0.0	0.7
Subtotal, nonsubject	79.5	82.6	73.0	77.7	73.6
Total	100.0	100.0	100.0	100.0	100.0

Table continued on next page.

Table I-1--*Continued*
Silicon metal: U.S. imports, by source, 1999-2001, January-September 2001, and January-September 2002

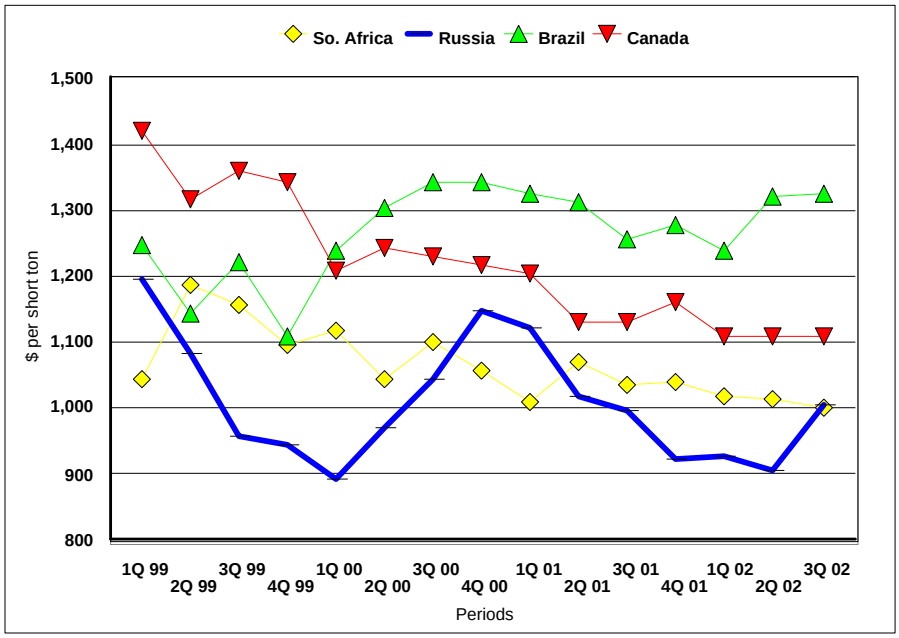
Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Share of value (*percent*)				
Russia	17.7	15.9	25.3	21.8	23.0
Brazil	11.6	18.4	16.2	18.4	27.6
China	1.9	2.5	2.5	2.2	2.4
Subtotal, Brazil and China	13.5	20.9	18.7	20.7	30.0
South Africa	21.7	27.2	25.8	28.8	20.5
Canada	22.9	20.9	14.3	14.2	10.2
Norway	8.1	3.3	5.6	5.9	6.7
Spain	0.7	0.0	2.5	1.1	1.2
Argentina	0.0	0.0	2.2	1.8	4.1
Korea	0.4	5.3	1.6	2.2	0.5
Saudi Arabia	9.0	4.9	0.8	1.1	0.7
United Arab Emirates	0.0	0.1	0.7	0.4	0.4
Germany	0.3	0.6	0.9	0.4	1.5
Australia	2.0	0.1	0.4	0.3	0.4
United Kingdom	0.5	0.4	0.4	0.4	0.0
Sweden	0.1	0.1	0.4	0.4	0.2
Ukraine	0.2	0.0	0.0	0.0	0.1
Belgium	0.0	0.0	0.4	0.5	0.1
France	2.4	0.0	0.0	0.0	0.0
All others	0.7	0.2	0.0	0.0	0.6
Subtotal, nonsubject	82.3	84.1	74.7	78.2	77.0
Total	100.0	100.0	100.0	100.0	100.0

[1] Landed, duty-paid.
[2] As indicated in the original investigation, average unit values have been adjusted using proprietary Customs data to remove certain anomalous entries for Brazil, Canada, Russia, and South Africa. Anomalies included ***. Confidential staff report, INV-AA-017, February 24, 2003, table IV-1, fn. 3.
[3] Not applicable.

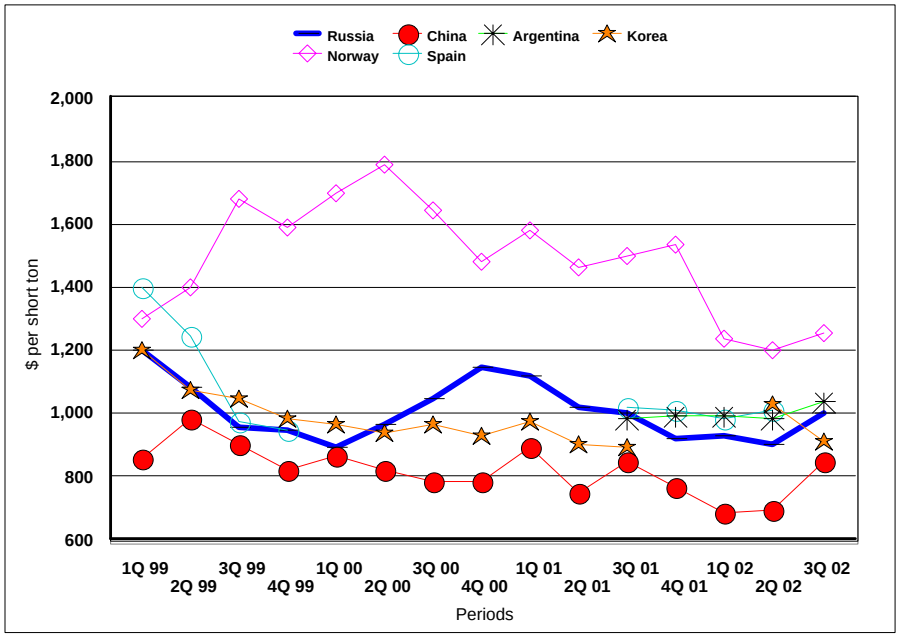
Source: Compiled from official Commerce statistics for HTS subheadings 2804.69.10 and 2804.69.50.

Figure I-1
Silicon metal: Quarterly import average unit values, January 1999-September 2002

Top 4 sources[1]



Russia and next 5 sources[2] [3]



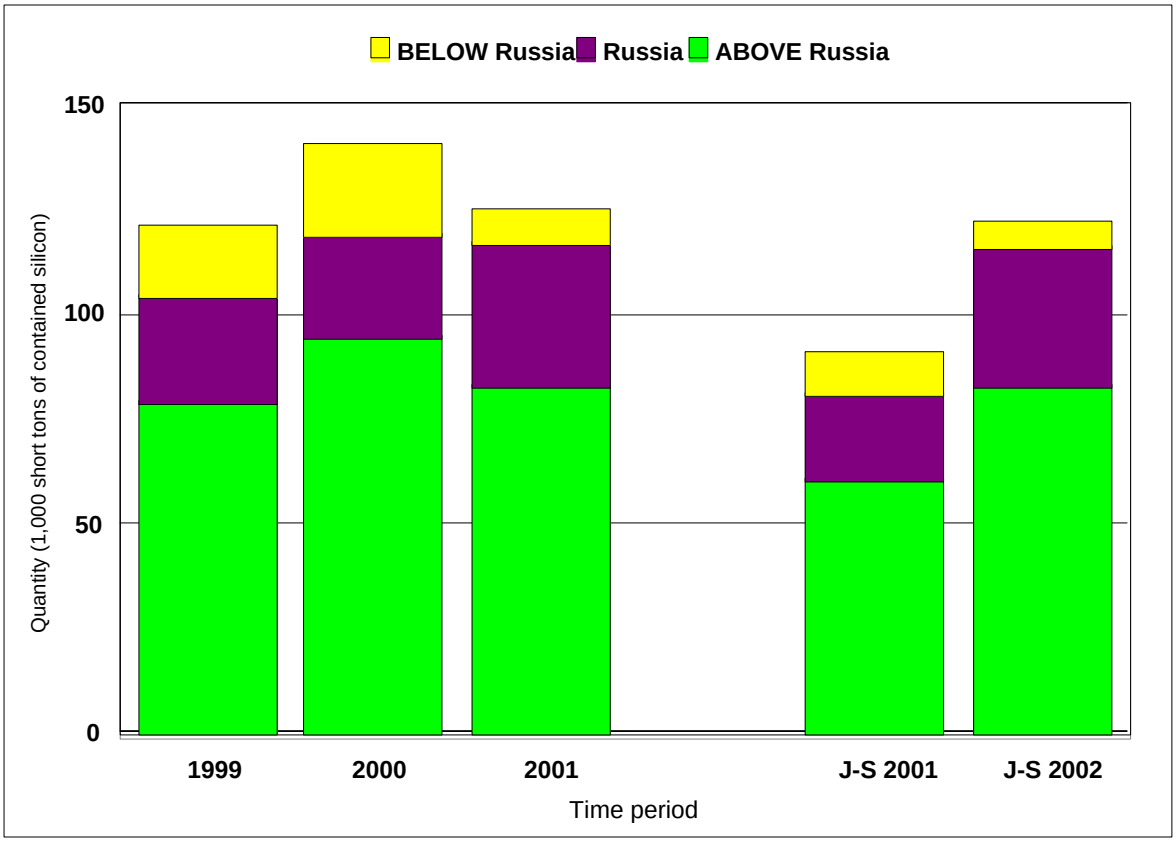
[1] Shares (*percent*) of total imports accounted for by the top 4 sources during 2001 were: South Africa, 27.9; Russia, 27.0; Brazil, 13.7; and Canada, 13.7; for a total of 82.3 percent.

[2] Shares (*percent*) of total imports accounted for by the next 5 sources during 2001 were: Norway, 4.0; China, 3.4; Spain, 2.7; Argentina, 2.4; and Korea, 1.9; for a total of 14.5 percent.

[3] Imports from Norway principally consisted of ***. The imported product was produced through an "acid leach" (vs. mechanical crush) process which lowers impurities such as iron and boron, and was considered a premium product.

Source: Reprinted from *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final), USITC Publication 3584*, March 2003, figure I-3; data taken from official Commerce statistics with adjustments based on proprietary Customs data.

Figure I-2
Silicon metal: Import volumes, arrayed on the basis of average unit values that are above and below those of Russia, 1999-2001, January-September 2001, and January-September 2002



Note 1.--Respective shares (percent) of nonsubject imports with average unit values above and below imports from Russia during the five respective periods are: ABOVE–83.2, 81.3, 91.5, 86.0, and 93.1 percent; BELOW–16.8, 18.7, 8.5, 14.0, and 6.9 percent.

Note 2.--If average unit values were not adjusted, there is a significant difference in respective shares of nonsubject imports with average unit values above and below imports from Russia during 2001, and January-September 2001: ABOVE–45.0 and 44.8 percent; BELOW–55.0 and 55.2 percent.

Source: Reprinted from *Silicon Metal from Russia, Inv. No. 731-TA-991 (Final), USITC Publication 3584*, March 2003, figure I-4; data taken from official Commerce statistics with adjustments based on proprietary Customs data.

Table I-2
Silicon metal: Apparent U.S. consumption and market shares, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Quantity (*short tons of contained silicon*)				
Apparent consumption	324,202	329,502	278,197	208,615	204,876
	Value (*1,000 dollars*)				
Apparent consumption	424,244	405,491	335,989	254,431	233,131
	Share of quantity (*percent*)				
U.S. producers' shipments	62.2	57.0	54.6	55.4	39.7
U.S. imports from--					
Russia	7.8	7.5	12.3	9.9	15.9
Brazil	3.8	6.8	6.2	7.1	13.6
China	1.0	1.5	1.5	1.4	2.0
Subtotal, Brazil and China	4.8	8.3	7.8	8.4	15.7
South Africa	8.7	12.2	12.7	14.2	13.0
Canada	7.7	8.3	6.2	6.2	6.4
Norway	2.5	1.0	1.8	2.0	3.5
Spain	0.3	0.0	1.2	0.5	0.8
Argentina	0.0	0.0	1.1	0.9	2.6
Korea	0.2	2.7	0.9	1.1	0.4
Saudi Arabia	4.0	2.4	0.4	0.6	0.5
United Arab Emirates	0.0	0.0	0.4	0.2	0.3
Germany	0.1	0.2	0.3	0.1	0.6
Australia	0.7	0.0	0.2	0.1	0.2
United Kingdom	0.1	0.1	0.1	0.1	0.0
Sweden	0.0	0.0	0.0	0.0	0.0
Ukraine	0.1	0.0	0.0	0.0	0.1
Belgium	0.0	0.0	0.0	0.0	0.0
France	0.7	0.0	0.0	0.0	0.0
All others	0.1	0.1	0.0	0.0	0.4
Subtotal, nonsubject	30.1	35.5	33.2	34.6	44.4
Total imports	37.8	43.0	45.4	44.6	60.3

Table continued on next page.

Table I-2--*Continued*
Silicon metal: Apparent U.S. consumption and market shares, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Share of value (*percent*)				
U.S. producers' shipments	65.0	60.5	58.4	58.7	43.4
U.S. imports from--					
Russia	6.2	6.3	10.5	9.0	13.0
Brazil	4.1	7.3	6.7	7.6	15.6
China	0.7	1.0	1.0	0.9	1.3
Subtotal, Brazil and China	4.7	8.3	7.8	8.5	17.0
South Africa	7.6	10.7	10.8	11.9	11.6
Canada	8.0	8.3	5.9	5.9	5.8
Norway	2.8	1.3	2.3	2.4	3.8
Spain	0.2	0.0	1.0	0.4	0.7
Argentina	0.0	0.0	0.9	0.7	2.3
Korea	0.2	2.1	0.7	0.9	0.3
Saudi Arabia	3.1	1.9	0.3	0.5	0.4
United Arab Emirates	0.0	0.0	0.3	0.2	0.2
Germany	0.1	0.2	0.4	0.2	0.8
Australia	0.7	0.0	0.2	0.1	0.2
United Kingdom	0.2	0.2	0.2	0.1	0.0
Sweden	0.0	0.1	0.2	0.2	0.1
Ukraine	0.1	0.0	0.0	0.0	0.0
Belgium	0.0	0.0	0.2	0.2	0.0
France	0.8	0.0	0.0	0.0	0.0
All others	0.2	0.1	0.0	0.0	0.3
Subtotal, nonsubject	28.8	33.2	31.1	32.3	43.6
Total imports	35.0	39.5	41.6	41.3	56.6

Source: Compiled from responses to Commission questionnaires and official Commerce statistics for HTS subheadings 2804.69.10 and 2804.69.50.

THE GLOBAL INDUSTRY AND MARKET

Global Capacity, Production, Capacity Utilization, and Excess Capacity

Table I-3 presents data on global capacity, production, and capacity utilization as reported by ***. As indicated in the table, Brazil, China, Norway, and the United States are the largest producers of silicon metal in the world, accounting for approximately *** percent of global production of silicon metal over the original period of investigation. While Europe is the region with the most capacity to produce silicon metal, China as a single source, has the greatest capacity.[14] Brazil had decreasing capacity utilization rates over the original period of investigation, while Norway maintained its capacity utilization at approximately *** percent over the period. Countries with less overall capacity by and large maintained or increased their production levels, thereby increasing their capacity utilization rates–with the exception of Argentina, Italy, and Saudi Arabia where production of silicon metal was halted altogether and in some instances capacity apparently was decommissioned.

Table I-3
Silicon metal: Global capacity, production, and capacity utilization, 1999-2001 and projections for 2002-03

* * * * * * *

Table I-4 presents data on global excess capacity. Excluding China (no available data), total excess capacity to produce silicon metal in nonsubject countries is estimated at *** short tons in 2001, of which excess capacity in Brazil accounts for *** percent.[15] A portion of the excess capacity in Brazil may be overstated as "***."[16]

Table I-4
Silicon metal: Excess capacity in nonsubject countries, 1999-2001

* * * * * * *

[14] Reliable data are not available on Chinese production capacity for silicon metal. Reported exports from China of silicon metal were used as a placeholder for Chinese production capacity in table I-3. This placeholder tends to underestimate Chinese capacity to produce silicon metal by any amount of (i) capacity dedicated to producing silicon metal that is consumed internally in China and (ii) any excess capacity idled or otherwise not being used to currently produce silicon metal.

