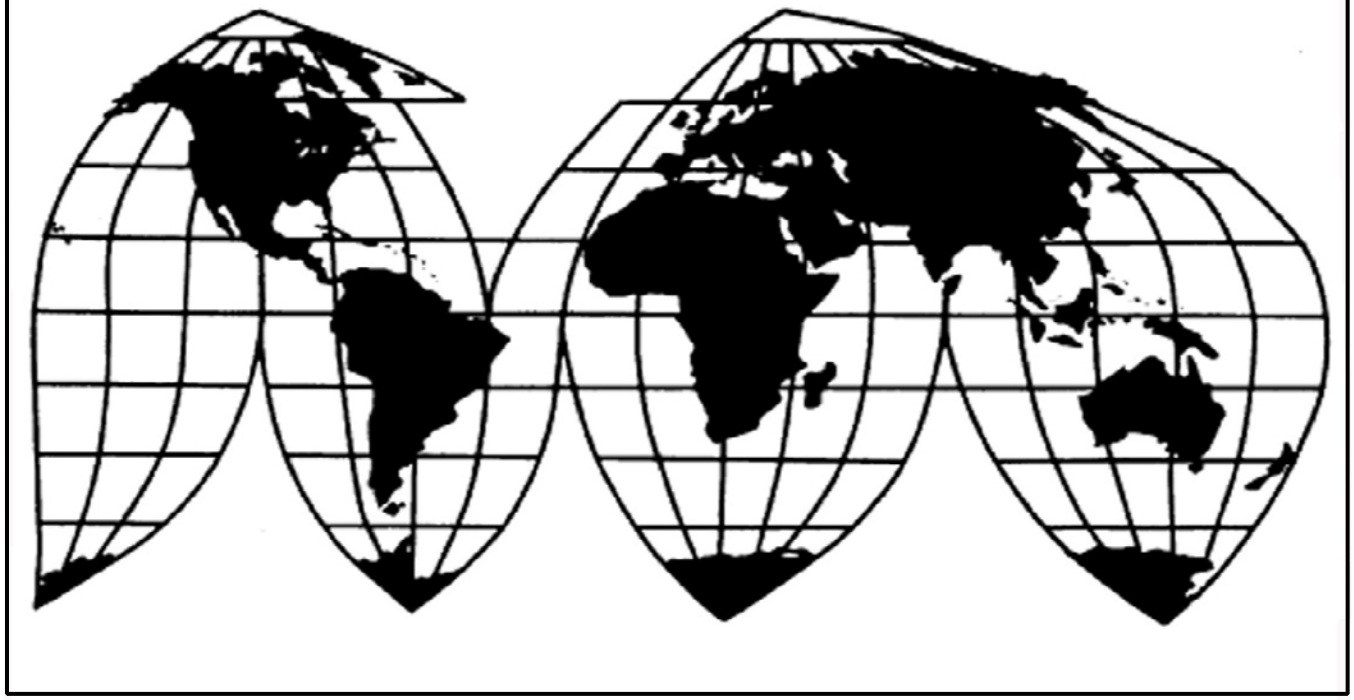
Silicomanganese from Brazil, China, and Ukraine

Investigation Nos. 731-TA-671-673 (Third Review)

Publication 4354 **October 2012**

U.S. International Trade Commission



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U.S. International Trade Commission

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Note.--Information that would reveal confidential operations has been deleted and replaced with asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-671-673 (Third Review)
SILICOMANGANESE FROM BRAZIL, CHINA, AND UKRAINE

DETERMINATIONS

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission (Commission)[2] determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), that revocation of the antidumping duty order on silicomanganese from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time[3] and that revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

BACKGROUND

The Commission instituted these reviews on August 1, 2011 (76 F.R. 54272) and determined on November 4, 2011 that it would conduct full reviews (76 F.R. 72212, November 22, 2011). Notice of the scheduling of the Commission's reviews 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* on April 13, 2012 (77 F.R. 22344). The hearing was held in Washington, DC, on September 5, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).
[2] Commissioner Meredith Broadbent did not participate in these reviews.
[3] Commissioner Dean A. Pinkert dissenting.
[4] Commissioner Daniel R. Pearson dissenting with regard to Ukraine.

VIEWS OF THE COMMISSION

Based on the record in these five-year reviews, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5] The Commission further determines, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on silicomanganese from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6] [7]

I. BACKGROUND

In December 1994, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of imports of silicomanganese from Brazil, China, and Ukraine that were being sold at less than fair value ("LTFV").[8] On December 22, 1994, Commerce issued antidumping duty orders on silicomanganese from Brazil and China.[9]

The Commission instituted first reviews of the antidumping orders on silicomanganese from Brazil and China and the suspended investigation on silicomanganese from Ukraine on November 2, 1999,[10] and received responses to the notice of institution from a domestic interested party and respondent interested parties concerning subject imports from Brazil and Ukraine. The Commission determined to conduct full reviews.[11] In January 2001, the Commission determined that revocation of the antidumping orders on silicomanganese from Brazil and China and the suspended investigation on silicomanganese from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the

[5] Commissioner Daniel R. Pearson determines that revocation of the antidumping duty order on silicomanganese from Ukraine would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Additional and Dissenting Views of Commissioner Daniel R. Pearson.

[6] Commissioner Dean A. Pinkert determines that revocation of the antidumping duty order on silicomanganese from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. His determination is set forth in these views and his separate footnotes.

[7] Commissioner Meredith Broadbent did not participate in these reviews.

[8] Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Investigations Nos. 731-TA-671-674 (Final), USITC Pub. 2836 (Dec. 1994) ("Original Determinations"). The Commission reached a negative determination with respect to silicomanganese from Venezuela. The original investigations were instituted based on a petition filed by Elkem and the Oil, Chemical and Atomic Workers Local 3-639 on November 12, 1993. Effective October 31, 1994, Commerce suspended the antidumping investigation of silicomanganese from Ukraine, based on an agreement by the Government of Ukraine to restrict the volume of direct or indirect silicomanganese exports to the United States and to sell such exports at or above a "reference price" in order to prevent the suppression or undercutting of price levels of domestic silicomanganese in the United States. 59 Fed. Reg. 60951 (Nov. 29, 1994). Petitioners then requested continuation of the investigation regarding silicomanganese from Ukraine.

[9] 59 Fed. Reg. 66003 (Dec. 22, 1994).

[10] 64 Fed. Reg. 59209 (Nov. 2, 1999).

[11] 65 Fed. Reg. 7891 (Feb. 16, 2000).

United States in a reasonably foreseeable time.[12] On February 16, 2001, Commerce published a notice of continuation of the antidumping duty orders on silicomanganese from Brazil and China.[13]

The Commission instituted second reviews of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine[14] on January 3, 2006, and received a response to the notice of institution from a domestic interested party, but no responses from any respondent interested parties. On April 10, 2006, the Commission determined to conduct expedited reviews.[15] On August 1, 2006, the Commission made affirmative determinations with respect to the antidumping duty orders covering silicomanganese from Brazil, China, and Ukraine.[16] On September 14, 2006, Commerce published a notice of continuation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine.[17]

The Commission instituted these reviews on August 1, 2011.[18] Responding to the notice of institution were: two domestic producers, Eramet Marietta, Inc. ("Eramet")[19] and Felman Production, Inc. ("Felman"); a Brazilian producer, Vale Manganese S.A. ("Vale"); and a Ukrainian trade association, Ukrainian Association of Ferroalloy Producers ("UkrFA"). On November 4, 2011, the Commission determined to conduct full reviews on the orders on subject imports from Brazil and Ukraine because of adequate interested party responses and determined to conduct full reviews on the order on subject imports from China to promote administrative efficiency.[20]

Both domestic producers participated in the hearing and filed separate prehearing and posthearing briefs.[21] Counsel for Vale participated at the hearing and filed prehearing and posthearing briefs. No Chinese respondent participated at the hearing or filed briefs. No Ukrainian respondent participated at the hearing, but UkrFA filed prehearing and posthearing briefs.

In these reviews, the domestic industry data are based on questionnaire responses from the two U.S. producers of silicomanganese which account for 100 percent of known U.S. production of silicomanganese during the period of review.[22] Respondents from each of the three subject countries provided data to the Commission in varying degrees. One of the four principal producers of silicomanganese in Brazil, Vale, provided a useable questionnaire response; Vale estimates that it accounts for *** of total Brazilian silicomanganese production in 2011.[23] While there were 423 reported

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[12] Silicomanganese from Brazil, China, and Ukraine, Inv. Nos. 731-TA-671-673 (Review), USITC Pub. 3386 (Jan. 2001) ("First Review Determinations").

[13] 66 Fed. Reg. 10669 (Feb. 16, 2001).

[14] On July 19, 2001, the Government of Ukraine requested that Commerce terminate the suspension agreement on silicomanganese from Ukraine. On September 17, 2001, Commerce terminated the suspension agreement and issued an antidumping duty order covering imports of silicomanganese from Ukraine. See 66 Fed. Reg. 43838 (Aug. 21, 2001).

[15] 71 Fed. Reg. 27515 (May 11, 2006).