[15] Included in the denominator (total excess capacity) of this calculation were capacity to produce silicon metal in Argentina and Saudi Arabia, both of whose production had ceased all together in 2001, as well as Macedonia, whose capacity was reportedly not used to produce silicon metal at all over the period of investigation. Excluding the capacities reported for Argentina, Macedonia, and Saudi Arabia (under the assumption that their exit from the silicon metal market was permanent), total excess capacity would have been at *** short tons in 2001, and Brazil would have accounted for *** percent of that total. Again, these data do not include information on any excess capacity in China.

[16] ***, received by fax, January 17, 2007. ***.

Apparent Consumption in Selected Countries

Table I-5 presents data on apparent consumption in selected nonsujbect countries, estimated using *** and GTIS data with supplemental data taken from foreign producer questionnaire responses from firms in France and South Africa. The largest markets for silicon metal identified by the data are France, Italy, Norway, and Canada.

Table I-5
Silicon metal: Estimated apparent consumption, import penetration, and ratio of exports to consumption, 1999-2001

* * * * * * *

Global Trade

Trade in silicon metal is global. Table I-6 presents information on global imports during the period January 1999 through September 2002. Table I-7 presents data on global exports during the period January 1999 through September 2002.

Based on national treatment, Japan is the largest importer of silicon metal followed by the United States and Germany. However, the European Union is the largest single market for trans-national shipment of silicon metal.[17] Asian nations, such as Japan, South Korea, and Taiwan, import primarily Chinese silicon metal, which may explain their lower average unit value of imports in table I-6 compared to average unit values of silicon metal imports in other destinations. European nations primarily import silicon metal from other European nations and Brazil.

China, Norway, and Brazil are the largest exporters of silicon metal and accounted for 69.4 percent of silicon metal exports in 2001. China is the global producer with the lowest unit value for its export shipments over the original period of investigation.

[17] Belgium, France, Germany, Italy, the Netherlands, and the United Kingdom accounted for 43.1 percent of global imports of silicon metal in 2001. *See* table I-6.

Table I-6
Silicon metal: Global imports, by destination, 1999-2001, January-September 2001, and January-September 2002

Destination	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Quantity (*short tons contained silicon*)				
United States	126,164	145,379	130,422	97,011	122,494
Other importing countries--					
Japan	194,322	209,963	199,602	149,926	152,680
Germany	94,517	111,873	106,650	81,020	90,742
United Kingdom	61,604	83,595	92,673	74,538	65,896
Netherlands	64,276	77,508	71,843	58,334	61,575
Italy	35,030	48,291	46,549	36,729	30,247
South Korea	23,160	33,510	26,371	19,344	22,205
Canada	22,099	29,547	20,769	17,921	21,195
France	17,080	20,628	22,085	17,284	15,124
Taiwan	18,738	17,852	12,929	8,847	12,720
Belgium	17,856	15,561	13,766	10,803	11,883
All others	112,753	132,701	121,408	(1)	(1)
Total	787,598	926,409	865,067	(1)	(1)
	Value (*1,000 dollars*)				
United States	141,149	152,821	132,604	100,135	122793
Other importing countries--					
Japan	196,183	194,939	174,227	133,426	129,370
Germany	110,654	115,644	111,748	85,183	91,133
United Kingdom	75,983	89,182	98,778	79,234	70,047
Netherlands	69,206	75,707	67,521	55,985	54,252
Italy	37,841	46,320	47,772	37,458	29,166
South Korea	20,389	26,474	19,312	14,232	16,612
Canada	24,959	29,326	19,867	16,960	19,267
France	20,129	20,015	22,989	18,099	15,905
Taiwan	15,832	14,341	9,420	6,593	9,453
Belgium	18,317	14,418	13,207	9,860	8,322
All others	160,625	148,284	121,604	(1)	(1)
Total	891,267	927,469	839,047	(1)	(1)

Table continued on next page.

Table I-6--*Continued*
Silicon metal: Global imports, by destination, 1999-2001, January-September 2001, and January-September 2002

Destination	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Unit value (*per short ton contained silicon*)				
United States	$1,119	$1,051	$1,017	$1,032	$1,002
Other importing countries--					
Japan	1,010	928	873	890	847
Germany	1,171	1,034	1,048	1,051	1,004
United Kingdom	1,233	1,067	1,066	1,063	1,063
Netherlands	1,077	977	940	960	881
Italy	1,080	959	1,026	1,020	964
South Korea	880	790	732	736	748
Canada	1,129	993	957	946	909
France	1,178	970	1,041	1,047	1,052
Taiwan	845	803	729	745	743
Belgium	1,026	927	959	913	700
All others	1,425	1,117	1,002	(1)	(1)
Average	1,132	1,001	970	(1)	(1)
	Share of quantity (*percent*)				
United States	16.0	15.7	15.1	(1)	(1)
Other importing countries--					
Japan	24.7	22.7	23.1	(1)	(1)
Germany	12.0	12.1	12.3	(1)	(1)
United Kingdom	7.8	9.0	10.7	(1)	(1)
Netherlands	8.2	8.4	8.3	(1)	(1)
Italy	4.4	5.2	5.4	(1)	(1)
South Korea	2.9	3.6	3.0	(1)	(1)
Canada	2.8	3.2	2.4	(1)	(1)
France	2.2	2.2	2.6	(1)	(1)
Taiwan	2.4	1.9	1.5	(1)	(1)
Belgium	2.3	1.7	1.6	(1)	(1)
All others	14.3	14.3	14.0	(1)	(1)
Total	100.0	100.0	100.0	(1)	(1)

Table continued on next page.

Table I-6--*Continued*
Silicon metal: Global imports, by destination, 1999-2001, January-September 2001, and January-September 2002

Destination	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Share of value (*percent*)				
United States	15.8	16.5	15.8	([1])	([1])
Other importing countries--					
Japan	22.0	21.0	20.8	([1])	([1])
Germany	12.4	12.5	13.3	([1])	([1])
United Kingdom	8.5	9.6	11.8	([1])	([1])
Netherlands	7.8	8.2	8.0	([1])	([1])
Italy	4.2	5.0	5.7	([1])	([1])
South Korea	2.3	2.9	2.3	([1])	([1])
Canada	2.8	3.2	2.4	([1])	([1])
France	2.3	2.2	2.7	([1])	([1])
Taiwan	1.8	1.5	1.1	([1])	([1])
Belgium	2.1	1.6	1.6	([1])	([1])
All others	18.0	16.0	14.5	([1])	([1])
Total	100.0	100.0	100.0	([1])	([1])

[1] Data on imports of silicon metal broken out on a monthly basis were not available for a number of countries in the "all others" category that otherwise reported their data on a calendar year basis. Since the number of countries reporting their data on a monthly basis was a subset of those reporting annual data, staff was unable to compile a comparable partial year period dataset for the imports of silicon metal by the "all others" basket of countries. Totals and shares are, therefore, not available for January-September 2001 and January-September 2002.

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 17, 2007.

Table I-7
Silicon metal: Global exports, by source, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Quantity (*short tons contained silicon*)				
United States	37,649	17,065	11,682	8,615	7,684
Other exporting countries--					
China	285,344	351,470	348,415	259,600	298,686
Norway	153,568	167,226	165,261	(1)	(1)
Brazil	133,108	166,371	112,929	92,213	116,479
Canada	47,257	64,038	48,626	37,988	31,480
Russia	36,058	47,999	56,673	(1)	(1)
South Africa[2]	36,917	53,695	34,210	(1)	(1)
Netherlands	22,367	36,608	47,675	38,890	44,291
Australia	36,643	31,182	36,485	(1)	(1)
Spain	16,189	16,624	15,144	10,803	16,204
Belgium	7,123	8,808	13,299	10,803	4,321
All others	12,999	22,414	11,366	(1)	(1)
Total	825,223	983,500	901,766	(1)	(1)
	Value (*1,000 dollars*)				
United States	46,678	23,026	25,217	17,838	14,655
Other exporting countries--					
China	224,179	261,275	245,456	184,720	215,952
Norway	190,771	178,032	175,505	(1)	(1)
Brazil	136,717	167,156	113,339	93,567	113,355
Canada	60,309	70,722	52,312	41,089	32,505
Russia	29,121	34,220	40,048	(1)	(1)
South Africa[2]	36,144	41,575	33,398	(1)	(1)
Netherlands	17,370	27,831	84,813	78,308	38,448
Australia	36,637	37,669	31,636	(1)	(1)
Spain	16,261	16,542	15,012	10,760	14,207
Belgium	8,056	8,332	14,250	11,270	4,099
All others	19,273	28,806	24,359	(1)	(1)
Total	821,517	895,187	855,346	(1)	(1)

Table continued on next page.

Table I-7--*Continued*
Silicon metal: Global exports, by source, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Unit value (*per short ton*)				
United States	$1,240	$1,349	$2,159	$2,071	$1,907
Other exporting countries--					
China	786	743	704	712	723
Norway	1,242	1,065	1,062	(1)	(1)
Brazil	1,027	1,005	1,004	1,015	973
Canada	1,276	1,104	1,076	1,082	1,033
Russia	808	713	707	(1)	(1)
South Africa[2]	979	774	976	(1)	(1)
Netherlands	777	760	1,779	2,014	868
Australia	1,000	1,208	867	(1)	(1)
Spain	1,004	995	991	996	877
Belgium	1,131	946	1,072	1,043	949
All others	1,483	1,285	2,143	(1)	(1)
Average	996	910	949	(1)	(1)
	Share of quantity (*percent*)				
United States	4.6	1.7	1.3	(1)	(1)
Other exporting countries--					
China	34.6	35.7	38.6	(1)	(1)
Norway	18.6	17.0	18.3	(1)	(1)
Brazil	16.1	16.9	12.5	(1)	(1)
Canada	5.7	6.5	5.4	(1)	(1)
Russia	4.4	4.9	6.3	(1)	(1)
South Africa[2]	4.5	5.5	3.8	(1)	(1)
Netherlands	2.7	3.7	5.3	(1)	(1)
Australia	4.4	3.2	4.0	(1)	(1)
Spain	2.0	1.7	1.7	(1)	(1)
Belgium	0.9	0.9	1.5	(1)	(1)
All others	1.6	2.3	1.3	(1)	(1)
Total	100.0	100.0	100.0	(1)	(1)

Table continued on next page.

Table I-7--*Continued*
Silicon metal: Global exports, by source, 1999-2001, January-September 2001, and January-September 2002

Source	Calendar year			January-September	
	1999	2000	2001	2001	2002
	Share of value (*percent*)				
United States	5.7	2.6	2.9	([1])	([1])
Other exporting countries--					
China	27.3	29.2	28.7	([1])	([1])
Norway	23.2	19.9	20.5	([1])	([1])
Brazil	16.6	18.7	13.3	([1])	([1])
Canada	7.3	7.9	6.1	([1])	([1])
Russia	3.5	3.8	4.7	([1])	([1])
South Africa[2]	4.4	4.6	3.9	([1])	([1])
Netherlands	2.1	3.1	9.9	([1])	([1])
Australia	4.5	4.2	3.7	([1])	([1])
Spain	2.0	1.8	1.8	([1])	([1])
Belgium	1.0	0.9	1.7	([1])	([1])
All others	2.3	3.2	2.8	([1])	([1])
Total	100.0	100.0	100.0	([1])	([1])

[1] Data on exports of silicon metal broken out on a monthly basis were not available for a number of countries that otherwise reported their data on a calendar year basis (including major exporters like Australia, Norway, Russia, and South Africa). Since the number of countries reporting their data on a monthly basis was a subset of those reporting annual data, staff was unable to compile a comparable partial year period dataset for the exports of silicon metal. Totals and shares are, therefore, not available for January-September 2001 and January-September 2002.

[2] Global Trade Information Services reports that South Africa exported 679,791 short tons of silicon metal in 2001 (an increase of 1141 percent over the previous year) valued at $36.8 million (a decrease of 11 percent over the previous year), which results in an unrealistic unit value of $54 per short ton. Staff believes these data to be misreported. Data from the South African Ministry of Trade (http://www.dti.gov.za) correspond to the data reported by GTIS by quantity. Further, the South African data indicate that exports of silicon metal from South Africa in the month of September account for 94 percent of the total quantity in 2001. For purposes of providing data for exports of silicon metal from South Africa in 2001, staff has backed out the 641,312 short tons reported in September from the South African Ministry of Trade and its corresponding dollar amount of $3.4 million (calculated using the same U.S. Federal Reserve published exchange rate apparently used by GTIS in its database, http://www.federalreserve.gov/releases/g5/20011203/, or 8.6756 Rand per U.S. dollar September 2001). The data for South Africa in 2001, therefore, equal exports for only eleven (11) out of twelve (12) months in 2001.

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 17, 2007.

Industries in Nonsubject Countries

Argentina

According to *** data, Argentina accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The industry in Argentina had capacity to produce *** short tons of silicon metal over the original period of investigation. Actual production of silicon metal was approximately *** short tons in 1999 and 2000, and then only *** short tons in 2001.[18]

The U.S. Commercial Service indicated that:

> "{t}he local firm Electrometalúrgica Andina (EA) informed that they produced silicon metal until 2000. EA said to have been the only producer of silicon metal in Argentina. Electrometalúrgica Andina was originally founded in 1948 by Pechiney, a French Group. In 1982 Argentine capitals acquired 100% of the firm, and it started a process of technological development and overseas expansion. They produce calcium carbide and derivatives, calcium silicon and derivatives, ferrosilicon and derivatives, recarburizer, and microsilica... EA reported that they closed operations due to an inconvenient cost/price relation."[19]

Australia

*** reported that Australia accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The industry in Australia maintained a constant capacity to produce silicon metal at approximately *** short tons over the original period of investigation.[20] According to the *** data, the Australian industry maintained a high capacity utilization rate of approximately *** percent over the period. Australia, therefore, had very little excess capacity to produce silicon metal at approximately *** short tons each year between 1999 and 2001.[21]

U.S. imports of silicon metal from Australia were 2,216 short tons in 1999, 159 short tons in 2000, and 482 short tons in 2001.[22] Trends reported in U.S. imports of silicon metal from Australia correspond to the trends in Australian exports to the United States reported in the GTA® database. The Australian industry has *** exports to consumption ratio over the period of investigation which indicates that Australia exported more silicon metal than it consumed internally.[23]

Table I-8 presents data on exports of silicon metal from Australia from 1999 to 2001 and figure I-3 presents data on shares of Australian exports in 2001. Japan is Australia's primary export market by quantity, and exports of silicon metal from Australia to Japan were reported at a higher unit value than exports of silicon metal from Australia to the United States.

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[18] The reason for this apparent *** in production is unknown.

[19] U.S. Commercial Service, U.S. Department of State, U.S. Embassy, Buenos-Aires, unclassified, February 1, 2007.

[20] *See* table I-3.

[21] Ibid.

[22] *See* table I-1.

[23] The export to consumption ratio for Australia ranged between *** over the original period of investigation, which means that the Australian industry exported approximately *** times the amount of silicon metal that firms in Australia apparently consumed.