[16] Silicomanganese from Brazil, China, and Ukraine, Inv. Nos. 731-TA-671-673 (Second Review), USITC Pub. 3879 (Aug. 2006) ("Second Review Determinations").

[17] 71 Fed. Reg. 54272 (Sept. 14, 2006).

[18] 76 Fed. Reg. 45856 (Aug. 1, 2011).

[19] Eramet's predecessor firm, Elkem Metals Co. ("Elkem"), was a petitioner in the original investigations. Confidential Report (CR) at I-2; Public Report (PR) at I-2.

[20] Explanation of Commission Determinations on Adequacy.

[21] Eramet's Final Comments exceeded the 15 pages of textual material limit set forth in 19 C.F.R. 207.68(b). Consequently, we have disregarded Exhibit 1 of Eramet's Final Comments. We note that the textual material contained in Exhibit 1 was also set forth on page 3 of its Final Comments.

[22] CR at I-15; PR at I-13.

[23] CR at IV-13; PR at IV-10. An additional firm in Brazil provided the Commission a questionnaire response; however, its data were unusable. CR at IV-13 n.151; PR at IV-10 n.151.

silicomanganese producers in China, only one producer, Guilin Comilog Ferroalloy Co., Ltd. ("Comilog") provided a questionnaire response to the Commission; Comilog accounted for less than *** of total silicomanganese production in China in 2011.[24] Each of the three primary silicomanganese producers in Ukraine, PJSC Nikopol Ferroalloy Plant ("Nikopol"), PJSC Zaporozhye Ferroally Plant ("Zaporozhye"), and PJSC Stakhanov Ferroalloy Plant ("Stakhanov") provided a questionnaire response; these producers account for 100 percent of the known industry in Ukraine during the period of review.[25]

In these reviews, there were 10 importers of silicomanganese that responded to the Commission's questionnaires and accounted for 96 percent of total U.S. imports from 2006 to 2011, based on official Commerce import statistics.[26] Import data in the Commission report are based on questionnaire responses.[27] Foreign industry data and related information are based on the questionnaire responses of the six responding producers of silicomanganese in the subject countries, industry association statistics, and global trade data.[28]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c) of the Act, the Commission defines the "domestic like product" and the "industry."[29] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[30] The Commission's practice in five-year reviews is to examine the domestic like product definition from the original determinations and any completed reviews and consider whether the record indicates any reason to revisit the prior findings.[31]

Commerce has defined the imported merchandise within the scope of the orders under review as follows:

> Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much

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[24] CR at IV-22; PR at IV-17.

[25] CR at IV-31; PR at IV-23.

[26] CR/PR at IV-1. There were no subject imports from Brazil and *** subject imports from the Ukraine over the period of review. CR at Table IV-2 and IV-8 n.135; PR at Table IV-2 and IV-6 n.135. Subject imports from China were not sold in commercial quantities in the United States and accounted for only *** of total imports from 2006 to 2011. Id. As ***. CR at IV-8 n.135; PR at IV-6 n.135.

[27] CR at I-15; PR at I-14. For purposes of compiling data on apparent U.S. consumption, data from U.S. importers' questionnaire responses were combined with Customs data for the remaining firms in official Commerce import statistics (*i.e.*, the remaining 4 percent) that did not provide data to the Commission. CR/PR at IV-1.

[28] CR at I-15; PR at I-14.

[29] 19 U.S.C. § 1677(4)(A).

[30] 19 U.S.C. § 1677(10); see, e.g., Cleo Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int'l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); see also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[31] See, e.g., Internal Combustion Industrial Forklift Trucks From Japan, Inv. No. 731-TA-377 (Second Review), USITC Pub. 3831 at 8-9 (Dec. 2005); Crawfish Tail Meat From China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 at 4 (Jul. 2003); Steel Concrete Reinforcing Bar From Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 at 4 (Feb. 2003).

> smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of the order, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.[32]

Silicomanganese is consumed in bulk form primarily by the steel industry as a source of both silicon and manganese, and sometimes as an alloying agent in the production of iron castings. Although manufactured to ASTM International specifications A 483 in three grades (A, B, and C) that are differentiated by their silicon and carbon content, most silicomanganese produced and sold in the United States conforms to the specification for grade B. Silicomanganese generally is sold in small pieces of fairly uniform sizes.[33] Silicomanganese is produced by smelting together in a submerged arc furnace sources of silicon, manganese, iron, and a carbonaceous reducing agent (usually coke).[34]

In its original determinations, the Commission considered whether there should be multiple like products, and found that all silicomanganese is utilized as a source of manganese and silicon in iron and steelmaking. Accordingly, the Commission defined the domestic like product as all silicomanganese, coextensive with Commerce's scope.[35] In its first and second five-year reviews, the Commission again defined the domestic like product as all silicomanganese, coextensive with Commerce's scope. In so doing, the Commission noted that none of the parties disagreed with the Commission's original domestic like product definition and that no new information had been obtained during the five-year reviews that would suggest that it should change its domestic like product definition.[36]

In these third reviews, there is no information in the record that would warrant a re-examination of the Commission's original domestic like product definition. None of the parties disagree with the Commission's prior definition.[37] Accordingly, we again define the domestic like product to be all silicomanganese, coextensive with Commerce's scope.

B. Domestic Industry and Related Parties

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[38] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic

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[32] Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders, 76 Fed. Reg. 73587, 73588 (Nov. 29, 2011).

[33] CR at I-18-I-19; PR at I-16-I-17.

[34] CR at I-20-I-22; PR at I-17-I-18.

[35] Original Determinations, USITC Pub. 2836 at I-6-I-7 (Dec. 1994) (Commissioners Rohr and Newquist) and I-21-I-22 (Commissioners Watson, Nuzum, Crawford, and Bragg). The Ukrainian respondents had argued that off-specification silicomanganese should be treated as a separate like product.

[36] First Review Determinations, USITC Pub. 3386 at 5 (Jan. 2001); Second Review Determinations, USITC Pub. 3879 at 5 (Aug. 2006).

[37] Felman's Prehearing Brief at 5-6.

[38] 19 U.S.C. § 1677(4)(A). The definitions in 19 U.S.C. § 1677 are applicable to the entire subtitle containing the antidumping and countervailing duty laws, including 19 U.S.C. §§ 1675 and 1675a. See 19 U.S.C. § 1677.

merchant market. Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.[39]

In the original investigations, the Commission defined the domestic industry as the sole domestic producer Elkem, which it determined was not a related party within the meaning of the statute.[40] In the first and second five-year reviews, the Commission again defined the domestic industry as consisting of Eramet (successor firm to Elkem),[41] the sole domestic producer of silicomanganese at the time.[42]

In these reviews, there are two domestic producers of silicomanganese – Eramet and Felman.[43] Both domestic producers have affiliations with foreign subject producers (and a subject importer in the case of Felman), through their parent corporations, which raise issues concerning whether they are related parties.[44]

Eramet is affiliated, ***, with a subject Chinese producer, Comilog.[45] According to Eramet, the ***.[46] Eramet also indicates that Comilog accounted for less than *** of total silicomanganese

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[39] The statute defines related parties in terms of direct or indirect control, including whether "a third party directly or indirectly controls the producer and the exporter or importer...." 19 U.S.C. § 1677(4)(B)(ii)(III). Direct or indirect control exists when "the party is legally or operationally in a position to exercise restraint or direction over the other party." *Id.* The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

(1) the percentage of domestic production attributable to the importing producer;

(2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and

(3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

[40] Respondents had suggested that Elkem and an importer of subject merchandise were related on the basis of a joint venture between the respective parent corporations, but the Commission determined that Elkem was not a related party. Original Determinations, USITC Pub. 2836 at I-7-I-9 and I-22-I-25.

[41] In July 1999, Eramet S.A. of France purchased the production facility in Marietta, OH, which included all of Elkem's silicomanganese assets, from Elkem S.A., and created the U.S. company Eramet Marietta, Inc. ("Eramet"). CR at I-22; PR at I-19.

[42] First Review Determination, USITC Pub. 3386 at 6; Second Review Determinations, USITC Pub. 3879 at 5. In the second reviews, the Commission found that Eramet was related, through its parent company Eramet S.A., to two Chinese producers of the subject merchandise, Guangxi Comilog Ferroalloy Co., Ltd. and Guilin Comilog Ferroalloys. There was no evidence that Eramet imported the subject merchandise from either of these producers during the period of review. Eramet was the only domestic producer of silicomanganese, and no party had argued for its exclusion. Moreover, there was no evidence that Eramet had received a benefit by virtue of its relationship with these two related Chinese producers. Under these circumstances, the Commission found that appropriate circumstances did not exist to exclude Eramet from the domestic industry. USITC Pub. 3879 at 5 n. 19.

[43] In January 2006, Felman purchased the silicomanganese assets previously operated by Highlander Alloys LLC, which attempted to produce silicomanganese from 2002 to 2005. ***. CR at I-23; PR at I-19.