Table I-8
Silicon metal: Australian export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	1,535	137	337
Other Australian export markets--			
Japan	18,387	22,534	21,366
Norway[1]	8,698	0	7,346
United Arab Emirates	590	1,960	2,553
Italy	0	151	1,777
Bahrain	1,273	1,889	1,335
New Zealand	3,691	2,922	807
Canada	1,537	519	385
United Kingdom	346	562	302
All others	586	509	278
Total[1]	36,643	31,182	36,485
	Value (*1,000 dollars*)		
United States	1,847	147	345
Other Australian export markets--			
Japan	22,927	27,058	23,348
Norway[1]	947	0	833
United Arab Emirates	863	2,179	2,188
Italy	0	147	1,495
Bahrain	1,459	2,210	1,421
New Zealand	5,440	3,506	1,014
Canada	1,965	637	360
United Kingdom	336	559	288
All others	853	1,226	344
Total[1]	36,637	37,669	31,636
	Unit value (*per short ton*)		
United States	$1,203	$1,076	$1,024
Other Australian export markets--			
Japan	1,247	1,201	1,093
Norway[1]	109	([2])	113
United Arab Emirates	1,462	1,112	857
Italy	([2])	970	841
Bahrain	1,147	1,170	1,065
New Zealand	1,474	1,200	1,255
Canada	1,278	1,228	936
United Kingdom	971	995	953
All others	1,455	2,408	1,240
Average[1]	1,000	1,208	867

Table continued next page.

Table I-8--*Continued*
Silicon metal: Australian export markets, 1999-2001

Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	4.2	0.4	0.9
Other Australian export markets--			
Japan	50.2	72.3	58.6
Norway[1]	23.7	([2])	20.1
United Arab Emirates	1.6	6.3	7.0
Italy	([2])	0.5	4.9
Bahrain	3.5	6.1	3.7
New Zealand	10.1	9.4	2.2
Canada	4.2	1.7	1.1
United Kingdom	0.9	1.8	0.8
All others	1.6	1.6	0.8
Total[1]	100.0	100.0	100.0
	Share of value (*percent*)		
United States	5.0	0.4	1.1
Other Australian export markets--			
Japan	62.6	71.8	73.8
Norway[1]	2.6	([2])	2.6
United Arab Emirates	2.4	5.8	6.9
Italy	([2])	0.4	4.7
Bahrain	4.0	5.9	4.5
New Zealand	14.8	9.3	3.2
Canada	5.4	1.7	1.1
United Kingdom	0.9	1.5	0.9
All others	2.3	3.3	1.1
Total[1]	100.0	100.0	100.0

[1] Data on exports of silicon metal from Australia to Norway appear to be misreported, either in quantity or in value. Note the difference in the share of quantity versus the share of value of these exports. Also the data for exports to Norway cause the fluctuations in average unit values between 1999 and 2001.

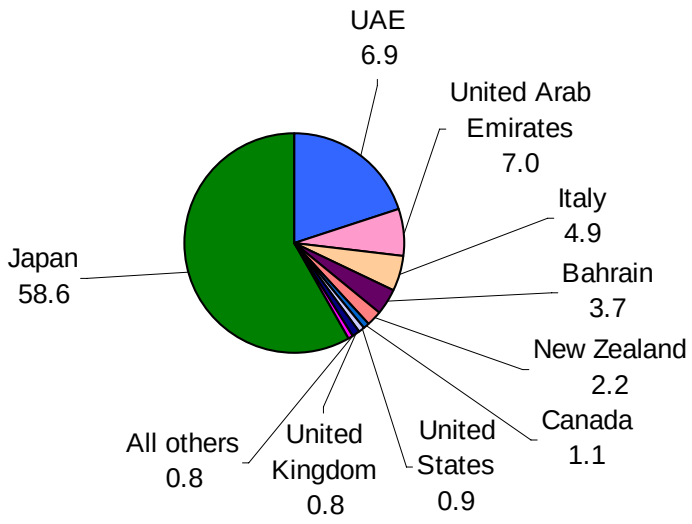
[2] Not applicable.

Note.–Exports to the United States from Australia reported in the GTA® presented in this table follow the same trend as reported U.S. imports from Australia. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from Australia to the United States:

	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	2,216	159	482
GTA® statistics on exports from Australia (*short tons contained silicon*)	1,535	137	337

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-3
Silicon metal: Market shares (*in percent*) of Australian exports, 2001



Source: Table I-8.

Brazil

According to *** data, Brazil accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The industry in Brazil increased its capacity to produce silicon metal by *** percent between 1999 and 2000, and by an additional *** percent between 2000 and 2001.[24] Excess capacity existed in Brazil during the original period of investigation; *** short tons in 1999, which decreased to *** short tons in 2000, but then *** to approximately *** short tons by 2001.[25] Some of this reported excess capacity may not have actually been available for Brazilian firms to produce silicon metal since *** indicated that electricity rationing had reduced nameplate capacity in Brazil over the original period of investigation.[26] CCBM submitted a foreign producer questionnaire response to the Commission indicating that ***.

In the original period of investigation, U.S. imports of silicon metal from Brazil were subject to an antidumping duty order and were 12,429 short tons in 1999, 22,385 short tons in 2000, and 17,309 short tons in 2001.[27] In its 2000 review of the antidumping duty order on silicon metal from Brazil, the Commission indicated that, "like China, the Brazilian industry is heavily export-oriented."[28] Data

[24] *See* table I-3.

[25] Ibid.

[26] ***, received by fax, January 17, 2007. The ***.

[27] *See* table I-1 for data on U.S. import from Brazil. U.S. imports of silicon metal from Brazil correspond to Brazilian exports to the United States as contained in GTA® data.

[28] *Silicon metal from Argentina, Brazil, and China, Inv. Nos. 731-TA-470-472 (Review)*, USITC Publication 3385, January 2001, p. 17.

collected in this remand investigation indicate that Brazil exports *** than it consumes internally as demonstrated by its *** ratio of exports to consumption.[29]

Table I-9 presents data on exports of silicon metal from Brazil between 1999 and 2001 and figure I-4 presents data on shares of Brazilian exports in 2001. European nations were Brazil's primary export markets, including France, Germany, Italy, the Netherlands, Norway, and the United Kingdom, which together accounted for 54.8 percent of Brazilian exports in 2001. The average unit values for shipments of silicon metal from Brazil to European nations were generally lower than the unit values for shipments of silicon metal from Brazil to the United States; however, this might be explained in part by the fact that U.S. imports of silicon metal from Brazil were subject to an antidumping duty order during the original period of investigation. The antidumping duty rates applicable to Brazilian exporters at the time of the original investigation on silicon metal from Russia were as follows (in percent *ad valorem*): 0.0 percent for CBCC, 0.74 for Minasligas, 0.0 for Rima, and 91.08 for all others.[30] Other Brazilian firms such as Electrosilex maintained antidumping duty rates of 93.2 percent during Commerce administrative reviews on the antidumping duty order for silicon metal from Brazil;[31] whereas Commerce revised the rate for CCM to 87.79 percent in accordance with a court-ordered remand.[32]

Table I-9
Silicon metal: Brazilian export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	16,262	23,446	17,992
Other Brazilian export markets--			
Netherlands	41,166	29,317	27,945
Italy	14,781	18,642	14,486
United Arab Emirates	9,119	14,746	13,198
Japan	18,260	19,078	8,252
Canada	6,558	9,598	7,679
France	4,227	6,711	6,255
Argentina	5,621	9,643	4,246
United Kingdom	3,200	11,341	3,625
Norway	5,872	9,591	2,819
Germany	369	557	2,512
All other	7,674	13,701	3,921
Total	133,108	166,371	112,929

Table continued on next page.

[29] The export to consumption ratio for Brazil ranged between *** over the original period of investigation, which means that the Brazilian industry exported approximately *** times the amount of silicon metal that firms in Brazil apparently consumed.

[30] *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225, December 17, 2002. This notice revoked the antidumping duty order on imports of silicon metal into the United States from Rima in Brazil.

[31] *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 66 FR 11256, February 23, 2001.

[32] *Antidumping Duty Investigation; Silicon Metal from Brazil: Amended Final Determination in Accordance with Court Decision*., 67 FR 61318, September 30, 2002.

Table I-9--*Continued*
Silicon metal: Brazilian export markets, 1999-2001

Market	1999	2000	2001
	Value (*1,000 dollars*)		
United States	16,908	27,222	20,922
Other Brazilian export markets--			
Netherlands	39,828	27,295	25,823
Italy	13,625	17,955	13,824
United Arab Emirates	11,156	15,782	13,823
Japan	21,088	19,436	8,170
Canada	6,052	8,728	7,332
France	5,055	6,705	5,829
Argentina	6,448	10,934	4,790
United Kingdom	3,150	10,002	3,815
Norway	5,342	9,263	2,705
Germany	355	522	2,379
All other	7,711	13,314	3,926
Total	136,717	167,156	113,339
	Unit value (*per short ton*)		
United States	$1,040	$1,161	$1,163
Other Brazilian export markets--			
Netherlands	967	931	924
Italy	922	963	954
United Arab Emirates	1,223	1,070	1,047
Japan	1,155	1,019	990
Canada	923	909	955
France	1,196	999	932
Argentina	1,147	1,134	1,128
United Kingdom	985	882	1,053
Norway	910	966	960
Germany	962	937	947
All other	1,005	972	1,001
Average	1,027	1,005	1,004

Table continued on next page.

Table I-9--*Continued*
Silicon metal: Brazilian export markets, 1999-2001

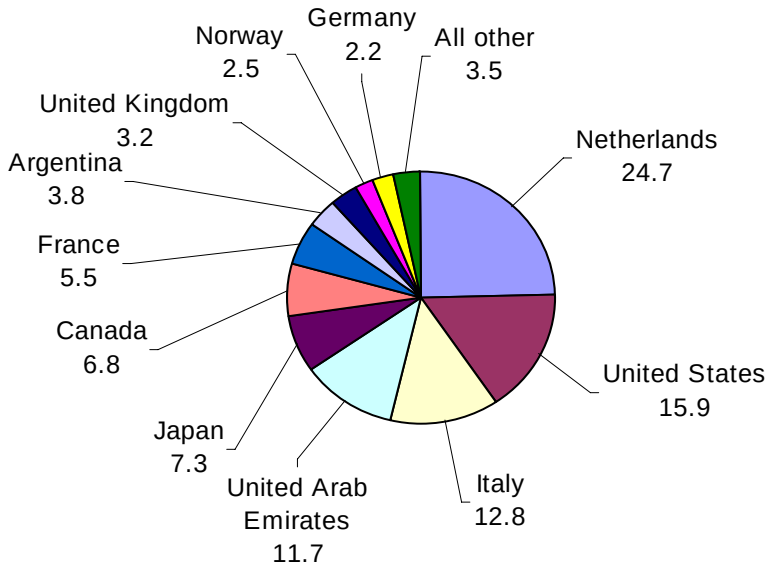
Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	12.2	14.1	15.9
Other Brazilian export markets--			
Netherlands	30.9	17.6	24.7
Italy	11.1	11.2	12.8
United Arab Emirates	6.9	8.9	11.7
Japan	13.7	11.5	7.3
Canada	4.9	5.8	6.8
France	3.2	4.0	5.5
Argentina	4.2	5.8	3.8
United Kingdom	2.4	6.8	3.2
Norway	4.4	5.8	2.5
Germany	0.3	0.3	2.2
All other	5.8	8.2	3.5
Total	100.0	100.0	100.0
	Share of value (*percent*)		
United States	12.4	16.3	18.5
Other Brazilian export markets--			
Netherlands	29.1	16.3	22.8
Italy	10.0	10.7	12.2
United Arab Emirates	8.2	9.4	12.2
Japan	15.4	11.6	7.2
Canada	4.4	5.2	6.5
France	3.7	4.0	5.1
Argentina	4.7	6.5	4.2
United Kingdom	2.3	6.0	3.4
Norway	3.9	5.5	2.4
Germany	0.3	0.3	2.1
All other	5.6	8.0	3.5
Total	100.0	100.0	100.0

Note.–Exports to the United States from Brazil reported in the GTA® presented in the table, follow the same trend as U.S. Imports from Brazil reported in official Commerce statistics. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from Brazil to the United States:

	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	12,429	22,385	17,309
GTA® statistics on exports from Brazil (*short tons contained silicon*)	16,262	23,446	17,992

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-4
Silicon metal: Market shares (*in percent*) of Brazilian exports, 2001



Source: Table I-9.

Canada

According to *** data, Canada accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The U.S. Department of State indicated that "there is only one firm producing and/or exporting the subject merchandise: Becancour Silicon" and cited a total production capacity of approximately *** short tons.[33]

*** data indicate that the industry in Canada increased its capacity to produce silicon metal by *** percent between 1999 and 2000, and then maintained its capacity at approximately *** short tons in 2000 and 2001.[34] Canada had high capacity utilization rates and therefore very little excess capacity during the original period of investigation.

U.S. imports of silicon metal from Canada were 25,044 short tons contained silicon in 1999, 27,347 short tons contained silicon in 2000, and 17,281 short tons contained silicon in 2001.[35] Reported Canadian exports to the United States in the GTA® were higher than reported U.S. imports of silicon metal from Canada.[36] The Canadian industry had *** ratio of exports to consumption.[37] Calculated

[33] U.S. Department of State, U.S. Embassy, Ottawa, unclassified OTTAWA 000145, January 26, 2007.

[34] *See* table I-3.

[35] Ibid.

[36] Since total reported exports from Canada to all non-Canadian markets was greater than reported production of silicon metal in Canada in each year, some of the material entering the United States from Canada was possibly transshipments of silicon metal produced elsewhere.

[37] *See* table I-5. The export to consumption ratio for Canada ranged between *** over the original period of investigation, which means that the Canadian industry exported approximately *** times the amount of silicon metal that firms in Canada apparently consumed.

import penetration in the Canadian market was *** in each year between 1999 and 2001, which may indicate that some silicon metal exported from Canada is non-Canadian material.[38]

Table I-10 presents data on exports of silicon metal from Canada and figure I-5 presents export market shares for Canadian exports of silicon metal. After the United States, Germany is Canada's primary export market. The average unit values of Canada's exports of silicon metal to Germany are slightly lower than the unit values of Canada's exports of silicon metal to the United States.

Table I-10
Silicon metal: Canadian export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	31,950	42,574	25,092
Other Canadian export markets--			
Germany	12,687	18,426	16,491
France	540	0	4,819
Belgium	2,080	2,539	1,961
All other	1	499	263
Total	47,257	64,038	48,626
	Value (*1,000 dollars*)		
United States	40,939	49,276	27,604
Other Canadian export markets--			
Germany	16,428	18,818	17,245
France	654	0	5,184
Belgium	2,266	2,370	1,931
All other	22	259	348
Total	60,309	70,722	52,312
	Unit value (*per short ton*)		
United States	$1,281	$1,157	$1,100
Other Canadian export markets--			
Germany	1,295	1,021	1,046
France	1,211	([1])	1,076
Belgium	1,090	933	985
All other	22,909	519	1,323
Average	1,276	1,104	1,076

Table continued on next page.

[38] *See* table I-5. The *** import penetration calculation indicates Canada exports more silicon metal than what the Canadian silicon metal industry produces.

Table I-10--*Continued*
Silicon metal: Canadian export markets, 1999-2001

Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	67.6	66.5	51.6
Other Canadian export markets--			
Germany	26.8	28.8	33.9
France	1.1	([1])	9.9
Belgium	4.4	4.0	4.0
All other	([2])	0.8	0.5
Total	100.0	100.0	100.0
	Share of value (*percent*)		
United States	67.9	69.7	52.8
Other Canadian export markets--			
Germany	27.2	26.6	33.0
France	1.1	([1])	9.9
Belgium	3.8	3.4	3.7
All other	([2])	0.4	0.7
Total	100.0	100.0	100.0

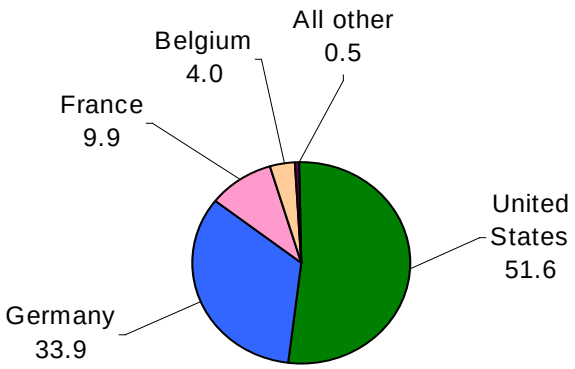
[1] Not applicable.
[2] Less than 0.05 percent.