[44] None of the parties have argued that appropriate circumstances exist for the Commission to exclude either domestic producer as a related party. As discussed below, Vale has presented evidence alleging a relationship, through common third party ownership, between Felman and Ukrainian producers; it suggests the Commission consider this relationship in its analysis of cumulation and likely volume of subject imports. See, e.g., Vale's Prehearing Brief at 28; Vale's Posthearing Brief at 13-14, and Exhibit 7.

[45] CR/PR at Table I-3; Eramet's Posthearing Brief, Response to Commission Questions at 50.

[46] Eramet's Posthearing Brief, Response to Commission Questions at 51.

production in China in 2011 and, except for a small quantity ***, does not export silicomanganese to any market.[47] While Eramet meets the definition of a related party, pursuant to 19 U.S.C. § 1677(4)(B), there is no evidence that Eramet imported subject merchandise from any source during the period of review, and its primary interest clearly lies in domestic production. Eramet is one of two U.S. producers, accounting for *** of U.S. production in 2011 and supports continuation of the orders.[48] While Eramet's operating margin *** the industry average during all but one year of the period of review,[49] there is no evidence that Eramet has received a benefit by virtue of its relationship with the related Chinese producer.[50] [51] Under these circumstances, we find that appropriate circumstances do not exist to exclude Eramet from the domestic industry.

Felman is affiliated, through its parent company ***, with an importer of silicomanganese, Felman Trading, Inc.[52] The evidence indicates that Felman Trading imported ***.[53] Accordingly, Felman is a related party subject to possible exclusion from the domestic industry. Felman is the larger of the two U.S. producers, accounting for *** of U.S. production in 2011 and supports continuation of the orders.[54] With its substantial investment to acquire and refit U.S. production facilities in 2006 and additional expenditures in the subsequent years,[55] Felman's primary interest appears to lie in domestic production rather than importation. Felman's operating margin *** the industry average during all but one year of the period of review.[56] Based on these considerations, we find that appropriate circumstances do not exist to exclude Felman from the domestic industry.

The parties have raised additional issues concerning Felman's relationship with subject producers in Ukraine. They disagree about the nature of these relationships. In these five-year reviews, evidence Vale submitted from a court proceeding involving Felman's business activities in 2008 appears to document common ownership interest (i.e., the Privat Group)[57] and common management between

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[47] Eramet's Posthearing Brief, Response to Commission Questions at 51.

[48] CR/PR at Table I-3.

[49] CR/PR at Table III-10.

[50] Consistent with her practice in past investigations and reviews, Commissioner Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the domestic like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation.

[51] Commissioner Dean A. Pinkert does not rely upon the financial performance of Eramet or Felman as a factor in determining whether there are appropriate circumstances to exclude these related parties from the domestic industry in these five-year reviews. The record is not sufficient to infer from their profitability on U.S. operations whether they have derived a specific benefit from their status as related parties. See Allied Mineral Products v. United States, 28 CIT 1861, 1865-67 (2004).

[52] CR/PR at Table I-3.

[53] CR at III-8 n.113; PR at III-3 n.113. Felman indicates that the ***.'" Felman's Prehearing Brief at 9 n.35.

[54] CR/PR at Table I-3.

[55] CR at III-20 and Table III-13; PR at III-6-III-7 and Table III-13.

[56] CR/PR at Table III-10.

[57] The Privat Group, owned by Ukrainian businessmen Hannady Boholiubov and Ihor Kolmoisky, is currently the majority shareholder in all the Ukraine-based ferroalloy enterprises. Privat's owners also control U.S. enterprises Felman Production, Inc and CC Metal Alloys, LLC; Georgian Manganese, based in Georgia; SC Feral SRL in Romania; and the manganese ore producer Consolidated Mineral (Consmin) in Australia. Brazilian respondent interested party, response to September 19, 2011 Letter Regarding Response to Notice of Institution, October 5, 2011, p. 1-2, exhibit 2 (Ukraine Business Weekly article).

Felman and the Ukrainian producers.[58] Felman acknowledges that there are common investors in both the Ukrainian producers and Felman, and that there was ***.[59] Confidential statements from the Ukrainian producers ***.[60] While Felman Trading's website indicates that the company currently has "exclusive contracts (with the Ukrainian producers as well as the Georgian and Romanian producers) for ferroalloys deliveries on the markets of North, Central, and South Americas," Felman contends that these contracts do not demonstrate that Felman Trading has control over Ukrainian exports ***.[61] Even assuming arguendo that these materials indicate additional bases for concluding that Felman is a related party, we still find that appropriate circumstances do not exist to exclude Felman from the domestic industry as a related party. As explained above, Felman has substantial interests in U.S. production and does not appear to have derived any benefit from whatever relationships it may have with subject producers.

Thus, we find that appropriate circumstances do not exist to exclude either Felman or Eramet from the domestic industry, and define the domestic industry to include all domestic producers of silicomanganese.

III. CUMULATION

A. Legal Standard

> With respect to five-year reviews, section 752(a) of the Act provides as follows: the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[62]

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[58] Vale's Posthearing Brief, Exh. 7, quoting from Mt. Hawley Insurance v. Felman, Ct. No. 3:09-00481, Slip Op. at 15 (S.D.W.V. Aug. 19, 2010) ("Privat representatives operate Felman Production, Inc. as if it is their sole proprietorship; Feldman has little independence." Id. at 21); see also Felman Productions v. Industrial Risk Insures, Ct. No. 3:09-0481, 2011 WL 4547012 at 9 (S.D.W.V. Sept. 29, 2011) ("Privat controlled Felman's pricing and other features of the business, including balancing Felman's sales with other Privat holdings.") in Vale's Posthearing Brief, Exh. 7. Felman indicates that these court decisions, which defined "Privat" as "Privat Intertrading," "involved a dispute over an insurance claim that arose from events that occurred in 2008 and preceded ***." Felman's Posthearing Brief, App. Williamson 2 at Williamson-4 and 5 n.6.

[59] Felman's Posthearing Brief, App. Williamson 2 at Williamson-4 n.6; CR at I-25 n.52, quoting from Response to staff questions, July 26, 2012; Felman's U.S. producers' questionnaire response, part I.

[60] Ukrainian responses on September 14, 2012 to staff questions from August 17, 2012.

[61] See Felman's Posthearing Brief, App. Williamson 2 at Williamson-3 through Williamson-5, and App. Williamson 2.1; Felman's e-mail response staff inquiry dated July 26, 2012; Hearing Transcript at 87 (Salonen); Felman's Prehearing Brief at 41 n.195. Felman explained that "Felman Trading has exclusive agreements to market silicomanganese and other ferroalloys from Ukraine ***." Felman's Posthearing Brief, App. Williamson 2 at Williamson-3. Felman also clarified that "***." Felman's Prehearing Brief at 41 n.195.

[62] 19 U.S.C. § 1675a(a)(7).

Cumulation therefore is discretionary in five-year reviews, unlike original investigations, which are governed by section 771(7)(G)(I) of the Act.[63] The Commission may exercise its discretion to cumulate, however, only if the reviews are initiated on the same day, the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market, and imports from each such subject country are not likely to have no discernible adverse impact on the domestic industry in the event of revocation. Our focus in five-year reviews is not only on present conditions of competition, but also on likely conditions of competition in the reasonably foreseeable future.

In the original investigations, for purposes of their analysis of material injury, three of the six Commissioners found a reasonable overlap of competition and cumulated imports from all the subject countries.[64] Three Commissioners cumulated subject imports from Brazil and China, but did not cumulate imports from Ukraine, finding no reasonable overlap in competition between imports from Ukraine and the domestic like product.[65] Among the three Commissioners who made affirmative threat of material injury determinations, none of these Commissioners cumulated imports from any of the subject countries for purposes of their threat analysis.[66]

In the first and second five-year reviews, the Commission cumulated subject imports from Brazil, China, and Ukraine for purposes of its assessment of the likely volume and effects of subject imports.[67] The Commission did not find that revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would likely have no discernible adverse impact on the domestic industry.[68] Reasons that the Commission provided for these conclusions included that the subject imports and the domestic like product remained highly fungible and substitutable, that all three countries had the economic incentive and ability to increase sales to the United States, that sustained underselling by dumped imports would likely have significant price-depressing or -suppressing effects if the orders were revoked, and that excess capacity existed in all three countries.[69] Regarding the likely reasonable overlap of competition, the Commission found with respect to fungibility that subject imports were likely to be fungible with each other and with the domestic like product.[70] The Commission also found with respect

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[63] 19 U.S.C. § 1677(7)(G)(i); see, e.g., Nucor Corp. v. United States, 601 F.3d 1291, 1293 (Fed. Cir. 2010) (Commission may reasonably consider likely differing conditions of competition in deciding whether to cumulate subject imports in five-year reviews); Allegheny Ludlum Corp. v. United States, 475 F. Supp. 2d 1370, 1378 (Ct. Int'l Trade 2006) (recognizing the wide latitude the Commission has in selecting the types of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews).

[64] Commissioners Rohr, Newquist, and Nuzum.

[65] Commissioners Watson, Crawford, and Bragg.

[66] Original Determinations, USITC Pub. 2836 at I-12-I-15, I-30-I-35, I-53, I-61, I-69, I-73-75 and I-80-I-81. For the threat of material injury determinations, Commissioner Watson did not cumulate subject imports from Brazil and China, but made affirmative threat of material injury determinations for each of these countries; Commissioner Nuzum did not cumulate subject imports from China and Ukraine, but made affirmative threat of material injury determinations for each of these countries; and Commissioner Bragg only made an affirmative threat of material injury determination regarding subject imports from China.

[67] First Review Determinations, USITC Pub. 3386 at 10 and Second Review Determinations, USITC Pub. 3879 at 12.

[68] First Review Determinations, USITC Pub. 3386 at 8 and Second Review Determinations, USITC Pub. 3879 at 8-10.

[69] First Review Determinations, USITC Pub. 3386 at 8; Second Review Determination, USITC Pub. 3879 at 8-10.

[70] First Review Determinations, USITC Pub. 3386 at 9-10 and Second Review Determinations, USITC Pub. 3879 at 11-12. In the first review, the Commission recognized that Ukraine silicomanganese generally had a higher phosphorus content that might partially limit end-use applications but still found them fungible with the domestic like product and other subject imports.

to channels of distribution, geographical overlap, and simultaneous presence that subject imports were likely to be used in the same channels of distribution (*i.e.*, mostly sold directly to end users), likely to serve overlapping geographical markets, and likely be simultaneously present in the U.S. market.[71] In the first review, the Commission found that asserted differences in likely conditions of competition between the imports from the different subject countries were not sufficient to lead it to exercise its discretion not to cumulate the subject imports.[72]

The statutory threshold for cumulation is satisfied in these reviews because all reviews were initiated on the same day: August 1, 2011.[73] We consider the following issues in deciding whether to exercise our discretion to cumulate the subject imports: (1) whether imports from any of the subject countries are precluded from cumulation because they are likely to have no discernible adverse impact on the domestic industry; (2) whether there is a likelihood of a reasonable overlap of competition among imports from the subject countries and the domestic like product; and (3) whether there are similarities and differences in the likely conditions of competition under which subject imports are likely to compete in the U.S. market.[74]

Based on the record, we find that subject imports from each of the three countries would not be likely to have no discernible adverse impact on the domestic industry were the antidumping duty orders to be revoked. We also find a likely reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product were the orders to be revoked. We find, however, that subject imports from Brazil would not be likely to compete under similar conditions of competition with subject imports from China and Ukraine, but find no significant distinctions in likely conditions of competition between subject imports from China and Ukraine.[75]

B. Likelihood of No Discernible Adverse Impact

The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.[76] Neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides

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[71] First Review Determinations, USITC Pub. 3386 at 9-10 and Second Review Determinations, USITC Pub. 3879 at 11-12.

[72] First Review Determinations, USITC Pub. 3386 at 8-10.

[73] See 76 Fed. Reg. 45856 (Aug. 1, 2011).

[74] Commissioner Pearson notes that, while he considers the same issues discussed in this section in determining whether to exercise his discretion to cumulate the subject imports, his analytical framework begins with whether imports from the subject countries are likely to face similar conditions of competition. For those subject imports which are likely to compete under similar conditions of competition, he next proceeds to consider whether there is a likelihood of a reasonable overlap of competition whereby those imports are likely to compete with each other and with the domestic like product. Finally, if based on that analysis he intends to exercise his discretion to cumulate one or more subject countries, he analyzes whether he is precluded from cumulating such imports because the imports from one or more subject countries, assessed individually, are likely to have no discernible adverse impact on the domestic industry. See Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine, Invs. Nos. 731-TA-873 to 875, 877 to 880, and 882 (Review), USITC Pub. 3933 (Jul. 2007) (Separate and Dissenting Views of Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Regarding Cumulation). Accord Nucor Corp. v. United States, 605 F. Supp.2d 1361, 1372 (Ct. Int'l Trade 2009); Nucor Corp. v. United States, 594 F. Supp.2d 1320, 1345-47 (Ct. Int'l Trade 2008), aff'd, 601 F.3d 1291 (Fed Cir. 2010). His cumulation analysis in these reviews is set forth in his additional and dissenting views and he does not join the remainder of section III of this opinion.

[75] As discussed in note 111 below, Commissioner Pinkert does not find it warranted to decumulate imports from any of the subject countries.

[76] 19 U.S.C. § 1675a(a)(7).

specific guidance on what factors the Commission is to consider in determining that imports "are likely to have no discernible adverse impact" on the domestic industry.[77] With respect to this provision, the Commission generally considers the likely volume of subject imports and the likely impact of those imports on the domestic industry within a reasonably foreseeable time if the orders are revoked. Our analysis for each of the subject countries takes into account, among other things, the nature of the product and the behavior of subject imports in the original investigations.

1. Brazil

Following the imposition of the order, subject imports from Brazil exited the U.S. market; there were virtually no subject imports from Brazil during the period examined in the first review (1997-1999), second review (2005) or the third review (2006-2011).[78] The Commission received a useable questionnaire response in these reviews from one producer of silicomanganese from Brazil, Vale.[79] Vale reported data for each year in the 2006-11 period, and estimates that it accounted for *** of total Brazilian silicomanganese production in 2011 and approximately *** of the Brazilian silicomanganese market.[80] [81] It reported no exports to the United States for the third review period.[82]

Vale's silicomanganese production capacity rose slightly in 2009, and then remained unchanged through 2011, its production fluctuated annually but rose slightly from 2006 to 2011, and its capacity utilization fluctuated during the period.[83] The percentage of shipments Vale exported fluctuated on an annual basis and rose slightly during the period of review.[84] Available trade and industry data for the Brazil industry show trends similar to those Vale reported for capacity, production and exports in absolute volumes during the 2006-2011 period.[85]

Based on the available data concerning production capacity, which shows some excess capacity, and moderate export orientation, we find that subject imports from Brazil, upon revocation, are not likely to have no discernible adverse impact on the domestic industry.

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[77] SAA, H.R. Rep. No. 103-316, vol. I at 887 (1994).

[78] CR/PR at Table I-1. In the original investigation, the volume of U.S. shipments of subject imports from Brazil increased, from 47,613 short tons in 1991 to 63,614 short tons in 1993. In the first review, subject imports from Brazil were zero short tons in 1997 and 1998, and 22 short tons in 1999; there were no subject imports from Brazil during the period examined in the second review (2005) or third review (2006-2011). Id.

[79] See CR/PR at Table IV-7.

[80] CR at IV-13 and Table IV-7; PR at IV-10 and Table IV-7. There are three other principal producers of silicomanganese in Brazil; Commission staff made three attempts to obtain responses from these producers and on Sept. 20, 2012 received an initial but unuseable response from one of them, Granha Ligas. CR at IV-13 and n.151.

[81] Commissioner Pinkert would add that Granha Ligas reported that ***. Granha Ligas Questionnaire Response at 5, 17. Furthermore, although the Commission has no data from the other known principal Brazilian producers, there is record evidence that Brazilian producers other than Vale export silicomanganese. *** and GTA data reflect total Brazilian exports of 73,789 short tons in 2011; Vale exported only *** short tons in that year. CR/PR at Table IV-7 and Table IV-9.

[82] CR at IV-13, and Tables I-1 and IV-7; PR at IV-10, and Tables I-1 and IV-7.

[83] Vale's silicomanganese production capacity remained constant from 2006 to 2008 at ***, rose slightly to *** in 2009, and then remained unchanged through 2011. Vales's production fluctuated between years but rose slightly over the 2006-2011 from ***. Capacity utilization fluctuated, ranging from a low of *** in 2009 to a high of *** in 2008, and was *** in 2011. CR/PR at Table IV-7.

[84] The percentage of shipments Vale exported ranged from a low of *** in 2009 to a period high of *** in 2011. CR/PR at Table IV-7.

[85] See CR/PR at Tables IV-8 and 9.

2. China

Immediately following the imposition of the antidumping duty order, subject imports from China declined, and there were no imports during periods examined in the first review (1997-1999) or second review (2005).[86] In the current review, there have been limited quantities of Chinese imports entering the United States from 2007 to 2011.[87]

Only one Chinese producer (Comilog) reported data to the Commission in these reviews. Comilog accounted for less than *** of total silicomanganese production in China in 2011.[88] Comilog's only exports of silicomanganese over the review period were a small amount of product shipped ***.[89] There were 423 reported silicomanganese plants in China in 2010.[90] Available trade and industry data indicate that China's silicomanganese capacity has increased by more than 50 percent from 2006 to 2011 and its production also increased but, because production increased at a slower rate than capacity, capacity utilization levels declined from 2006 to 2011.[91] Chinese exports to all markets generally rose from 2006 to 2008, but then declined sharply in 2009 and have remained at levels far lower than those of 2006-2008, in part due to Chinese export restrictions.[92]

Based on the Chinese silicomanganese industry's increasing and significant capacity, excess capacity, and export orientation at the beginning of the period of these reviews, we find that subject imports from China, upon revocation, are not likely to have no discernible adverse impact on the domestic industry.