Note.–Exports to the United States from Canada reported in the GTA® are greater than reported U.S. imports from Canada in official Commerce statistics. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from Canada to the United States:

	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	25,044	27,347	17,281
GTA® statistics on exports from Canada (*short tons contained silicon*)	31,950	42,574	25,092

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-5
Silicon metal: Market shares (*in percent*) of Canadian exports, 2001



Source: Table I-10.

China

The Commission sent foreign producer questionnaires to nine firms identified as producers of silicon metal in China and received no responses. Little secondary-source data are available concerning the industry in China. *** reported that the information it had on the industry in China was *** at the time of the original investigation.[39] Relying on global silicon metal export data for subheading 2804.69 of the HTS as reported in the GTA® database and presented in table I-7, China is the world's largest exporter of silicon metal, accounting for an estimated *** percent of world production and 39 percent of world exports during 2001 (*see* tables I-3 and I-7). Chinese export data reported in table I-11 represent quantities greater than reported capacities for silicon metal in any other country, indicating that, in turn, China is the world's largest producer of silicon metal.[40] Both the United States and the European Union imposed antidumping duty order disciplines on imports of silicon metal produced in China between January 1999 and September 2002.[41]

The United States had an antidumping duty order on U.S. imports of silicon metal from China at a China-wide antidumping duty margin of 139.49 *ad valorem* over the original period of investigation.[42] In its 2000 review of the antidumping duty order on silicon metal from China, the Commission indicated that Chinese capacity to produce silicon metal was estimated to range between 250,000 and 400,000 short

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[39] Staff telephone interview with ***, January 17, 2007.

[40] *See* table I-3. Chinese export data were used as a surrogate for Chinese capacity and production data for the purposes of that table.

[41] *Silicon Metal from Argentina, Brazil, and China, Inv. Nos. 731-TA-470-472 (Review),* USITC Publication 3385, January 2001, p. IV-6.

[42] *Notice of Final Results of Expedited Sunset Review of Silicon Metal from the People's Republic of China,* 65 FR 35609, June 5, 2000.

tons in 1998.[43] Exports of silicon metal from China increased by 22.1 percent from 1999 to 2001 (with a peak in 2000), and were 15.1 percent higher in the period January to September 2002 than in the period January to September 2001.[44] The Commission indicated that "{t}he industry in China is export-oriented" in its review of the antidumping duty order in 2000.[45]

Table I-11 presents data on exports of silicon metal from China between 1999 and 2001 and figure IV-6 presents shares for Chinese exports of silicon metal in 2001. Other Asian nations are China's main export destination, including Japan, South Korea, Hong Kong, and Taiwan, which collectively represented 57.6 percent of Chinese exports of silicon metal. There is a possibility that U.S. imports of silicon metal from Japan and Korea, two countries with no known silicon metal production at the time of the original investigation, were of Chinese origin.[46]

Table I-11
Silicon metal: Chinese export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	7,213	9,227	6,504
Other Chinese export markets--			
Japan	134,858	139,755	143,989
South Korea	24,537	31,457	28,531
Netherlands	17,646	27,087	25,330
Canada	11,954	26,236	23,768
Taiwan	13,615	17,250	14,227
Hong Kong	13,918	16,124	14,050
India	11,302	11,790	11,324
Russia	3,478	8,236	10,138
Mexico	1,461	4,302	8,531
United Kingdom	2,182	3,522	8,188
All others	43,180	56,484	53,834
Total	285,344	351,470	348,415

Table continued on next page.

[43] *Silicon Metal from Argentina, Brazil, and China, Inv. Nos. 731-TA-470-472 (Review),* USITC Publication 3385, January 2001, p. 16, fn. 94. The Commission, however, relied on 272,000 short tons as its estimate for total production capacity in China. This was the figure that the U.S. Geological Survey reported as total Chinese exports of silicon metal in 1998. This treatment is consistent with data presented in table I-3 of this report, only in that GTA® data on exports from China are used as a surrogate for Chinese capacity not USGS data in this instance.

[44] *See* table I-7.

[45] *Silicon Metal from Argentina, Brazil, and China, Inv. Nos. 731-TA-470-472 (Review),* USITC Publication 3385, January 2001, p. 16.

[46] E-mail from, ***, January 31, 2007.

Table I-11--*Continued*
Silicon metal: Chinese export markets, 1999-2001

Market	1999	2000	2001
	Value (*1,000 dollars*)		
United States	5,287	6,313	4,218
Other Chinese export markets--			
Japan	106,919	105,524	102,245
South Korea	19,496	22,962	19,719
Netherlands	13,824	20,678	18,147
Canada	9,497	20,080	16,853
Taiwan	10,658	12,098	9,764
Hong Kong	10,091	10,828	9,095
India	8,437	8,226	7,324
Russia	2,852	6,122	7,210
Mexico	1,149	3,324	5,814
United Kingdom	1,991	2,921	7,187
All others	33,978	42,199	37,882
Total	224,179	261,275	245,456
	Unit value (*per short ton*)		
United States	$733	$684	$648
Other Chinese export markets--			
Japan	793	755	710
South Korea	795	730	691
Netherlands	783	763	716
Canada	794	765	709
Taiwan	783	701	686
Hong Kong	725	672	647
India	747	698	647
Russia	820	743	711
Mexico	787	773	682
United Kingdom	912	829	878
All others	787	747	704
Average	786	743	704

Table continued on next page.

Table I-11--*Continued*
Silicon metal: Chinese export markets, 1999-2001

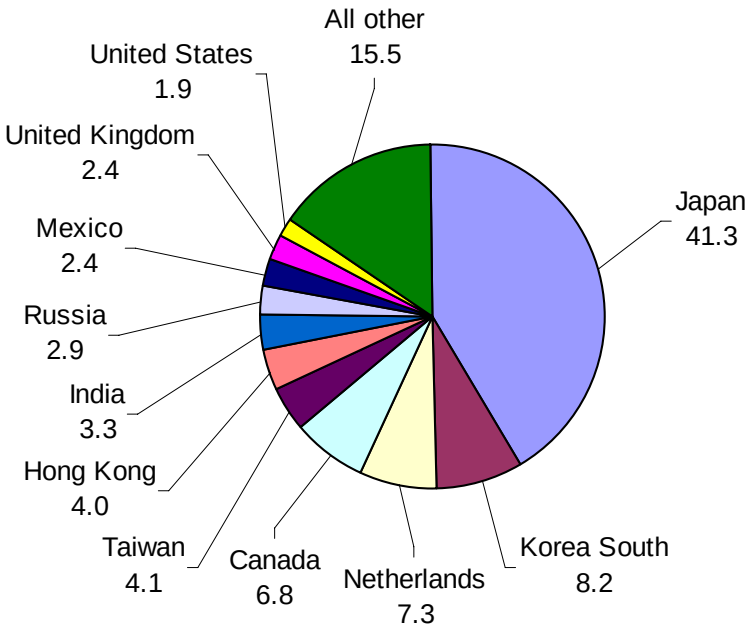
Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	2.5	2.6	1.9
Other Chinese export markets--			
Japan	47.3	39.8	41.3
South Korea	8.6	9.0	8.2
Netherlands	6.2	7.7	7.3
Canada	4.2	7.5	6.8
Taiwan	4.8	4.9	4.1
Hong Kong	4.9	4.6	4.0
India	4.0	3.4	3.3
Russia	1.2	2.3	2.9
Mexico	0.5	1.2	2.4
United Kingdom	0.8	1.0	2.4
All others	15.1	16.1	15.5
Total	100.0	100.0	100.0
	Share of value (*percent*)		
	2.4	2.4	1.7
Other Chinese export markets--			
Japan	47.7	40.4	41.7
South Korea	8.7	8.8	8.0
Netherlands	6.2	7.9	7.4
Canada	4.2	7.7	6.9
Taiwan	4.8	4.6	4.0
Hong Kong	4.5	4.1	3.7
India	3.8	3.1	3.0
Russia	1.3	2.3	2.9
Mexico	0.5	1.3	2.4
United Kingdom	0.9	1.1	2.9
All others	15.2	16.2	15.4
Total	100.0	100.0	100.0

Note.–Exports to the United States from China reported in the GTA® are higher than reported U.S. imports of silicon metal from China. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from China to the United States:

	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	3,237	4,958	4,292
GTA® statistics on exports from China (*short tons contained silicon*)	7,213	9,227	6,504

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-6
Silicon metal: Market shares (*in percent*) of Chinese exports, 2001



Source: Table I-11.

France

According to *** data, France accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). Ferropem, the successor firm to Invensil, submitted a response to the Commission's foreign producer questionnaire in this remand investigation. Invensil was the only producer of silicon metal in France during the period of the original investigation. Table I-12 presents data on the silicon metal industry in France between January 1999 and September 2002.

Table I-12
Silicon metal: French total capacity, production, inventories, and shipments, 1999-2001, January-September 2001, and January-September 2002

* * * * * * *

Invensil increased its capacity to produce silicon metal by *** percent between 1999 and 2000 and *** percent between 2000 and 2001.[47] Invensil did not report its capacity for the partial periods January to September 2001 and January to September 2002. Invensil also increased its production by *** percent between 1999 and 2000, and by *** percent between 2000 and 2001. Invensil reported *** percent higher production of silicon metal in January to September 2002 than in January to September 2001. Since production increased by *** than capacity, Invensil's capacity utilization decreased from *** percent in 1999 to *** percent in 2001. The data indicate that Invensil had an increasing, but ***

[47] The average production capacity reported by Invensil was *** percent of nameplate capacity as reported in the ***. Invensil indicated that ***. Ferropem/Invensil's foreign producer questionnaire response, section II-6.

excess capacity of *** short tons contained silicon in 1999, *** short tons contained silicon in 2000, and *** short tons contained silicon in 2001. The unused capacity in France represented approximately *** percent of U.S. imports from Russia in 1999, *** percent of U.S. imports from Russia in 2000, and *** percent of U.S. import from Russia in 2001.[48]

U.S. imports of silicon metal from France were 2,397 short tons in 1999, three short tons in 2000, and 25 short tons in 2001.[49] The GTA® does not report any exports from France under the HTS subheading for silicon metal.[50] The trend in exports reported by Invensil, the only known French silicon metal producer during the original period of investigation, corresponds to the trend reported in U.S. imports of silicon metal from France.[51] The French industry has an exports to consumption ratio ***.[52] While data on total exports of silicon metal from France are not available from GTA, Invensil, the only known producer of silicon metal in France, reports that exports from France to markets other than the United States accounted for *** short tons in 1999, *** short tons in 2000, and *** short tons in 2001. Invensil indicated that its principal export markets are ***.[53]

Germany

According to *** data, Germany accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). RW Silicium, the only known producer of silicon metal in Germany, declined to provide the Commission with a response to the foreign producer questionnaire after consultation with the EU industry association Euroalliage based in Belgium.[54] [55] *** data indicate that the industry in Germany increased its capacity to produce silicon metal by *** percent between 1999 and 2000, and then again increased capacity by *** percent between 2000 and 2001.[56] The German industry increased its capacity utilization from *** percent in 1999 to *** percent in 2000, and then had decreased its capacity utilization to *** percent in 2001.

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[48] *See* table I-3.

[49] Ibid.

[50] GTIS receives European data from Eurostat for its GTA® database. Eurostat suppresses some countries' import and export data based on concerns over confidentiality.

[51] The following tabulation compares U.S. imports of silicon metal from France and reported exports of silicon metal from France by Invensil:

	Calendar year			January to September	
	1999	2000	2001	2001	2002
U.S. imports	2,397	2	1	1	1
Invensil exports	***	***	***	***	***

According to Invensil, some of the material reported in its exports are ***, which might explain why exports as reported by Invensil are *** than material reported in U.S. imports near the end of the original period of investigation.

[52] The export to consumption ratio for France ranged between *** over the original period of investigation, which means that the French industry exported approximately as much silicon metal that it consumed internally.

[53] Ferropem's/ Invensil's foreign producer's questionnaire response, question II-6.

[54] U.S. Department of State, U.S. Embassy, Berlin, unclassified BERLIN 000206, February 1, 2007.

[55] E-mail from ***, January 22, 2007.

[56] *See* table I-3.

The GTA® did not report any exports of silicon metal from Germany.[57] The U.S. Department of State provided the Commission with some data on exports of silicon metal from Germany; however, these data were for both subject (HTS subheading 2804.69) and nonsubject (HTS subheading 2804.61) products combined.[58]

Italy

*** reported capacity and production of silicon metal in Italy in 1999 and 2000, but indicated discontinued operations beginning in 2001 (*see* table I-3).[59] Metalleghe Group submitted a foreign producer questionnaire response to the Commission indicating that ***.[60] In response to the Commission's request for information from the U.S. embassy in Rome, the U.S. State Department indicated that:

> "the Italian Bureau of Statistics (ISTAT) confirmed the existence of one Italian company which produces silicon, but declined to name the company for confidentiality reasons. They also refused to release production data because the release of these data would violate ISTAT rules regarding releasing company-specific data. The company is likely the Metalleghe Group, the Italian company which controls the Bosnian company B.S.I. d.o.o., mentioned in reftel. The Metalleghe Group (http://www.metalleghegroup.com/) owns companies in Italy, France, Hungary, Romania and Bosnia-Herzegovina and focuses on re-carburizing products and raw materials for the steel industry, especially the production of recarburizers on a carbon basis, the production of ferroalloy briquettes for cast iron foundries, and the sale of ferroalloys."[61]

Norway

According to *** data, Norway accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The industry in Norway increased its capacity to produce silicon metal by *** percent between 1999 and 2000, and then again increased its capacity by *** percent between 2000 and 2001.[62] The Norwegian industry increased its capacity utilization over the original period of investigation. Norway had a decreasing amount of excess capacity between 1999 and 2001.

In the original period of investigation, U.S. imports of silicon metal from Norway were 8,050 short tons in 1999, 3,293 short tons in 2000, and 5,114 short tons in 2001.[63] Trends reported in U.S.

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[57] GTIS receives European data from Eurostat for its GTA® database. Eurostat suppresses some countries' import and export data based on concerns over confidentiality.

[58] U.S. Department of State, U.S. Embassy, Berlin, unclassified BERLIN 000206, February 1, 2007.

[59] ***, received by fax, January 17, 2007.

[60] Metalleghe foreign producer questionnaire response.

[61] U.S. Department of State, U.S. Embassy, Rome, Unclassified ROME 000233, February 5, 2007.

[62] *See* table I-3. Data are not available on the degree to which the industry further processes or purifies the silicon metal it produces into product used in the semiconductor industry.

[63] *See* table I-3.

imports of silicon metal from Norway correspond to the trends in Norwegian exports to the United States reported in the GTA® database. [64] The Norwegian industry has *** exports to consumption ratio.[65]

Table I-13 presents data on exports of silicon metal from Norway between 1999 and 2001, and figure I-7 presents shares for Norwegian exports of silicon metal in 2001. Other European nations (Germany, United Kingdom, France, the Netherlands, Italy, Sweden, Denmark, and Finland) are Norway's primary export markets and accounted for 83.3 percent of Norwegian exports in 2001. The average unit values of Norwegian exports to other European nations were lower than the average unit values of Norwegian exports to the United States.

The U.S. Department of State was also able to gather data on the production, capacity, and shipments of silicon metal from the only two known Norwegian producers, Fesil and Elkem, and the data are presented in table I-14.[66]

[64] However, the reported Norwegian exports are greater than reported U.S. imports in 1999 and slightly lower in both 2000 and 2001.

[65] The export to consumption ratio for Norway ranged between *** over the original period of investigation, which means that the Norwegian industry exported approximately *** times the amount of silicon metal that firms in Norway apparently consumed.

[66] U.S. Department of State, U.S. Embassy, Oslo, unclassified OSLO 000095, February 1, 2007.