3. Ukraine

After the suspension agreement became effective in 1994, subject imports from Ukraine declined to very low levels.[93] With the termination of the suspension agreement and the imposition of the antidumping duty order in 2001, the quantity of subject imports from Ukraine declined to zero in both

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[86] In the original investigations, U.S. shipments of subject imports from China increased from 6,064 short tons in 1991 to 24,092 short tons in 1993. CR/PR at Table I-1.

[87] CR/PR at Table I-1. ***. Data for imports from China are based on official Commerce import statistics. ***. CR/PR at Table IV-1 and n.1, and Table IV-2 and n.1.

[88] CR at IV-22; PR at IV-17.

[89] CR/PR at Table IV-11.

[90] CR at IV-22; PR at IV-17.

[91] Available trade and industry data indicate that China's silicomanganese capacity has increased from *** in 2011. Chinese production also increased from *** in 2011, but Chinese capacity utilization levels declined from *** in 2011. CR/PR at Table I-12.

[92] CR/PR at Tables IV-12, IV-13, and IV-14. The Chinese export tax on silicomanganese was five percent at the beginning of 2006, and increased three times in five percent increments, reaching 20 percent on January 1, 2008. CR at II-7 n.79; PR at II-4 n.79. The economic effect of these policies was to restrict the export of silicomanganese (and other steel sector inputs), thereby increasing their supply and lowering their price in the domestic market in China and promoting their incorporation into downstream, "higher value-added" production activities in steel in China. CR at IV-28; PR at IV-20. There is some indication that the Chinese government may eliminate or reduce these export taxes as it has done with other similar export taxes on other steel inputs and products in recent years, but as of the closing of the record in these reviews, no such action had been announced. See, e.g., Eramet's Posthearing Brief, Response to Commission questions at 44-48 and Exhs. 30-32; Felman's Posthearing Brief, Aranoff Exhibit 1.1.

[93] In the original investigations, U.S. shipments of subject imports from Ukraine increased from zero in 1991 to 29,468 short tons in 1993. During the first review period, subject imports from Ukraine were 8,259 short tons in 1997, zero in 1998, and 9,025 short tons in 1999. CR/PR at Table I-1.

2005 (second review) and during the 2006-2011 third review period, except for *** of 22 short tons imported in 2010.[94]

The Commission received questionnaire responses in these reviews from the three primary producers of silicomanganese in Ukraine – Nikopol, Zaporozhye, and Stakhanov.[95] Responding Ukrainian producers reported data for each year in the 2006-11 period, and are estimated to account for 100 percent of total Ukrainian silicomanganese production in 2011.[96] Ukrainian silicomanganese production capacity increased from 2006 to 2011, production fluctuated on an annual basis but declined from 2006 to 2011, and capacity utilization fluctuated between years and declined during the period of review.[97] The percentage of shipments exported fluctuated from 2006 to 2009, and then declined sharply in 2010 and 2011.[98] Available trade and industry data show similar trends for capacity and production for these producers during the 2006-2011 period.[99]

Based on the responding Ukrainian producers' significant capacity, including excess capacity, and export orientation, we find that subject imports from Ukraine, upon revocation, are not likely to have no discernible adverse impact on the domestic industry.

C. Likelihood of a Reasonable Overlap of Competition

The Commission generally has considered four factors intended to provide a framework for determining whether subject imports compete with each other and with the domestic like product.[100] Only a "reasonable overlap" of competition is required.[101] In five-year reviews, the relevant inquiry is whether

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[94] CR/PR at Table I-1.

[95] See CR/PR at Table IV-15.

[96] CR at IV-31 and Table IV-15; PR at IV-23 and Table IV-15.

[97] Ukrainian silicomanganese production capacity from 2006 and 2010 ranged between *** and increased to *** in 2011. Ukrainian production fluctuated on an annual basis but declined from *** in 2011. Capacity utilization fluctuated, ranging from a low of *** in 2009 to a high of *** in 2007, and was *** in 2011. CR/PR at Table IV-15.

[98] The percentage of shipments exported fluctuated from 2006 to 2009, ranging from a low of *** in 2008 to a high of *** in 2007, and then declined sharply in 2010 (***) and 2011 (***). CR/PR at Table IV-15.

[99] See CR/PR at Tables IV-16 and IV-17. During 2010 and 2011, there was a large discrepancy between exports reported by Global Trade Atlas and those reported by the subject producers in their questionnaire responses. This discrepancy ***. CR/PR at Table IV-16 and n.1.

[100] The four factors generally considered by the Commission in assessing whether imports compete with each other and with the domestic like product are as follows: (1) the degree of fungibility between subject imports from different countries and between subject imports and the domestic like product, including consideration of specific customer requirements and other quality-related questions; (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product; (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and (4) whether subject imports are simultaneously present in the market with one another and the domestic like product. See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[101] See Mukand Ltd. v. United States, 937 F. Supp. 910, 916 (Ct. Int'l Trade 1996); Wieland Werke, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996). We note, however, that there have been investigations where the Commission has found an insufficient overlap in competition and has declined to cumulate subject imports. See, e.g., Live Cattle From Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 15 (Feb. 1999), aff'd sub nom, Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp. 2d 1353 (Ct. Int'l Trade 1999); Static Random Access Memory Semiconductors from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-761 to 762 (Final), USITC Pub. 3098 at 13-15 (Apr. 1998).

there likely would be competition even if none currently exists because the subject imports are absent from the U.S. market.[102]

Fungibility. Imported silicomanganese is generally considered to be interchangeable with domestically produced silicomanganese in most applications.[103] Both U.S. producers, and almost all importers and purchasers, found silicomanganese from each subject country to be at least frequently interchangeable with silicomanganese from other subject sources and the domestically produced product.[104] Most purchasers further found silicomanganese from each subject country to be comparable with each other and with the domestic like product with respect to most non-price product characteristics.[105]

Interchangeability may be limited by the chemical composition of the material.[106] In the original investigations and the prior reviews, the Commission found that while the use of Ukrainian silicomanganese could be limited for certain applications due to a higher level of phosphorus, it was considered substitutable with silicomanganese from other sources in suitable applications such as static structural steel products.[107] Producers and purchasers, moreover, are able to blend high-phosphorus silicomanganese with standard silicomanganese to produce a silicomanganese with lower phosphorus content.[108] There is no information in the record of the present reviews indicating that the fungibility of silicomanganese from all sources has changed.

Channels of Distribution. During each year of the period of review, the *** percentage of domestic producers' U.S. shipments of silicomanganese was sold directly to end users.[109] Importers provided no channels of distribution data for subject imports and sold nonsubject imports primarily directly to end users, with sales to distributors peaking at 13 percent in 2009.[110]

Geographic Overlap. The domestic like product is sold in every geographical market of the contiguous United States.[111] During the period of review, no imports from Brazil were reported, and only *** was reported. The small volume of imports from China identified in official import statistics entered in a number of Customs districts across the contiguous United States.[112]

Simultaneous Presence in Market. The domestic like product has been present in the U.S. market throughout the period of review.[113] With the orders in place, there were no imports reported from Brazil in the review period, imports from China were reported for only 7 of 75 reporting months, and imports

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[102] See generally Chefline Corp. v. United States, 219 F. Supp. 2d 1313, 1314 (Ct. Int'l Trade 2002).

[103] CR at II-23; PR at II-16.

[104] CR/PR at Table II-11.

[105] CR/PR at Table II-9.

[106] CR at II-23; PR at II-16. Low-carbon silicomanganese is produced by upgrading standard grade material by the addition of silicon wastes from the ferrosilicon industry. It is produced primarily in Norway by a firm related to Eramet, and ***. CR at I-20.

[107] First Review Determinations, USITC Pub. 3386 at 9 and Second Review Determinations, USITC Pub. 3879 at 11.

[108] First Review Determinations, USITC Pub. 3386 at 9 and Second Review Determinations, USITC Pub. 3879 at 11.

[109] CR/PR at Table II-1. U.S. produced silicomanganese sales to *** of total U.S. shipments in any given year. *Id*.

[110] CR/PR at Table II-1.

[111] CR at II-2, IV-9 and IV-10; PR at II-1, IV-7.

[112] CR at IV-10; PR at IV-7-IV-8.

[113] CR/PR at Table I-6.

from Ukraine were reported for only 1 of 75 reporting months.[114]

Conclusion. The information in the record supports a finding that imports from each subject country are fungible with the domestic like product and each other. The limited information in the record also supports finding that upon revocation imports from each of the subject countries and the domestic like product would likely be sold in similar channels of distribution and geographic markets and be simultaneously present in the U.S. market, as they were prior to imposition of the orders. Based on these considerations, we find that there would likely be a reasonable overlap of competition between and among imports from each subject country and the domestic like product if the orders were to be revoked.

D. Likely Conditions of Competition[115]

In determining whether to exercise our discretion to cumulate the subject imports, we assess whether the subject imports from Brazil, China, and Ukraine are likely to compete under similar or different conditions in the U.S. market after revocation of the orders.[116]

We find that subject imports from China and Ukraine would likely compete in the U.S. market under the same conditions of competition with each other,[117] but under different conditions of competition than subject imports from Brazil. The available information in the record indicates that the industries in both China and Ukraine play a substantial and increasing role in supplying the global silicomanganese markets. Together these industries accounted for 64.4 percent of global production in 2010.[118] The production capacity in each of these countries is huge and increased substantially from 2006 to 2011.[119] Since production has not kept pace with the increase in capacity, these industries have large and

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[114] CR at IV-10; PR at IV-7-IV-8.

[115] Commissioner Pinkert notes that Vale's arguments on discretionary decumulation center on Vale's contention that, in the event of revocation, the likely adverse impact of imports of the subject merchandise from Brazil is small relative to the likely adverse impact of subject imports from China and Ukraine. Vale Final Comments at 3-4. He finds, as explained below, that this contention rests on a misconstruction of the cumulation provisions of the statute and that cumulation of imports of the subject merchandise from Brazil, China, and Ukraine is warranted for purposes of the analysis of likelihood of continuation or recurrence of material injury in these reviews.

In Commissioner Pinkert's view, assuming a reasonable overlap of competition, if the Commission finds that imports of the subject merchandise from a particular country are likely to have a discernible adverse impact on the domestic industry in the event of revocation, a relatively small expected impact from those imports cannot be a valid basis for decumulating them – the cumulation provisions exist to enable the Commission to achieve a sensible overall result where multiple discernible adverse impacts, however small, are likely to affect the domestic industry in the same manner and thus to achieve a concerted impact. As the Statement of Administrative Action to the Uruguay Round Agreements Act states, at 847, "This [cumulative] analysis recognizes that a domestic industry can be injured by a particular volume of imports and their effects regardless of whether those imports come from one source or many sources." In the present case, where the product in question is standardized globally and the U.S. market is not segmented, there can be little doubt that unfairly traded imports from Brazil, China, and Ukraine will likely have precisely the same kind of adverse impact on the domestic industry, albeit not necessarily to the same degree, in the event of revocation.

[116] See Nucor Corp. v. United States, 601 F.3d 1291, 1296 (Fed. Cir. 2010); see also Allegheny Ludlum Corp., 475 F. Supp. 2d at 1378 (recognizing the wide latitude the Commission has in selecting the type of factors it considers relevant in deciding whether to exercise discretion to cumulate subject imports in five-year reviews); Nucor v. United States, 569 F. Supp. 2d at 1337-38; United States Steel, Slip Op. 08-82.

[117] No party argued that subject imports from China and Ukraine would likely compete under different conditions of competition.

[118] CR/PR at Table IV-6.

[119] CR/PR at Tables IV-12, IV-15, and IV-17.

increasing quantities of excess capacity. Even though exports as a share of total production have declined from 2009 to 2011 for the industry in China and exports as a share of total shipments have declined from 2010 to 2011 for the industry in Ukraine, the export volumes in absolute terms were large and remain large for the industry in Ukraine.[120] Available information shows that home market consumption in Ukraine has not increased sufficiently to adjust for lower export volumes and thus the industry's inventories have increased.[121] Moreover, Chinese and Ukrainian producers have exported silicomanganese to a wide range of markets around the globe.[122] Finally, silicomanganese from both China and Ukraine is subject to third-country antidumping duty orders in two countries.[123]

In contrast with the industries in China and Ukraine, the industry in Brazil has neither the global reach nor focus it exhibited at the time of the original investigations and first review.[124] After imposition of the orders, subject imports from Brazil exited the U.S. market. Vale is the largest silicomanganese producer in Brazil and the predominant exporter.[125] The majority of the total shipments of Brazilian producer Vale in each calendar year of the period reviewed were domestic shipments, ranging from a low of ***.[126] From 2006 to 2011, total export shipments from Brazil declined and the markets served by those exports have been relatively stable. The majority of the Brazilian industry's export shipments have been focused on customers located in regional South and Central American markets throughout the period of review, ranging from a low of 62.0 percent of total exports in 2007 to a high of 82.3 percent in 2009.[127] Most of the remaining exports have been shipped by Vale to support its affiliated operations in Europe.[128] In this review, Vale provided evidence to the Commission that it has adopted a corporate strategy of focusing on its home and regional markets.[129] Consistent with this strategy, Vale voluntarily stopped shipping silicomanganese to the Canadian market in 2007, and in July 2012 announced that it was selling its affiliated operations in Europe and would no longer have a need to export silicomanganese to Europe.[130]

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[120] CR/PR at Tables IV-12, IV-15, and IV-17. Ukrainian producers reported exports of *** in 2011. CR/PR at Table IV-15. Total exports reported for Ukraine by the Global Trade Atlas were *** in 2011. CR/PR at Table IV-16. The discrepancy, as noted above, is ***. Id. at n.1. As discussed below, Chinese exports declined as the Chinese government instituted progressively higher export taxes to restrict exports of silicomanganese to promote their incorporation into downstream, higher value-added production activities. There is some indication that the Chinese government may eliminate or reduce these export taxes as it has done with other similar export taxes on other steel inputs and products in recent years, but as of the closing of the record in these reviews, no such action had been announced. Eramet's Posthearing Brief, Response to Commission questions at 44-48, and Exhs. 30-32; Felman's Posthearing Brief, Aranoff Exhibit 1.1.

[121] CR/PR at Table IV-15.

[122] CR/PR at Tables IV-13 and IV-15.

[123] CR/PR at Table IV-20.

[124] See, e.g., Original Determinations, USITC Pub. 2836 at Table 17 and n.3 ("Other markets consist primarily of ***."); First Review Determinations, USITC Pub. 3386 at Table F-1.

[125] CR at II-6, IV-13 and Tables IV-7 and IV-8; PR at II-, IV-10 and Tables IV-7 and IV-8.

[126] CR/PR at Table IV-7. Vale's domestic shipments (combined internal consumption and commercial home market sales) as a share of its total shipments were *** in 2011. Id. The Brazilian industry's domestic shipments as a share of its total production were *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in 2011. Calculated from CR/PR at Table IV-8.

[127] CR/PR at Table IV-9. The Brazilian industry's export shipments to the South and Central American markets as a share of its total exports were *** in 2011, and *** in interim 2012. Id.

[128] CR/PR at Table IV-9 and Vale's Posthearing Brief at 5.

[129] Vale's Posthearing Brief at 4 and 5, Response to Commission questions at 13-22, and Exhibit 3.

[130] Vale's Posthearing Brief at 4 and 5, Response to Commission questions at 13-22, and Exhibit 3. Vale also indicated that it ***.

The industry in Brazil accounts for a small share of global production; the industry declined from 2.4 percent in 2006 to 1.9 percent in 2010.[131] Its production capacity is relatively small compared to the huge capacity of the industry in other subject countries.[132] Moreover, reported silicomanganese capacity for the Brazilian industry has remained relatively flat, rising slightly in 2007 and 2009, and then remaining unchanged through 2011.[133] Even though the industry's capacity utilization fluctuated during the period, it has remained above *** in all but the year affected most by the global economic downturn (2009).[134] Thus, the industry in Brazil is distinguished from the industries in China and Ukraine by its focus on supplying home and regional markets, its relatively smaller capacity, and its more stable capacity during the period of review. Accordingly, we find that subject imports from Brazil would likely compete in the U.S. market under different conditions of competition than subject imports from China or Ukraine.

E. Conclusion

In sum, we determine that subject imports from all three countries are not likely to have no discernible adverse impact on the domestic industry in the event of revocation and that there would likely be a reasonable overlap of competition between subject imports from each country and the domestic like product. We also determine that subject imports from Brazil would not be likely to compete under similar conditions of competition with the subject imports from China and Ukraine. Accordingly, for the reasons discussed above, we exercise our discretion to cumulate subject imports from China and Ukraine and consider them separately from subject imports from Brazil.[135] [136]

IV. WHETHER REVOCATION OF THE ANTIDUMPING DUTY ORDERS WOULD LIKELY LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standards

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping or countervailing duty order unless (1) it makes a determination that dumping or subsidization is likely to continue or recur and (2) the Commission makes a determination that revocation of the antidumping or countervailing duty order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[137] The SAA states that "under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a

[131] CR/PR at Table IV-6.

[132] Compare CR/PR at Tables IV-8, IV-12, IV-15 and IV-17.

[133] CR/PR at Table IV-8. Vale's capacity shows similar trends. CR/PR at Table IV-7.

[134] CR/PR at Table IV-8.

[135] For the reasons set forth in his additional and dissenting views, Commissioner Pearson has exercised his discretion not to cumulate subject imports from Brazil, China, or Ukraine, respectively, with any other subject imports.

[136] Commissioner Pinkert considers subject imports from Brazil, China, and Ukraine on a cumulated basis.

[137] 19 U.S.C. § 1675a(a).

proceeding and the elimination of its restraining effects on volumes and prices of imports."[138] Thus, the likelihood standard is prospective in nature.[139] The U.S. Court of International Trade has found that "likely," as used in the five-year review provisions of the Act, means "probable," and the Commission applies that standard in five-year reviews.[140]

The statute states that "the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time."[141] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' timeframe applicable in a threat of injury analysis in original investigations."[142]

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated."[143] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C.§ 1675(a)(4).[144] The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination.[145]

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked and/or the suspended investigation is terminated, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or

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[138] SAA at 883-84. The SAA states that "{t}he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed." Id. at 883.