Table I-13
Silicon metal: Norwegian export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	6,687	3,693	5,736
Other Norwegian export markets--			
Germany	66,217	75,706	66,413
United Kingdom	31,432	34,548	38,292
Japan	13,694	15,393	15,107
France	8,886	7,600	9,893
Netherlands	4,556	3,642	8,132
Italy	3,089	3,599	6,307
Sweden	3,407	3,670	4,112
United Arab Emirates	6,174	8,550	3,343
Denmark	2,807	2,607	2,557
Finland	2,446	2,193	1,940
All other	4,173	6,024	3,430
Total	153,568	167,226	165,261
		Value (*1,000 dollars*)	
United States	9,243	5,069	7,748
Other Norwegian export markets--			
Germany	80,153	77,919	67,949
United Kingdom	40,290	35,889	40,600
Japan	21,390	21,973	20,012
France	10,037	7,376	9,703
Netherlands	5,050	3,426	7,246
Italy	3,348	3,466	6,551
Sweden	3,938	3,763	4,160
United Arab Emirates	7,243	8,974	3,377
Denmark	3,038	2,808	2,649
Finland	2,700	2,230	1,994
All other	4,342	5,138	3,516
Total	190,771	178,032	175,505

Table continued on next page.

Table I-13--*Continued*
Silicon metal: Norwegian export markets, 1999-2001

Market	1999	2000	2001
	Unit value (*per short ton*)		
United States	$1,382	$1,373	$1,351
Other Norwegian export markets--			
Germany	1,210	1,029	1,023
United Kingdom	1,282	1,039	1,060
Japan	1,562	1,427	1,325
France	1,130	971	981
Netherlands	1,108	941	891
Italy	1,084	963	1,039
Sweden	1,156	1,025	1,012
United Arab Emirates	1,173	1,050	1,010
Denmark	1,082	1,077	1,036
Finland	1,104	1,017	1,028
All other	1,040	853	1,025
Average	1,242	1,065	1,062
	Share of quantity (*percent*)		
United States	4.4	2.2	3.5
Other Norwegian export markets--			
Germany	43.1	45.3	40.2
United Kingdom	20.5	20.7	23.2
Japan	8.9	9.2	9.1
France	5.8	4.5	6.0
Netherlands	3.0	2.2	4.9
Italy	2.0	2.2	3.8
Sweden	2.2	2.2	2.5
United Arab Emirates	4.0	5.1	2.0
Denmark	1.8	1.6	1.5
Finland	1.6	1.3	1.2
All other	2.7	3.6	2.1
Total	100.0	100.0	100.0

Table continued on next page.

Table I-13--*Continued*
Silicon metal: Norwegian export markets, 1999-2001

Market	1999	2000	2001
	Share of value (*percent*)		
United States	4.8	2.8	4.4
Other Norwegian export markets--			
Germany	42.0	43.8	38.7
United Kingdom	21.1	20.2	23.1
Japan	11.2	12.3	11.4
France	5.3	4.1	5.5
Netherlands	2.6	1.9	4.1
Italy	1.8	1.9	3.7
Sweden	2.1	2.1	2.4
United Arab Emirates	3.8	5.0	1.9
Denmark	1.6	1.6	1.5
Finland	1.4	1.3	1.1
All other	2.3	2.9	2.0
Total	100.0	100.0	100.0

Note.–Exports to the United States from Norway reported in the GTA® follow the same trends as U.S. imports of silicon metal in official Commerce statistics. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from Norway to the United States.

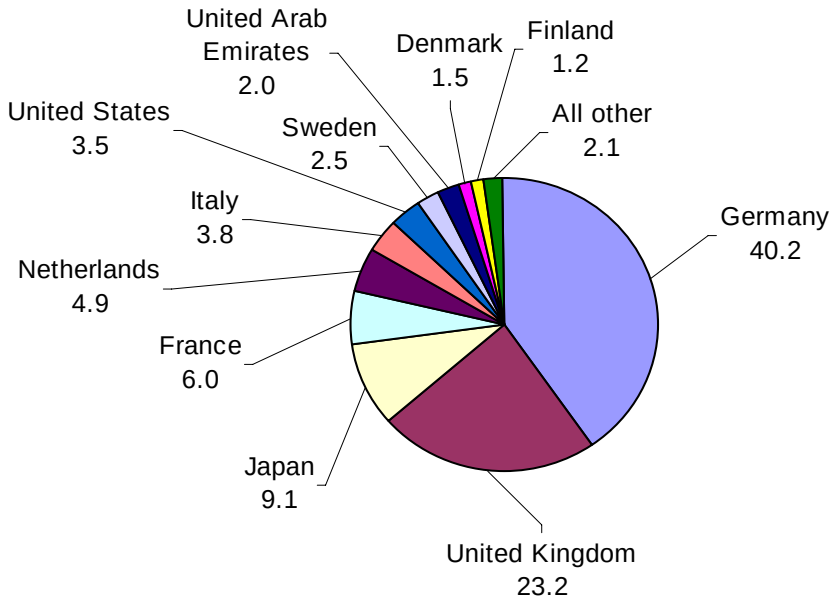
	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	8,050	3,293	5,114
GTA® statistics on exports from Norway (*short tons contained silicon*)	6,687	3,693	5,736

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Table I-14
Silicon metal: Norwegian total capacity, production, inventories, and shipments, 1999-2001, January-September 2001, and January-September 2002

* * * * * * *

Figure I-7
Silicon metal: Market shares (*in percent*) of Norwegian exports, 2001



Source: Table I-13.

Saudi Arabia

*** reported production of silicon metal in Saudi Arabia in 1999 and 2000, but indicated operations were discontinued beginning in 2001 (*see* table I-3).

South Africa

According to *** data, South Africa accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). As reported by the U.S. embassy in Pretoria, Silicon Smelters is the only producer of silicon metal in South Africa, and the firm "has never faced any antidumping duties or quantitative restrictions in foreign markets."[67] In addition, Silicon Smelters submitted a response to the foreign producer questionnaire in this remand investigation, and the data are presented in table I-15.

Table I-15
Silicon metal: South African total capacity, production, inventories, and shipments, 1999-2001, January-September 2001, and January-September 2002

* * * * * * *

[67] U.S. Department of State, U.S. Embassy, Pretoria, unclassified PRETORIA 000436, February 6, 2007.

Silicon Smelters increased its capacity to produce silicon metal by *** percent between 1999 and 2000 and decreased its capacity by *** percent between 2000 and 2001.[68] Silicon Smelters' capacity *** by *** percent during January-September 2002 when compared to January-September 2001. Silicon Smelters also *** its production by *** percent between 1999 and 2000, and *** its production *** between 2000 and 2001 (*** percent). Production of silicon metal decreased *** percent during January-September 2002 when compared to the same period in 2001. Capacity utilization fluctuated from *** percent in 1999 to *** percent in 2000, and *** percent in 2001. Excess capacity amounted to *** short tons contained silicon in 1999, *** short tons contained silicon in 2000, *** short tons contained silicon in 2001, and *** short tons during January-September 2002.

U.S. imports of silicon metal from South Africa were 28,184 short tons contained silicon in 1999, 40,329 short tons in 2000, and 35,305 short tons in 2001.[69] Except for the misreported material identified in GTA® data for exports of silicon metal from South Africa in 2001, U.S. imports of silicon metal from South Africa, GTA® data on South African exports and Silicon Smelters' reported exports to the United States are consistent and indicate that South African silicon metal was present in the U.S. market during the original period of investigation between approximately 25,000 to 35,000 short tons, in increasing amounts between 1999 and 2001.[70] The South African industry had an exports to consumption ratio greater than *** in each calendar year of the original investigation.[71]

Table I-15 presents data on exports of silicon metal from South Africa between 1999 and 2001 and figure I-8 presents shares of South African exports of silicon metal in 2001. Silicon Smelters, the only known South African producer of silicon metal, primarily supplied its production to the United States. Silicon Smelters indicated that its principal export markets besides the United States were ***.[72]

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[68] Silicon Smelters indicated that "***." Silicon Smelters' foreign producer questionnaire response, section II-6. The average production capacity reported by Silicon Smelters was *** than the nameplate capacity reported in *** data in 1999, which may be explained by the reported ***.

[69] *See* table I-3.

[70] The following tabulation compares U.S. imports of silicon metal from South Africa and reported exports of silicon metal from South Africa by Silicon Smelters (quantities reported in short tons contained silicon):

	Calendar year			January to September	
	1999	2000	2001	2001	2002
U.S. imports	28,184	40,329	35,305	29,690	26,731
Silicon Smelters exports	***	***	***	***	***

[71] The export to consumption ratio for South Africa ranged between *** over the original period of investigation.

[72] Silicon Smelters' foreign producer questionnaire response, section II-6.

Table I-16
Silicon metal: South African export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	25,349	36,626	26,731
Other South African export markets--			
Netherlands	2,094	930	3,972
United Kingdom	4,511	11,231	3,073
Germany	1,841	1,872	2,408
Japan	402	2,865	1,591
All others	2,721	171	314
Total	36,917	53,695	38,089
	Value (*1,000 dollars*)		
United States	24,636	32,143	26,976
Other South African export markets--	0	0	0
Netherlands	517	333	1,129
United Kingdom	4,403	5,638	2,864
Germany	2,342	1,059	1,489
Japan	872	2,054	2,410
All others	3,374	349	533
Total	36,144	41,575	35,401
	Unit value (*per short ton*)		
United States	$972	$878	$1,009
Other South African export markets--			
Netherlands	247	358	284
United Kingdom	976	502	932
Germany	1,272	566	618
Japan	2,172	717	1,515
All others	1,240	2,035	1,695
Average	979	774	929

Table continued on next page.

Table I-16--*Continued*
Silicon metal: South African export markets, 1999-2001

Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	68.7	68.2	70.2
Other South African export markets--	0.0	0.0	0.0
Netherlands	5.7	1.7	10.4
United Kingdom	12.2	20.9	8.1
Germany	5.0	3.5	6.3
Japan	1.1	5.3	4.2
All others	7.4	0.3	0.8
Total	100.0	100.0	100.0
	Share of value (*percent*)		
United States	68.2	77.3	76.2
Other South African export markets--	0.0	0.0	0.0
Netherlands	1.4	0.8	3.2
United Kingdom	12.2	13.6	8.1
Germany	6.5	2.5	4.2
Japan	2.4	4.9	6.8
All others	9.3	0.8	1.5
Total	100.0	100.0	100.0

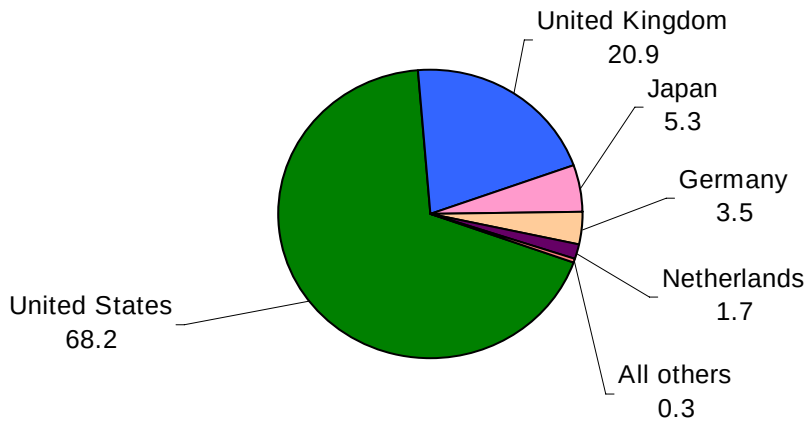
Note.–Exports to the United States from South Africa reported in the GTA® presented in this table follow the same trend of U.S. imports from South Africa in official Commerce statistics, with the exception of the material or entry(ies) the South African Customs must have mistakenly entered in 2001. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from South Africa to the United States:

	1999	2000	2001
Official Commerce statistics, (*short tons contained silicon*)	28,184	40,329	35,305
GTA® statistics on exports from South Africa (*short tons contained silicon*)	25,866	37,373	668,201[1]

[1] Staff was not able to back out the misreported South African exports to the United States under the HTS subheading 2804.69 as was done in table I-7 and explained in footnote 2 of that table because the South African Trade Ministry website did not provide for a query that reports exports by quantity for the 2804.69 HTS subheading broken out by destination. Instead, staff substituted reported U.S. imports from South Africa (see table I-2) for exports from South Africa of silicon metal in 2001.

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-8
Silicon metal: Market shares (*in percent*) of South African exports, 2001



Source: Table I-16.

Spain

According to *** data, Spain accounted for *** percent of world production of silicon metal during 2001 (*see* table I-3). The industry in Spain had a capacity to produce approximately *** short tons of silicon metal over the original period of investigation, and was operating at *** percent capacity utilization in 1999 and then at *** percent capacity utilization in 2000 and 2001.

Table I-17 presents data on exports of silicon metal from Spain between 1999 and 2001 and figure I-9 presents shares of Spanish exports of silicon metal in 2001. Europe is Spain's primary export market.

Table I-17
Silicon metal: Spanish export markets, 1999-2001

Market	1999	2000	2001
	Quantity (*short tons contained silicon*)		
United States	500	3	2,269
Other Spanish export markets--			
United Kingdom	6,009	9,533	6,116
Germany	4,515	2,517	4,102
France	2,208	1,326	1,262
Italy	2,210	2,461	998
Portugal	230	303	283
All others	518	481	114
Total	16,189	16,624	15,144
	Value (*1,000 dollars*)		
United States	527	19	2,126
Other Spanish export markets--			
United Kingdom	5,946	9,338	6,254
Germany	4,379	2,481	3,866
France	2,478	1,341	1,308
Italy	2,162	2,501	1,026
Portugal	298	388	330
All others	472	474	102
Total	16,261	16,542	15,012
	Unit value (*per short ton*)		
United States	$1,054	$7,290	$937
Other Spanish export markets--			
United Kingdom	990	979	1,023
Germany	970	986	942
France	1,122	1,011	1,036
Italy	978	1,016	1,028
Portugal	1,297	1,283	1,165
All others	911	985	898
Total	1,004	995	991

Table continued on next page.

Table I-17--*Continued*
Silicon metal: Spanish export markets, 1999-2001

Market	1999	2000	2001
	Share of quantity (*percent*)		
United States	3.1	([1])	15.0
Other Spanish export markets--			
United Kingdom	37.1	57.3	40.4
Germany	27.9	15.1	27.1
France	13.6	8.0	8.3
Italy	13.7	14.8	6.6
Portugal	1.4	1.8	1.9
All others	3.2	2.9	0.8
Total	100.0	100.0	100.0
	Share of value (*percent*)		
United States	3.2	0.1	14.2
Other Spanish export markets--			
United Kingdom	36.6	56.4	41.7
Germany	26.9	15.0	25.8
France	15.2	8.1	8.7
Italy	13.3	15.1	6.8
Portugal	1.8	2.3	2.2
All others	2.9	2.9	0.7
Total	100.0	100.0	100.0

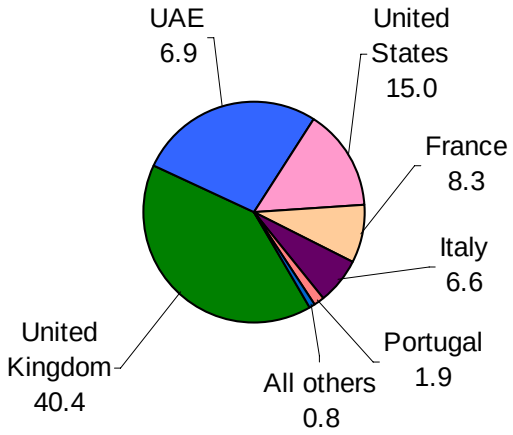
[1] Less than 0.05 percent.