[139] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued {sic} prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[140] See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int'l Trade 2003) ("'likely' means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)"), aff'd mem., 140 Fed. Appx. 268 (Fed. Cir. 2005); Nippon Steel Corp. v. United States, 26 CIT 1416, 1419 (2002) (same); Usinor Industeel, S.A. v. United States, 26 CIT 1402, 1404 nn.3, 6 (2002) ("more likely than not" standard is "consistent with the court's opinion;" "the court has not interpreted 'likely' to imply any particular degree of 'certainty'"); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int'l Trade Sept. 4, 2002) ("standard is based on a likelihood of continuation or recurrence of injury, not a certainty"); Usinor v. United States, 26 CIT 767, 794 (2002) ("'likely' is tantamount to 'probable,' not merely 'possible'").

[141] 19 U.S.C. § 1675a(a)(5).

[142] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." Id.

[143] 19 U.S.C. § 1675a(a)(1).

[144] 19 U.S.C. § 1675a(a)(1). Commerce has not issued any duty absorption findings with respect to silicomanganese from the subject countries.

[145] 19 U.S.C. § 1675a(a)(5). Although the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

consumption in the United States.[146] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[147]

In evaluating the likely price effects of subject imports if the orders under review are revoked and/or the suspended investigation is terminated, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.[148]

In evaluating the likely impact of imports of subject merchandise if the orders under review are revoked and/or the suspended investigation is terminated, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[149] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry. As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the orders under review and whether the industry is vulnerable to material injury upon revocation.[150]

B. Findings in the Original Investigations and Prior Reviews

Conditions of Competition. In the original investigations and prior five-year reviews, the Commission identified several conditions of competition pertinent to the domestic silicomanganese industry. These included the fact that the U.S. market for silicomanganese remains highly competitive, demand for silicomanganese is largely derived from demand from steelmakers and producers of ferrous castings, particularly in the production of long products by minimills, and that consequently demand remains cyclically tied to conditions in the U.S. and global steel industries.[151] The Commission also

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[146] 19 U.S.C. § 1675a(a)(2).

[147] 19 U.S.C. § 1675a(a)(2)(A-D).

[148] See 19 U.S.C. § 1675a(a)(3). The SAA states that "{c}onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[149] 19 U.S.C. § 1675a(a)(4).

[150] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

[151] First Review Determinations, USITC Pub. 3386 at I-14.

found that the domestic industry is small relative to apparent U.S. consumption and that imports were therefore required to satisfy domestic demand.[152]

The Commission found in the original investigations and first five-year reviews that silicomanganese is a commodity product made to common industry standards, because once a producer has qualified multiple suppliers, price takes on central importance to purchasing decisions.[153] Although silicomanganese can be produced with some variations in chemistry, the Commission found that silicomanganese consumed in the United States is largely grade B, and silicomanganese with variations in chemistry other than those specified by the ASTM standards is still viewed in the market as silicomanganese.[154] In both the original investigations and first five-year reviews, the Commission also found that silicomanganese producers are able, at least to a limited extent, to produce other products, particularly ferromanganese, in their silicomanganese furnaces.[155]

In the second review, the Commission found that there was no indication that there had been any significant changes in the conditions of competition since the first five-year reviews.[156] Specifically, there was no indication that the domestic like product and subject imports are no longer highly substitutable, or that silicomanganese is no longer sold primarily on the basis of price.

Subject Import Volume. In the original investigations, the Commissioners considered the subject imports' ability to increase their presence in the U.S. market in absolute and relative terms.[157] In the first five-year reviews, the Commission found that the antidumping duty orders and the Ukrainian Suspension Agreement had a restraining effect on cumulated subject import volumes, which dropped from 168,000 short tons in 1993 to 9,000 short tons in 1999.[158] The Commission noted that since the imposition of the orders, imports from Brazil and China effectively had ceased.[159] In the first and second reviews, the Commission concluded that the subject producers' ability to substantially increase shipments to the United States, continued production and exportation of substantial quantities of silicomanganese, export orientation, the rapid increase in subject exports to the United States in the original investigations, as well as such producers' apparent substantial capacity, indicate that they were likely to increase exports to the United States significantly upon revocation of the antidumping duty orders.[160] Accordingly, the Commission concluded that the likely volume of the subject merchandise, both in absolute terms and relative to consumption and production in the United States, would be significant, absent the restraining effect of the orders.[161]

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[152] Original Determinations, USITC Pub. 2836 at I-25; First Review Determinations, USITC Pub. 3386 at 14; Second Review Determinations, USITC Pub. 3879 at 16.

[153] Original Determinations, USITC Pub. 2836 at I-6-I-7 (Commissioners Rohr and Newquist) and I-21-I-22, I-26 (Commissioners Watson, Nuzum, Crawford, and Bragg); First Review Determinations, USITC Pub. 3386 at 14.

[154] First Review Determinations, USITC Pub. 3386 at I-14. The U.S. market at the time of the first reviews was served by silicomanganese suppliers from at least 20 countries.

[155] Original Determinations, USITC Pub. 2836 at I-26; First Review Determinations, USITC Pub. 3386 at 15.

[156] Second Review Determinations, USITC Pub. 3879 at 15.

[157] Original Determinations, USITC Pub 2836, Views of Commissioners Rohr and Newquist at 20-21; Views of Chairman Watson and Commissioners Crawford and Bragg at 11-12; and Additional and Dissenting Views of Chairman Nuzum at 24-27.

[158] First Review Determinations, USITC Pub. 3386 at 15.

[159] First Review Determinations, USITC Pub. 3386 at 15.

[160] First Review Determinations, USITC Pub. 3386 at 15-18; Second Review Determinations, USITC Pub. 3879 at 16-17.

[161] First Review Determinations, USITC Pub. 3386 at 18; Second Review Determinations, USITC Pub. 3879 at 17.

Price Effects. During the original investigations, the Commission found that the domestic like product and subject imports were highly fungible. The Commission found that prices for the domestic like product and subject imports declined over most of the period examined. The evidence showed a mixed pattern of overselling and underselling by the subject imports, with data obtained by the Commission indicating 21 instances of underselling and 19 instances of overselling by the imports with respect to contract prices, and 8 instances of underselling and 5 instances of overselling on the spot market.[162]

The record in the first and second five-year reviews contained limited pricing data for the U.S. market. The Commission found, in light of the already high degree of price-based competition in the U.S. market and the inelasticity of demand for silicomanganese, that competitive conditions would return to those prevailing prior to the imposition of the orders.[163] Moreover, given the fungibility between the domestic and subject silicomanganese, the producers in Brazil, China, and Ukraine would have the incentive to lower their prices to recapture their U.S. market share. The Commission found that the subject imports from Brazil, China, and Ukraine would likely enter the United States at prices that would significantly depress or suppress U.S. prices if the orders are revoked.[164]

Impact. In the original investigations, the Commission found that, due to falling prices, the domestic industry was unable to operate profitably.[165] In the first five-year reviews, the Commission found that despite the imposition of the orders on subject imports from Brazil and China and the suspension agreement with respect to imports from Ukraine following the original investigations, the domestic industry's financial condition remained weak and that the industry would be vulnerable to material injury if the orders were revoked and the suspended investigation terminated.[166] Accordingly, the Commission found that the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time if the orders were revoked and the suspended investigation terminated.[167] In the second five-year reviews, the Commission found that, given the likely significant increase in volume of subject imports and the resultant intense price competition, the domestic industry would likely experience significant declines in output, sales, and income, with eventual losses in employment, capital, and research and development expenditures similar to those experienced in the years examined during the original investigations.[168] The Commission found that the limited evidence in the record was insufficient to enable it to determine whether the domestic industry producing silicomanganese was vulnerable.[169]

C. Conditions of Competition and the Business Cycle

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors "within the context

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[162] Original Determinations, USITC Pub. 2836, Views of Commissioners Rohr and Newquist at 21; Views of Chairman Watson and Commissioners Crawford and Bragg at 4-7; and Additional and Dissenting Views of Chairman Nuzum at 13-14.

[163] First Review Determinations, USITC Pub. 3386 at 18-19; Second Review Determinations, USITC Pub. 3879 at 17-18.

[164] First Review Determinations, USITC Pub. 3386 at 19; Second Review Determinations, USITC Pub. 3879 at 18.

[165] Original Determinations, USITC Pub. 2836 at I-28.

[166] First Review Determinations, USITC Pub. 3386 at 20.

[167] First Review Determinations, USITC Pub. 3386 at 20.

[168] Second Review Determinations, USITC Pub. 3879 at 18-19.

[169] Second Review Determinations, USITC Pub. 3879 at 19.

of the business cycle and conditions of competition that are distinctive to the affected industry."[170] The following conditions of competition inform our determinations.