Note.–Exports to the United States from Spain reported in the GTA® follow the same trend as U.S. imports of silicon metal from Spain in official Commerce statistics. The following tabulation presents the quantities of U.S. imports of silicon metal based on official Commerce statistics and exports from Spain to the United States

	1999	2000	2001
Official Commerce statistics (*short tons contained silicon*)	942	0	3,453
GTA® statistics on exports from Spain (*short tons contained silicon*)	500	3	2,269

Source: HTS subheading 2804.69 of the Global Trade Atlas®, Global Trade Information Services, Inc., www.gtis.com, retrieved January 24, 2007.

Figure I-9
Silicon metal: Market shares (*in percent*) of Spanish exports, 2001



Source: Table I-17.

Ukraine

The U.S. Department of State indicated in its response to the Commission's request for information that Zaporizhskiy Titanium-Magnesium Combine ("ZTMC") was known to produce silicon metal in the Ukraine prior to the original period of investigation but ceased these operations in 1998.[73] The U.S. Department of State continued by stating that "{a}lthough ZTMC halted silicon production in 1998, other firms have tried to use ZTMC's facilities to produce some silicon. From 1999-2004, several foreign companies rented the silicon-production facilities at ZTMC, including the Russian firm Grafi... Serhiy Terekhov, Chief Engineer of the semiconductor plant, estimated that ZTMC facilities produced approximately three to four tons of silicon metal (of various types) per month during 1999-2002."[74] These estimated quantities would indicate an estimated production of only 36 to 48 short tons of silicon per year during the original period of investigation.

[73] U.S. Department of State, U.S. Embassy, Kyiv, unclassified KYIV 000220, January 31, 2007.

[74] Ibid.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Final)]

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.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 19, 2003. The views of the Commission are contained in USITC Publication 3584 (March 2003), entitled Silicon Metal from Russia: Investigation No. 731–TA–991 (Final).

Issued: March 18, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6942 Filed 3–21–03; 8:45 am]

BILLING CODE 7020–02–P

[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.''

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Final) (Remand)]

Silicon Metal From Russia; Notice and Scheduling of Remand Proceeding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The United States International Trade Commission (Commission) gives notice of the court-ordered remand of its final antidumping duty investigation No. 731–TA–991 (Final) (Remand).

FOR FURTHER INFORMATION CONTACT: June B. Brown, Esq., Office of the General Counsel, telephone (202) 205–3042, or Diane Mazur, Office of Investigations, telephone (202) 205–3184, 500 E Street, SW., Washington, DC 20436, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Reopening the Record

In March 2003, the Commission made a final affirmative determination in the referenced investigation. The determination was appealed to the U.S. Court of International Trade (CIT), which affirmed the Commission upon remand, and was then appealed to the U.S. Court of Appeals for the Federal Circuit, which vacated and remanded the Commission's determination. *Bratsk Aluminum Smelter* v. *United States*, 444 F.3d 1369 (Fed. Cir. 2006). On August 17, 2006, the CIT issued an order remanding the case to the Commission to comply with the Federal Circuit's decision in *Bratsk.* By order of September 22, 2006, the remand proceeding was stayed upon the Commission's motion. On December 22, 2006, the CIT issued an order lifting the stay and giving the Commission 90 days to issue its remand determination.

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to include additional information on the role of non-subject imports of silicon metal in the U.S. market during the original period of investigation. The record in this proceeding will encompass the material from the record of the original

investigation and additional information placed by Commission staff on the record during this remand proceeding.

Participation in the Proceeding

Only those persons who were interested parties in the original administrative proceeding and are parties to the ongoing litigation (i.e., persons listed on the Commission Secretary's service list and parties to *Bratsk Aluminum Smelter* v. *United States*, Consol. Ct. No. 03–00200) may participate as interested parties in this remand proceeding.

Nature of the Remand Proceeding

On February 16, 2007, the Commission will make available to parties who are participating in the remand proceeding information that has been gathered by the Commission as part of this remand proceeding. These parties may file comments on or before February 27, 2007 on the legal issues raised in *Bratsk* with respect to non-subject imports and on the information on the record that is relevant to how the Commission addresses these issues in its remand determination. No additional new factual information may be included in such comments. Such comments shall not exceed 25 double-spaced pages.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002). Each document filed by a party participating in the remand investigation must be served on all other parties who may participate in the remand investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207), for provisions of general applicability concerning written submissions to the Commission.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to the referenced parties, as appropriate, under the administrative protective order (APO) in effect in the original investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: January 4, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–187 Filed 1–9–07; 8:45 am]

BILLING CODE 7020–02–P

APPENDIX B

CIT ORDER AND CAFC DECISION

UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS

BRATSK ALUMINUM SMELTER and
RUAL TRADE LIMITED,

Plaintiffs,

and

SUAL HOLDING and ZAO KREMNY; and
GENERAL ELECTRIC SILICONES LLC,

Plaintiff-Intervenors,

v.

UNITED STATES,

Defendant,

and

GLOBE METALLURGICAL INC. and
SIMCALA, INC.,

Defendant-Intervenors.

Consol. Court No.
03-00200

ORDER

This matter comes before the Court pursuant to the decision of the Court of Appeals for the Federal Circuit ("CAFC") in Bratsk Aluminum Smelter v. United States ("Bratsk III"), 444 F.3d 1369 (Fed. Cir. 2006), and the CAFC mandate dated August 7, 2006, vacating and remanding the Court in Bratsk Aluminum Smelter v. United States ("Bratsk I"), 28 CIT ___, Slip-Op 2004-75 (2004).[1] In Bratsk I, this Court remanded the case back to the International Trade Commission ("Commission") for further consideration. On

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[1] Plaintiffs, Bratsk Aluminum Smelter and RUAL Trade Limited, filed a voluntary notice of dismissal on December 6, 2004, and were not parties in Bratsk III. The remaining plaintiffs, SUAL Holdings and ZAO Kremny, continued in the litigation and were the appellants in Bratsk III.

December 3, 2004, this Court affirmed the Commission's remand determination in its entirety and dismissed the case. See Bratsk Aluminum Smelter v. United States ("Bratsk II"), 28 CIT ___, Slip-Op 2004-153 (2004).

The CAFC held that the Commission's finding of material injury was insufficiently detailed to comply with the requirements of Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997). The CAFC reasoned that "[t]he antidumping investigation here revealed the same conditions that triggered the additional causation inquiry in Gerald Metals . . . ." Bratsk III, 444 F.3d at 1375. The CAFC also found that the Commission failed to sufficiently explain its causation analysis. As guidance for the Commission, the CAFC stated

> [W]e do not suggest that the mere existence of fairly traded commodity imports at the competitive prices precludes the Commission from finding material injury. For example, it may well be that non-subject importers lack capacity to replace the subject imports or that the price of the non-subject imports is sufficiently above the subject imports such that the elimination of the subject imports would have benefitted the domestic industry. The point is that the Commission has to explain, in a meaningful way, why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry.

id. at 1376. Accordingly, pursuant to said decision by the CAFC, the Court hereby

REMANDS this case to the Commission to specifically address whether the non-subject imports would have replaced subject imports during the period of investigation; and it is further

ORDERED that if the Commission finds material injury where fairly traded commodity imports are competitively priced, the Commission must explain, in a meaningful way, why the non-subject imports would not replace the subject imports while continuing to cause injury to the domestic industry; and it is further

ORDERED that the remand results are due within ninety (90) days of the date that this order is entered. Any comments are due within thirty (30) days thereafter. Any rebuttal comments are due within fifteen (15) days after the date the comments are due.

NICHOLAS TSOUCALAS
SENIOR JUDGE

Dated: August 17, 2006
New York, New York

NOTICE OF ENTRY AND SERVICE

This is a notice that an order or judgment was entered in the docket of this action, and was served upon the parties on the date shown below.

Service was made by depositing a copy of this order or judgment, together with any papers required by USCIT Rule 79(c), in a securely closed envelope, proper postage attached, in a United States mail receptacle at One Federal Plaza, New York, New York 10278 and addressed to the attorney of record for each party at the address on the official docket in this action, except that service upon the United States was made by personally delivering a copy to the Attorney-In-Charge, International Trade Field Office, Civil Division, United States Department of Justice, 26 Federal Plaza, New York, New York 10278 or to a clerical employee designated, by the Attorney-In-Charge in a writing filed with the clerk of the court.

or

Service was made electronically, by the Court's CM/ECF system, upon those parties that have filed a Notice of Consent to Electronic Service.

Tina Potuto Kimble
Clerk of the Court

Date: 8/17/06

By: /s/ Cynthia Love
Deputy Clerk

United States Court of Appeals for the Federal Circuit

05-1213

BRATSK ALUMINIUM SMELTER, RUAL TRADE LIMITED,
and GENERAL ELECTRIC SILICONES LLC,

Plaintiffs,

and

SUAL HOLDING and ZAO KREMNY,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee,

and

GLOBE METALLURGICAL INC. and SIMCALA, INC.,

Defendants-Appellees.

Frederick P. Waite, Vorys, Sater, Seymour and Pease LLP, of Washington, DC, argued for plaintiffs-appellants. With him on the brief was Kimberly R. Young.

June B. Brown, Attorney, Office of General Counsel, United States International Trade Commission, of Washington, DC, argued for defendant-appellee United States. On the brief were James M. Lyons, General Counsel, Andrea C. Casson, Acting Assistant General Counsel, and Irene H. Chen, Attorney.

William D. Kramer, DLA Piper Rudnick Gray Cary US LLP, of Washington, DC, argued for defendants-appellees Globe Metallurgical Inc. and Simcala, Inc. With him on the brief was Clifford E. Stevens, Jr. Of counsel was Martin Schaefermeier.

Appealed from: United States Court of International Trade

Senior Judge Nicholas Tsoucalas

United States Court of Appeals for the Federal Circuit

05-1213

BRATSK ALUMINIUM SMELTER, RUAL TRADE LIMITED,
and GENERAL ELECTRIC SILICONES LLC,

Plaintiffs,

and

SUAL HOLDING and ZAO KREMNY,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee,

and

GLOBE METALLURGICAL INC. and SIMCALA, INC.,

Defendants-Appellees.

DECIDED: April 10, 2006

Before GAJARSA, Circuit Judge, ARCHER, Senior Circuit Judge, and DYK, Circuit Judge.

Opinion for the court filed by Circuit Judge DYK. Dissenting opinion filed by Senior Circuit Judge ARCHER.

DYK, Circuit Judge.

SUAL Holding and ZAO Kremny (collectively "appellants") appeal from the judgment of the United States Court of International Trade affirming the International

Trade Commission's ("Commission") determination that domestic industry was materially injured by reason of silicon metal imports from Russia that were sold at less than fair market value ("LTFV"). We vacate the Court of International Trade's decision and remand for further proceedings.

BACKGROUND

In antidumping proceedings, the Commission is charged with determining whether an industry in the United States has suffered, or is threatened with, material injury by reason of imports. 19 U.S.C. § 1673d(b) (2000). Material injury determinations are particularly difficult where the imports sold at LTFV compete with identical imports not sold at LTFV.

The product involved here is silicon metal. Silicon metal is a commodity product, meaning that it is generally interchangeable regardless of its source. Therefore, price is the primary consideration for purchasers of silicon metal. The market for silicon metal consists of three segments: chemical, primary aluminum, and secondary aluminum. During the pertinent time period there were ten countries, other than the United States, which supplied silicon metal to the U.S. market: Argentina, Brazil, Canada, China, Korea, Norway, Russia, Saudi Arabia, South Africa, and Spain.

On March 7, 2002, Globe Metallurgical Inc., SIMCALA Inc., and several union groups filed an antidumping petition with the Commission and with the United States Department of Commerce ("Commerce"), alleging that Russian imports of silicon metal at LTFV had materially injured the domestic industry. On February 11, 2003, Commerce rendered its final determination that the subject imports were, or were likely

to be, sold at LTFV. On March 24, 2003, the Commission determined that the domestic industry was materially injured by reason of the subject imports.

The Commission relied on market data over a three-year period, 1999-2001, as well as data for specific periods between January-September 2001 and 2002, and, as required by the statute, considered subject import volume, the effect of subject imports on domestic prices, and the impact of subject imports on domestic producers. 19 U.S.C. § 1677(7)(B)(i), (C) (2000). First, the Commission found that subject import volume was significant and that subject import volume increased from 1999 to 2001, while domestic producers lost market share. The Commission also noted, however, that the domestic industry was able to satisfy only a portion of U.S. silicon metal demand.

The Commission next considered what effect subject imports had on domestic prices. The Commission noted that "price is very important in purchasing decisions, given the commodity-like nature of the subject product." Using purchaser price data, the Commission found that during the period of investigation, subject imports almost always undersold the domestic product in all three market segments. In response to the argument that all imports, not just subject imports, undersold the domestic product, the Commission stated that "price data for nonsubject imports shows that imports from Russia have been priced at lower levels than nonsubject imports," and concluded that "[i]n 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." The Commission further noted:

> 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 . . . .

Finally, the Commission turned to the impact of subject imports on domestic producers and concluded that, given the significant volume and price effects of the subject imports, subject imports had a significant adverse effect on the domestic industry. The Commission considered the domestic industry's drop in market share, as well as the fact that certain silicon metal furnaces had been closed or converted for other uses. The Commission "acknowledge[d] that domestic industry lost market share to nonsubject imports as well," but concluded that "[r]egardless 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 depressed domestic silicon metal prices to a significant degree during the POI had a material adverse impact on the domestic industry."

Appellants[1] argued that our decision in Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) required a specific determination as to whether the non-subject imports would simply replace the subject imports, with the same impact on domestic products, if the subject imports were excluded from the market. The Commission made no such determination and dismissed our decision in Gerald Metals as being factually distinguishable.

[1] Plaintiffs below, Bratsk Aluminium Smelter and RUAL Trade Limited, filed a voluntary notice of dismissal on December 6, 2004, and are thus not parties to this appeal. However, the remaining plaintiffs, SUAL Holding and ZAO Kremny, continued in the litigation and are appellants in this case.

Appellants challenged several aspects of the Commission's determination in the Court of International Trade, including whether the Russian imports actually caused injury to the domestic industry. The court made no ruling with respect to the causation issue but remanded the case to the Commission on an unrelated issue. The court noted that it would "consider the remaining issues raised by Plaintiffs upon review of the remand determination." Bratsk Aluminum Smelter v. United States, No. 03-00200, 2004 WL 1385848, at *11 (Ct. Int'l Trade June 22, 2004). On remand, the Commission incorporated its initial decision by reference and then clarified some of its findings. On December 3, 2004, the Court of International Trade affirmed the Commission's remand determination "in its entirety" and dismissed the case, stating that "all other issues have been decided . . . ." SUAL Holding and ZAO Kremny timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

The sole point of contention in this appeal is whether the Commission established that the injury to the domestic industry was "by reason of" the subject imports.[2]

I

The antidumping statute states that the "Commission shall make a final determination of whether . . . an industry in the United States . . . is materially injured . .

[2] "We apply anew the standard of review applied by the Court of International Trade in its review of the administrative record. We therefore uphold the Commission's determination unless it was arbitrary and capricious or unsupported by substantial evidence on the record, or otherwise not in accordance with law." Timken U.S. Corp. v. United States, 421 F.3d 1350, 1354 (Fed. Cir. 2005) (internal citation and quotation marks omitted); 19 U.S.C. § 1516a(b)(1)(B)(i) (2000).

. . . by reason of imports . . . ." 19 U.S.C. § 1673d(b) (2000). In making this determination, the Commission must consider:

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

19 U.S.C. § 1677(7)(B)(i) (2000). "An affirmative injury determination requires both (1) present material injury and (2) a finding that the material injury is 'by reason of' the subject imports." Gerald Metals, Inc., 132 F.3d at 719 (emphasis added). We have previously explained that the "by reason of" requirement "mandates a showing of causal—not merely temporal—connection between the LTFV goods and the material injury." Id. at 720. We have not required the Commission to employ any particular methodology for determining whether this causation element has been met,[3] and the "Commission need not isolate the injury caused by other factors from injury caused by unfair imports . . . ." Taiwan Semiconductor Industry v. Int'l Trade Comm'n, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (quoting legislative history of the Uruguay Round Agreements Act); see also Nippon Steel Corp. v. Int'l Trade Comm'n, 345 F.3d 1379, 1381 (Fed. Cir. 2003) ("'[D]umping' need not be the sole or principal cause of injury."). However, we have made clear that causation is not shown if the subject imports contributed only "minimally or tangentially to the material harm." Gerald Metals, 132

[3] In United States Steel Group v. United States, 96 F.3d 1352 (Fed. Cir. 1996), we noted that the Commission uses different methodologies in determining whether the domestic injury was "by reason of" the LTFV imports. Id. at 1361-62. We then found that the antidumping statute "on its face compels no [ ] uniform methodology, and we are not persuaded that we should create one, even were we so empowered." Id. at 1362.

F.3d at 722; see also Nippon Steel Corp., 345 F.3d at 1381; U.S. Steel Group v. United States, 96 F.3d 1352, 1361-62 (Fed. Cir. 1996).

The Commission, like other federal agencies, "must examine the relevant data and articulate a satisfactory explanation for its action . . . . Normally, an agency rule would be arbitrary and capricious if the agency . . . entirely fail[s] to consider an important aspect of the problem." Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Where commodity products are at issue and fairly traded, price competitive, non-subject imports are in the market, the Commission must explain why the elimination of subject imports would benefit the domestic industry instead of resulting in the non-subject imports' replacement of the subject imports' market share without any beneficial impact on domestic producers.

In Gerald Metals, the Commission determined that Ukranian imports of pure magnesium at LTFV injured the domestic industry. The Commission's determination did not discuss whether non-subject imports, namely fairly-traded Russian imports, would have replaced all or a greater part of the subject imports. Three dissenting commissioners found that the presence of the non-subject imports undermined the causation determination. Magnesium from China, Russia, and Ukraine, U.S. Int'l Trade Comm'n Pub. 2885, Inv. Nos. 731-TA-696-698 at 29 (Chairman Watson, dissenting), 35-36 (Vice Chairman Nuzum, dissenting), and 48 (Comm'r Crawford, dissenting) (May 1995) (final). The dissenters noted that non-subject imports were perfect substitutes for the Ukranian subject imports and frequently undersold the domestic product just as the Ukranian imports had. Magnesium from China, Russia, and Ukraine at 35 (Vice

Chairman Nuzum, dissenting), 45 (Comm'r Crawford, dissenting); see also Gerald Metals, 132 F.3d at 718-19.

The Court of International Trade, while acknowledging that the Commission did not discuss the issue of substitutability, affirmed the Commission's finding of material injury. Gerald Metals, Inc. v. United States, 937 F. Supp. 930, 935 n.22, 936 (Ct. Int'l Trade 1996). On appeal, we vacated the court's decision and explained that the Commission must "'take[ ] into account contradictory evidence or evidence from which conflicting inferences could be drawn.'" 132 F.3d at 720 (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 487 (1951)). Given that the fairly-traded non-subject imports were substitutable for the Ukranian subject imports and undersold the domestic product just as the subject imports had, we held that the Commission must explain, in its analysis of the harm caused by the subject imports, why domestic consumers would not have purchased the fairly traded non-subject imports. See id. at 718, 720, 721-23.[4]

This court applied the reasoning of Gerald Metals in Taiwan Semiconductor. There, the Commission—after two remands from the Court of International Trade on the issue of causation—determined that Taiwanese imports of static random access memory chips ("SRAMs") at LTFV had not injured the domestic industry. 266 F.3d at 1342. The Commission concluded that "the volume of subject imports, and increase in volume [of subject imports], are not sufficient to demonstrate that the subject imports themselves made a material contribution to any injury experienced by the domestic

[4] As we explained in Taiwan Semiconductor Industry v. International Trade Commission, 266 F.3d 1339 (Fed. Cir. 2001), "Gerald Metals applied the antidumping law as it existed prior to amendment effective on January 1, 1995, by the Uruguay Round Agreements Act (URAA) . . . . The URAA did not deviate from the pre-existing causation standard enunciated in Gerald Metals." Id. at 1345.

industry." Id. at 1346 (quoting the Commission's Redetermination). In particular, the Commission found that non-subject Korean imports of SRAMs were, like the subject imports, priced lower than the domestic product, and were at times priced lower than the subject imports as well. Id. at 1347. We affirmed the Commission's determination, noting that "substantial evidence supports the fact that the United States market share was impacted largely by non-subject imports," and that "[i]n Gerald Metals, as in this case, the record did not show that the subject imports caused the material injury in light of the dominant presence of non-subject imports in the marketplace." Id. at 1345-46, 1347.

Thus under Gerald Metals, the increase in volume of subject imports priced below domestic products and the decline in the domestic market share are not in and of themselves sufficient to establish causation. Gerald Metals did not, of course, establish a per se rule barring a finding of causation where the product is a commodity product and there are fairly traded imports priced below the domestic product. However, under Gerald Metals, the Commission is required to make a specific causation determination and in that connection to directly address whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.

II

The antidumping investigation here revealed the same conditions that triggered the additional causation inquiry in Gerald Metals and Taiwan Semiconductor, as the Commission found silicon metal generally interchangeable regardless of where it is produced. Non-subject imports were present in the U.S. market during the period of investigation and were a significant factor in the U.S. market. As a percentage of total

imports (by quantity), non-subject imports accounted for approximately 79.6% in 1999, 82.6% in 2000, and 73.0% in 2001.

Further, while the subject imports generally undersold the domestic product, there was evidence that non-subject imports from Brazil, Canada, Saudi Arabia, and South Africa generally undersold the domestic product during the period of investigation. These circumstances suggest that the elimination of the subject imports from the domestic market might simply have increased the market share of the non-subject imports. Gerald Metals thus requires the Commission to explain why—notwithstanding the presence and significance of the non-subject imports—it concluded that the subject imports caused material injury to the domestic industry. While there may be support for the Commission's ultimate determination of material injury in the record here, we find that the Commission did not sufficiently explain its decision in this regard.

The failure of the agency to explain its causation analysis in accordance with Gerald Metals is particularly troubling in this case because of the agency's claim that it is not obligated to follow this court's precedent. The Commission sought to dismiss Gerald Metals as having no precedential value in other anti-dumping investigations, stating that "the prior Commission investigations cited by respondents are factually distinguishable from the instant investigation." On appeal, the Commission continues to dismiss our precedent by attempting to limit Gerald Metals to its "unique facts" and explaining that "the instant investigation is not factually analogous either to Gerald Metals or Taiwan Semiconductor." Commission's Br. at 33, 35. In particular, the Commission stated that Gerald Metals and Taiwan Semiconductor are distinguishable

because in both of those cases, non-subject import volume increased while the subject import volume decreased or remained the same. The Commission is obligated to follow the holdings of our cases, not to limit those decisions to their particular facts. The holding of Gerald Metals is not limited to situations in which non-subject imports increased during the period of review. The obligation under Gerald Metals is triggered whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.

In its decision, the Commission also attempted to support the link between subject imports and the domestic injury by pointing out that after subject imports were withdrawn from the market in 2002 following the Department of Commerce's preliminary determination, silicon spot prices increased and prices for eleven domestic contracts increased during the fourth quarter of 2002. That spot prices may have increased after the Russian imports exited the market may be pertinent to the causation question, but that fact does not excuse the Commission's failure to address directly the causation issue in detail as required by Gerald Metals. The Commission did not explain how much the spot prices increased, the significance of that increase, or the significance of the eleven contracts for the domestic market.

Finally on appeal, among other things, the Commission argues that the appellant "has not demonstrated" that "nonsubject imports were well positioned to completely fill any void left by the withdrawal of subject imports from the market." Gov't Br. at 35-36. Presumably, this is an argument that non-subject imports could not replace subject imports because producers of non-subject imports lacked the capacity to supply the necessary volume to the U.S. market. Such a finding would certainly be relevant to the

causation analysis under Gerald Metals. However, it is the Commission's burden, not the subject importer's, to demonstrate that the subject imports themselves caused the domestic injury. See Gerald Metals, 132 F.3d at 722. In any event, the Commission's decision made no finding on the capacity issue.

III

In short, the Commission's summary finding of material injury is insufficiently detailed to comply with the requirements of Gerald Metals. We therefore vacate and remand the Court of International Trade's decision so that it may remand the case back to the Commission to specifically address whether the non-subject imports would have replaced subject imports during the period of investigation.

In ordering reconsideration by the Commission, we do not suggest that the mere existence of fairly traded commodity imports at competitive prices precludes the Commission from finding material injury. For example, it may well be that non-subject importers lack capacity to replace the subject imports or that the price of the non-subject imports is sufficiently above the subject imports such that the elimination of the subject imports would have benefited the domestic industry. The point is that the Commission has to explain, in a meaningful way, why the non-subject imports would not replace the subject imports and continue to cause injury to the domestic industry.

CONCLUSION

For the foregoing reasons, the decision below is vacated and remanded for further proceedings.

VACATED and REMANDED

COSTS

No costs.

United States Court of Appeals for the Federal Circuit

05-1213

BRATSK ALUMINIUM SMELTER, RUAL TRADE LIMITED,
and GENERAL ELECTRIC SILICONES LLC,

Plaintiffs,

and

SUAL HOLDING and ZAO KREMNY,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee,

and

GLOBE METALLURGICAL INC. and SIMCALA, INC.,

Defendants-Appellees.

ARCHER, Senior Circuit Judge, dissenting.

The majority states that Gerald Metals, 132 F.3d 716 (Fed. Cir. 1997), "requires the Commission to explain why—notwithstanding the presence and significance of the non-subject imports—it concluded that the subject imports caused material injury to the domestic industry." Maj. op. at 10. While acknowledging that there may be support for the Commission's ultimate determination of material injury in the record here, the majority "find[s] that the Commission did not sufficiently explain its decision in this regard." Id. I disagree.

In my view, the Commission adequately considered the effect of both the subject imports and the interchangeable nonsubject imports on the domestic industry in its

determination and found substantial evidence in the record to support its material injury determination. I would, therefore, affirm the Court of International Trade's judgment sustaining the Commission.

The majority appears to take no issue with the Commission's underlying analysis of whether the domestic industry was in fact harmed. The Commission performed the proper analysis and considered the statutorily enumerated factors. See 19 U.S.C. § 1677(7)(B)(i) (2000).[1] It concluded that 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, supported a finding of material injury determination. The Commission found that 1) the quantity of subject imports increased overall by 35.8% from 1999 to 2001 and by 38.6% from 2000-2001 (after showing a slight decrease from 1999 to 2000); 2) "[t]he 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"; and 3) from 1999 to 2001 and from 2000-2001 subject imports outpaced all other imports in gaining U.S. market share.

[1] Section 1677(7)(B)(i) of Title 19 of the United States Code states that in making a material injury determination the Commission must consider the following factors:

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

19 U.S.C. § 1677(7)(B)(i).

Given that "price is a key factor in purchasing decisions [to buy silicon metal]", the Commission also concluded that underselling by subject imports supported a material injury determination, "find[ing] that prices have been depressed to a significant degree by the subject imports." Although nonsubject goods have at times also undersold the domestic product, the Commission found that purchaser price data "show[s] that imports from Russia have been priced at lower levels than nonsubject imports." Specifically, the Commission noted that imports from Russia undersold South African chemical grade product in all eleven purchaser price comparisons and undersold Brazilian chemical grade product in ten of eleven purchaser price comparisons. In its price analysis, the Commission "recognize[d] that nonsubject imports may have had an independent price depressive effect on domestic silicon metal prices." Ultimately, however, the Commission concluded that

> given the significant underselling by subject imports, subject import volume surges during the [period of interest], and the high degree of substitutability between subject imports and the domestic product, . . . the subject imports themselves have significantly depressed domestic silicon metal prices in all three customer segments (i.e., chemical, primary and secondary aluminum customers).

As part of its material injury determination, the Commission specifically addressed the respondents' argument "that there was 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." The Commission found that "[s]ubject 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 [period of interest] and idled, closed, or converted many of its silicon metal production facilities."

Specifically, the Commission explained that Russian imports' share of total imports increased from 7.3% in the first quarter of 2001 to 26.2%, 31.4%, and 40.1%, respectively, in the remaining three quarters of 2001. Similarly, Russian imports' share of total imports was 31.5% in first quarter 2002 and 36.9% in second quarter 2002, before declining to 11.6% in third quarter 2002, following the Commission's and the Department of Commerce's preliminary determinations in this investigation. The Commission also observed that by quantity, nonsubject import volume increased only by 25.8% from interim 2001 to interim 2002, whereas subject import volume increased by 57.6% during the same period.

In view of this data, the Commission concluded that "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." This is precisely the causation analysis necessary in view of Gerald Metals. Neither the statute nor Gerald Metals imposes the rigidity in findings or analysis that the majority seems to require. Indeed, the Gerald Metals opinion acknowledges the "unique circumstances" in that case. Gerald Metals, 132 F.3d at 722.

Contrary to the majority's assertion, the Commission here did not "claim that it is not obligated to follow this court's precedent." Maj. op. at 10. Rather, the Commission merely noted that Commission investigations are sui generis and, because of this, its prior investigations may not always form the basis for clear precedent that transcends different fact patterns. When explaining the factual differences between Gerald Metals

(and other similar cases[2]) and the present case, the Commission found significant that in Gerald Metals subject import volume had decreased, both in absolute terms and relative to domestic consumption, during the last full year of the period of interest. These volume trends, explained the Commission, indicated that the significance of LTFV imports diminished during the period of interest, thus suggesting that in Gerald Metals any injury to domestic injury was not by reason of the subject imports. Because of the factual differences between Gerald Metals and the present case, the Commission determined that "respondents' arguments that Gerald Metals precludes an affirmative determination in this investigation [were] unpersuasive."

As summarized above, the Commission performed a proper material injury analysis, including explaining why the subject imports caused material injury to the domestic industry despite the existence of interchangeable nonsubject imports. In fact, the Commission expressly acknowledged its obligation to consider the effect of nonsubject imports in its investigation, citing Gerald Metals and Taiwan Semiconductor:

> 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

[2] For example, in discussing Taiwan Semiconductor Industry Assoc. v. United States, 266 F.3d 1339 (Fed. Cir. 2001), the Commission noted that this court had affirmed the Commission's redetermination. There the Commission found that, throughout the period of investigation, Taiwanese Static Random Access Memory Semiconductor ("SRAMS") market share, both by value and by quantity, had remained relatively flat. The domestic industry's market share, by quantity, declined by about 15% while the market share of nonsubject imports increased by almost that amount. During the years in which the domestic industry suffered its greatest injury, imports from Taiwan frequently oversold U.S. product. Thus, the Commission was simply noting the clear difference between the fact pattern present in Taiwan Semiconductor and the one before it.

Semiconductor Industry Assoc. v. United States, 266 F.3d 1339, 1344 (Fed. Cir. 2001).

I fail to see what more the Commission should be required to do to explain its decision.

APPENDIX C

SUMMARY DATA

Table C-1
Silicon metal: Summary data concerning the U.S. market, 1999-2001, January-September 2001, and January-September 2002

(Quantity=short tons of contained silicon, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	1999	2000	2001	2001	2002	1999-2001	1999-2000	2000-2001	2001-2002
U.S. consumption quantity:									
Amount	324,202	329,502	278,197	208,615	204,876	-14.2	1.6	-15.6	-1.8
Producers' share (1)	62.2	57.0	54.6	55.4	39.7	-7.6	-5.1	-2.5	-15.7
Importers' share (1):									
Russia	7.8	7.5	12.3	9.9	15.9	4.5	-0.3	4.8	6.0
Brazil	3.8	6.8	6.2	7.1	13.6	2.4	3.0	-0.6	6.6
China	1.0	1.5	1.5	1.4	2.0	0.5	0.5	0.0	0.6
Subtotal, Brazil & China	4.8	8.3	7.8	8.4	15.7	2.9	3.5	-0.5	7.2
South Africa	8.7	12.2	12.7	14.2	13.0	4.0	3.5	0.5	-1.2
Canada	7.7	8.3	6.2	6.2	6.4	-1.5	0.6	-2.1	0.2
Norway	2.5	1.0	1.8	2.0	3.5	-0.6	-1.5	0.8	1.6
Spain	0.3	0.0	1.2	0.5	0.8	1.0	-0.3	1.2	0.3
Argentina	0.0	0.0	1.1	0.9	2.6	1.1	0.0	1.1	1.7
Korea	0.2	2.7	0.9	1.1	0.4	0.7	2.5	-1.9	-0.8
Saudi Arabia	4.0	2.4	0.4	0.6	0.5	-3.6	-1.6	-2.0	-0.1
United Arab Emirates	0.0	0.0	0.4	0.2	0.3	0.4	0.0	0.3	0.1
Germany	0.1	0.2	0.3	0.1	0.6	0.2	0.1	0.1	0.4
Australia	0.7	0.0	0.2	0.1	0.2	-0.5	-0.6	0.1	0.1
United Kingdom	0.1	0.1	0.1	0.1	0.0	-0.0	0.0	-0.0	-0.1
Sweden	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-0.0
Ukraine	0.1	0.0	0.0	0.0	0.1	-0.1	-0.1	0.0	0.1
Belgium	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-0.0
France	0.7	0.0	0.0	0.0	0.0	-0.7	-0.7	-0.0	-0.0
All other	0.1	0.1	0.0	0.0	0.4	-0.1	-0.1	-0.1	0.4
Subtotal, nonsubject	30.1	35.5	33.2	34.6	44.4	3.1	5.4	-2.3	9.7
Total imports	37.8	43.0	45.4	44.6	60.3	7.6	5.1	2.5	15.7
U.S. consumption value:									
Amount	424,244	405,491	335,989	254,431	233,131	-20.8	-4.4	-17.1	-8.4
Producers' share (1)	65.0	60.5	58.4	58.7	43.4	-6.6	-4.6	-2.0	-15.3
Importers' share (1):									
Russia	6.2	6.3	10.5	9.0	13.0	4.3	0.1	4.2	4.0
Brazil	4.1	7.3	6.7	7.6	15.6	2.7	3.2	-0.5	8.0
China	0.7	1.0	1.0	0.9	1.3	0.3	0.3	0.0	0.4
Subtotal, Brazil & China	4.7	8.3	7.8	8.5	17.0	3.0	3.5	-0.5	8.4
South Africa	7.6	10.7	10.8	11.9	11.6	3.2	3.2	0.0	-0.3
Canada	8.0	8.3	5.9	5.9	5.8	-2.1	0.2	-2.3	-0.1
Norway	2.8	1.3	2.3	2.4	3.8	-0.5	-1.5	1.0	1.3
Spain	0.2	0.0	1.0	0.4	0.7	0.8	-0.2	1.0	0.2
Argentina	0.0	0.0	0.9	0.7	2.3	0.9	0.0	0.9	1.6
Korea	0.2	2.1	0.7	0.9	0.3	0.5	1.9	-1.4	-0.6
Saudi Arabia	3.1	1.9	0.3	0.5	0.4	-2.8	-1.2	-1.6	-0.1
United Arab Emirates	0.0	0.0	0.3	0.2	0.2	0.3	0.0	0.3	0.1
Germany	0.1	0.2	0.4	0.2	0.8	0.3	0.2	0.1	0.7
Australia	0.7	0.0	0.2	0.1	0.2	-0.5	-0.7	0.1	0.1
United Kingdom	0.2	0.2	0.2	0.1	0.0	-0.0	0.0	-0.0	-0.1
Sweden	0.0	0.1	0.2	0.2	0.1	0.1	0.0	0.1	-0.0
Ukraine	0.1	0.0	0.0	0.0	0.0	-0.1	-0.1	0.0	0.0
Belgium	0.0	0.0	0.2	0.2	0.0	0.2	0.0	0.2	-0.2
France	0.8	0.0	0.0	0.0	0.0	-0.8	-0.8	0.0	-0.0
All other	0.2	0.1	0.0	0.0	0.3	-0.2	-0.1	-0.1	0.3
Subtotal, nonsubject	28.8	33.2	31.1	32.3	43.6	2.3	4.4	-2.2	11.3
Total imports	35.0	39.5	41.6	41.3	56.6	6.6	4.6	2.0	15.3
U.S. imports from:									
Russia:									
Quantity	25,158	24,643	34,153	20,718	32,643	35.8	-2.0	38.6	57.6
Value	26,201	25,529	35,325	22,936	30,272	34.8	-2.6	38.4	32.0
Unit value (2)	$1,036	$1,003	$980	$1,018	$928	-5.4	-3.2	-2.3	-8.8
Brazil:									
Quantity	12,429	22,385	17,309	14,722	27,953	39.3	80.1	-22.7	89.9
Value	17,203	29,535	22,650	19,348	36,428	31.7	71.7	-23.3	88.3
Unit value (2)	$1,253	$1,306	$1,309	$1,314	$1,303	4.4	4.2	0.2	-0.8
China:									
Quantity	3,237	4,958	4,292	2,876	4,132	32.6	53.2	-13.4	43.7
Value	2,885	4,029	3,439	2,357	3,146	19.2	39.7	-14.6	33.5
Unit value (2)	$891	$813	$801	$819	$761	-10.1	-8.8	-1.4	-7.1
Subtotal, Brazil & China									
Quantity	15,666	27,343	21,600	17,598	32,086	37.9	74.5	-21.0	82.3
Value	20,088	33,564	26,090	21,705	39,575	29.9	67.1	-22.3	82.3
Unit value (2)	$1,178	$1,215	$1,208	$1,233	$1,233	2.5	3.1	-0.6	0.0

Table continued on next page.

Table C-1--Continued
Silicon metal: Summary data concerning the U.S. market, 1999-2001, January-September 2001, and January-September 2002

(Quantity=short tons of contained silicon, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	1999	2000	2001	2001	2002	1999-2001	1999-2000	2000-2001	2001-2002
U.S. imports from:--Continued									
South Africa:									
Quantity	28,184	40,329	35,305	29,690	26,731	25.3	43.1	-12.5	-10.0
Value	32,195	43,583	36,120	30,278	26,976	12.2	35.4	-17.1	-10.9
Unit value (2)	$1,118	$1,065	$1,039	$1,039	$1,009	-7.1	-4.8	-2.4	-2.8
Canada:									
Quantity	25,044	27,347	17,281	12,931	13,046	-31.0	9.2	-36.8	0.9
Value	34,064	33,516	19,987	14,943	13,481	-41.3	-1.6	-40.4	-9.8
Unit value (2)	$1,360	$1,226	$1,157	$1,156	$1,108	-15.0	-9.9	-5.6	-4.1
Norway:									
Quantity	8,050	3,293	5,114	4,086	7,221	-36.5	-59.1	55.3	76.7
Value	11,967	5,324	7,787	6,206	8,818	-34.9	-55.5	46.3	42.1
Unit value (2)	$1,487	$1,617	$1,523	$1,519	$1,221	2.4	8.8	-5.8	-19.6
Spain:									
Quantity	942	0	3,453	1,092	1,619	266.7	-100.0	(3)	48.2
Value	1,043	0	3,503	1,111	1,596	235.7	-100.0	(3)	43.7
Unit value (2)	$1,108	(3)	$1,015	$1,017	$986	-8.5	-100.0	(3)	-3.1
Argentina:									
Quantity	0	0	3,079	1,920	5,340	(3)	(3)	(3)	178.1
Value	0	0	3,043	1,894	5,385	(3)	(3)	(3)	184.3
Unit value (2)	(3)	(3)	$989	$986	$1,008	(3)	(3)	(3)	2.2
Korea:									
Quantity	620	8,967	2,395	2,395	741	286.5	1347.1	-73.3	-69.1
Value	647	8,510	2,301	2,301	696	255.8	1216.0	-73.0	-69.7
Unit value (2)	$1,044	$949	$961	$961	$940	-7.9	-9.1	1.2	-2.2
Saudi Arabia:									
Quantity	12,930	7,938	1,182	1,182	981	-90.9	-38.6	-85.1	-17.0
Value	13,306	7,784	1,162	1,162	884	-91.3	-41.5	-85.1	-23.9
Unit value (2)	$1,029	$981	$983	$983	$901	-4.5	-4.7	0.3	-8.4
United Arab Emirates:									
Quantity	0	109	1,036	430	562	(3)	(3)	847.2	30.7
Value	0	110	984	416	504	(3)	(3)	791.9	21.2
Unit value (2)	(3)	$1,009	$950	$967	$897	(3)	(3)	-5.8	-7.2
Germany:									
Quantity	190	656	815	247	1,158	328.5	244.8	24.2	369.1
Value	372	1,002	1,234	390	1,964	232.1	169.8	23.1	404.0
Unit value (2)	$1,952	$1,527	$1,513	$1,579	$1,696	-22.5	-21.8	-0.9	7.4
Australia:									
Quantity	2,216	159	482	285	434	-78.2	-92.8	203.8	52.2
Value	2,929	161	538	315	479	-81.6	-94.5	234.8	52.1
Unit value (2)	$1,322	$1,012	$1,115	$1,106	$1,105	-15.6	-23.4	10.2	-0.1
United Kingdom:									
Quantity	462	492	369	266	1	-20.2	6.5	-25.0	-99.8
Value	668	670	522	376	12	-21.8	0.3	-22.1	-96.8
Unit value (2)	$1,444	$1,360	$1,415	$1,410	$20,625	-2.1	-5.8	4.0	1362.5
Sweden:									
Quantity	17	35	80	59	23	367.1	104.9	128.0	-60.4
Value	137	233	527	389	261	285.1	70.5	125.8	-32.9
Unit value (2)	$8,005	$6,663	$6,600	$6,642	$11,269	-17.5	-16.8	-0.9	69.7
Ukraine:									
Quantity	306	0	44	0	113	-85.7	-100.0	(3)	(4)
Value	345	0	44	5	94	-87.3	-100.0	(3)	(4)
Unit value (2)	$1,127	(3)	$1,000	$16,911	$835	-11.3	-100.0	(3)	-95.1
Belgium:									
Quantity	0	1	43	43	10	(3)	(3)	(4)	-76.9
Value	0	8	549	549	106	(3)	(3)	(4)	-80.8
Unit value (2)	(3)	$5,406	$12,692	$12,692	$10,546	(3)	(3)	134.8	-16.9
France:									
Quantity	2,397	2	1	1	1	-100.0	-99.9	-56.9	-2.9
Value	3,505	9	22	17	3	-99.4	-99.7	137.5	-83.4
Unit value (2)	$1,462	$4,165	$22,952	$18,995	$3,243	(4)	184.9	451.0	-82.9
All others:									
Quantity	475	237	0	0	807	-100.0	-50.1	-100.0	(4)
Value	967	346	8	8	774	-99.1	-64.3	-97.5	(4)
Unit value (2)	$2,039	$1,458	$170,915	$170,915	$959	(4)	-28.5	(4)	-99.4
Subtotal, nonsubject:									
Quantity	97,499	116,908	92,279	72,226	90,875	-5.4	19.9	-21.1	25.8
Value	122,231	134,819	104,420	82,064	101,608	-14.6	10.3	-22.5	23.8
Unit value (2)	$1,232	$1,145	$1,139	$1,146	$1,129	-7.5	-7.1	-0.5	-1.5
All sources:									
Quantity	122,657	141,551	126,431	92,945	123,519	3.1	15.4	-10.7	32.9
Value	148,432	160,349	139,745	105,000	131,881	-5.9	8.0	-12.8	25.6
Unit value (2)	$1,191	$1,120	$1,096	$1,117	$1,076	-8.0	-6.0	-2.2	-3.7

Table continued on next page.

Table C-1--Continued
Silicon metal: Summary data concerning the U.S. market, 1999-2001, January-September 2001, and January-September 2002

(Quantity=short tons of contained silicon, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per short ton; period changes=percent, except where noted)

	Reported data					Period changes			
				January-September					Jan.-Sept.
Item	1999	2000	2001	2001	2002	1999-2001	1999-2000	2000-2001	2001-2002
U.S. producers':									
Average capacity quantity	243,667	215,245	198,363	148,123	144,450	-18.6	-11.7	-7.8	-2.5
Production quantity	209,376	195,660	145,324	112,638	85,824	-30.6	-6.6	-25.7	-23.8
Capacity utilization (1)	85.9	90.9	73.3	76.0	59.4	-12.7	5.0	-17.6	-16.6
U.S. shipments:									
Quantity	201,545	187,951	151,766	115,670	81,357	-24.7	-6.7	-19.3	-29.7
Value	275,812	245,142	196,244	149,431	101,250	-28.8	-11.1	-19.9	-32.2
Unit value	$1,368	$1,304	$1,293	$1,292	$1,245	-5.5	-4.7	-0.9	-3.7
Export shipments:									
Quantity	6,591	4,071	1,586	1,088	2,069	-75.9	-38.2	-61.0	90.2
Value	8,951	5,089	1,951	1,332	2,246	-78.2	-43.1	-61.7	68.6
Unit value	1,358	1,250	1,230	1,224	1,086	-9.4	-8.0	-1.6	-11.3
Ending inventory quantity	9,135	11,110	2,306	5,462	3,940	-74.8	21.6	-79.2	-27.9
Inventories/total shipments (1)	4.4	5.8	1.5	3.5	3.5	-2.9	1.4	-4.3	0.0
Production workers	719	637	523	531	407	-27.3	-11.4	-17.9	-23.4
Hours worked (1,000s)	1,632	1,471	1,210	970	793	-25.9	-9.9	-17.7	-18.2
Wages paid ($1,000s)	32,438	29,055	23,675	17,692	13,979	-27.0	-10.4	-18.5	-21.0
Hourly wages	20	20	20	18	18	-1.6	-0.6	-0.9	-3.4
Productivity (tons/1,000 hours)	128	133	120	116	108	-6.4	3.7	-9.7	-6.8
Unit labor costs	155	148	163	157	163	5.2	-4.2	9.7	3.7
Net sales:									
Quantity	207,173	202,463	169,520	116,758	83,426	-18.2	-2.3	-16.3	-28.5
Value	293,831	267,227	219,034	150,763	103,496	-25.5	-9.1	-18.0	-31.4
Unit value	1,418	1,320	1,292	1,291	1,241	-8.9	-6.9	-2.1	-3.9
Cost of goods sold (COGS)	251,913	242,020	214,672	152,054	106,554	-14.8	-3.9	-11.3	-29.9
Gross profit or (loss)	41,918	25,207	4,362	(1,291)	(3,058)	-89.6	-39.9	-82.7	136.9
SG&A expenses	16,743	15,964	14,703	11,459	8,703	-12.2	-4.7	-7.9	-24.1
Operating income or (loss)	25,175	9,243	(10,341)	(12,750)	(11,761)	-141.1	-63.3	-211.9	-7.8
Capital expenditures	28,546	9,457	7,773	5,411	8,830	-72.8	-66.9	-17.8	63.2
Unit COGS	1,216	1,195	1,266	1,302	1,277	4.1	-1.7	5.9	-1.9
Unit SG&A expenses	81	79	87	98	104	7.3	-2.4	10.0	6.3
Unit operating income or (loss)	122	46	(61)	(109)	(141)	-150.2	-62.4	-233.6	29.1
COGS/sales (1)	86	91	98	101	103	12.3	4.8	7.4	2.1
Operating income or (loss)/	8.6	3.5	-4.7	-8.5	-11.4	-13.3	-5.1	-8.2	-2.9

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Unit values calcuated from adjusted import statistics.
(3) Not applicable.
(4) Greater than 1,000 percent.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. Because of rounding, figures may not add to the totals shown. Unit values and shares are calculated from the unrounded figures.

Source: Compiled from data submitted in response to Commission questionnaires and official Commerce statistics.