1. Demand Conditions

Silicomanganese is primarily consumed by electric furnace steelmakers in the production of long products, including bars and structural shapes.[171] Thus, demand for silicomanganese is dependent on demand for steel products and reflects the state of the overall economy.[172]

Apparent U.S. consumption of silicomanganese fluctuated during the period examined in these reviews, increasing from*** short tons in 2006 to *** short tons in 2007, declining to *** short tons in 2008 and *** short tons in 2009, and increasing to *** short tons in 2010, and *** short tons in 2011, a level *** percent lower than in 2006.[173] Apparent U.S. consumption of silicomanganese was *** short tons in interim (January-March) 2011 and *** short tons in interim (January-March) 2012.[174]

The U.S. market is characterized by a limited number of purchasers with the majority of shipments sold directly to end users.[175] Although some steel producers can substitute a combination of high-carbon ferromanganese and ferrosilicon for silicomanganese, such substitution is limited by both technical and cost considerations.[176] Moreover, because silicomanganese accounts for only a small share of the total cost of end-use steel mill products, demand for silicomanganese is relatively price inelastic.[177]

When asked how overall demand for silicomanganese has changed in the United States since 2006, a majority of producers and purchasers, and a plurality of importers reported that demand has fluctuated, while a plurality of foreign producers reported that demand for silicomanganese has remained unchanged.[178] When asked about anticipated changes in silicomanganese demand in the United States, a majority of producers and a plurality of importers indicated that they believed demand would fluctuate, and pluralities of other market participants indicated that they anticipated that demand for silicomanganese will not change.[179]

Public data indicates that global consumption of silicomanganese fluctuated between years but increased overall over the period of review from 7.2 million short tons in 2006 to 9.7 million short tons in 2010.[180] Market participants' perceptions of changes in demand outside the United States since 2006 were mixed with a plurality of producers, importers, and foreign producers reporting that demand had increased, and a plurality of purchasers reporting that demand had fluctuated.[181]

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[170] 19 U.S.C. § 1675a(a)(4).

[171] CR/PR at I-19.

[172] CR/PR at II-1.

[173] CR/PR at Table I-5.

[174] CR/PR at Table I-5.

[175] CR/PR at II-1 and Table II-1.

[176] CR at II-16; PR at II-10.

[177] CR at II-16 and II-26; PR at II-10 and II-18. U.S. producers estimated that silicomanganese represented *** of the cost of steel production and the 10 responding purchasers reported it represented up to 3 percent of their relevant input costs. Id.

[178] CR/PR at Table II-4.

[179] CR/PR at Table II-4.

[180] CR/PR at Table IV-6.

[181] CR/PR at Table II-5.

2. Supply Conditions

The U.S. market is characterized by a small number of U.S. producers. A notable change in the conditions of competition during these reviews is the entrance of an additional U.S. producer – Felman Production.[182] With the addition of Felman, U.S. capacity and production *** from 2006 to 2011.[183] The U.S. producers' share of the U.S. market also more than doubled from 2006 to 2011. During that period, the U.S. producers' market share ranged from a low of ***.[184]

Nonetheless, the U.S. industry continues to be small relative to apparent U.S. consumption, with the majority of supply provided by nonsubject imports. Nonsubject imports' share of the U.S. market declined from *** in interim 2012.[185] Over the period of review, South Africa was the largest U.S. supplier of imported silicomanganese to the U.S. market.[186] U.S. importer BHP Billiton accounted for *** of U.S. importers' U.S. shipments of silicomanganese in 2011.[187] However, in February 2012, BHP Billiton announced the permanent closure of silicomanganese production at its Metalloys facility in South Africa.[188] Georgia and Australia were the second and third largest sources of nonsubject imports, and both countries increased their supply of imported silicomanganese into the U.S. market from 2006 to 2011.[189] There were virtually no subject imports during this period.[190]

3. Other Likely Conditions of Competition

Silicomanganese is a commodity product made to common industry standards. As discussed above, subject imports from each source and the domestic like product generally are considered interchangeable in most applications.[191] Although silicomanganese can be produced with some variations in chemical composition, the product produced and consumed in the United States largely conforms to the

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[182] CR/PR at Table III-1. In January 2006, Felman purchased the silicomanganese assets of Highlander from bankruptcy proceedings and ***. Id. and CR at I-23.

[183] CR/PR at Table III-2. U.S. silicomanganese capacity increased from *** in interim 2012. U.S. silicomanganese production increased from *** in interim 2012. Id.

[184] CR/PR at Table I-6. U.S. producers' market share increased from *** in interim 2012. Id.

[185] CR/PR at Tables I-5 and I-6. *** U.S. producers reported importing silicomanganese from ***. CR at III-8 and n.114; PR at III-3 and n.114. *** in 2011. CR/PR at Table III-6. ***. CR/PR at Table III-7.

[186] CR/PR at Table IV-1.

[187] CR at IV-5; PR at IV-4.

[188] CR at IV-5; PR at IV-4. According to Felman, the closure in South Africa resulted in prices increasing to approximately 72 cents per pound in the U.S. market that lasted from March through June 2012 until other nonsubject sources of supply entered the market. Id. and Hearing Tr. at 80, 169-170 ("indeed as the domestics had testified this morning, imports flowed in from Europe....what countries did they flow from in Europe? Norway, related to Eramet....Georgia, related to Felman."); Felman's Final Comments at 13 n.58 quoting Hearing Tr. at 80 ("{Prices} went up to approximately 72 cents per pound. But then imports from Europe {and} from all other markets came into the United States and reduced price down, and now we experience price at the level of 58, 59.5 cents per pound.").

[189] CR/PR at Table IV-1. Norway was a declining supplier of silicomanganese to the U.S. market from 2006 to 2011, and the principal U.S. supplier of low-carbon silicomanganese, which typically is more expensive than Grade B silicomanganese. CR at I-20, II-10, and Table IV-1; PR at I-17, II-6 and Table IV-1. In 2011, the United States imported silicomanganese from at least ten nonsubject countries.

[190] CR/PR at Tables I-6 and IV-1.

[191] See CR/PR at Table II-11.

specification for ASTM A 483 Grade B.[192]

The record also indicates that price is an important factor for purchasing decisions in the U.S. silicomanganese market. When asked to rank the factors used in purchasing decisions, responding purchasers ranked price most frequently as both the first and second most important factor, with availability reported most frequently as the third most important factor.[193] Half of responding purchasers reported that if comparable product were available from multiple sources they would purchase the lower price product.[194] When asked to rate the importance of 19 enumerated factors when making silicomanganese purchasing decisions, 10 of 11 responding purchasers rated "price" as "very important," with only delivery time reported more frequently as "very important."[195] Responding purchasers also indicated that availability, lump size, and reliability of supply were very important factors in their purchasing decisions.[196] While 5 of 12 responding purchasers reported that the silicomanganese that they purchase must be certified or prequalified, no purchaser reported that any supplier had failed in its attempt to qualify its product since 2006.[197]

Silicomanganese producers and purchasers have access to current price information through an industry publication, *Ryan's Notes*, which reportedly is used to set prices in many of the contracts; contract prices are "indexed or periodically adjusted to reflect the current markets [sic] prices."[198] As a result of the use of published prices, prices in the spot market quickly affect prices in the contract market.

Finally, silicomanganese producers are able, at least to a limited extent, to produce other products – particularly ferromanganese – in their silicomanganese furnaces. While differences in relative prices for silicomanganese and ferromanganese may lead to shifts in production, such conversion reportedly would take at least ***.[199]

D. Revocation of the Antidumping Duty Orders on Subject Imports from China and Ukraine Is Likely to Lead to Continuation or Recurrence of Material Injury to the Domestic Industry within a Reasonably Foreseeable Time[200] [201]

1. Likely Volume of Subject Imports

We find that subject imports from China and Ukraine are likely to return to the U.S. market and that the likely cumulated volume of such imports would be significant if the orders are revoked. As discussed below, subject producers in China and Ukraine have both the means and the incentive to export significant volumes of subject imports to the U.S. market after revocation.

Since imposition of the orders, there have been minimal subject imports from China and Ukraine in the U.S. market and thus the orders appear to have had a restraining effect on such subject imports.

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[192] CR at I-18; PR at I-16.

[193] CR/PR at Table II-6.

[194] CR at II-18; PR at II-12.

[195] CR/PR at Table II-7.

[196] CR/PR at Table II-7.

[197] CR at II-20; PR at II-14.

[198] CR at V-3 and V-4; PR at V-3.

[199] CR at II-4 and III-3 and Table III-3; PR at II-3 and III-2 and Table III-3.

[200] Commissioner Pearson does not join this section of the opinion.

[201] Commissioner Pinkert has cumulated all subject imports. He joins this section with respect to China and Ukraine and finds that the conclusions herein are strengthened by his inclusion of the subject imports from Brazil in the analysis. He explains his cumulated volume conclusions at the end of this section, and he explains his price and impact conclusions in later footnotes.

During the period examined, there have been limited quantities of Chinese imports entering the United States from 2007 to 2011,[202] and only *** of 22 short tons of silicomanganese imported from Ukraine in 2010.[203]

As discussed above, the Commission received complete coverage from foreign producers in Ukraine, but received a response from only a single Chinese producer out of the reported 423 silicomanganese plants in China.[204] Therefore, in assessing subject producer capacity, production, capacity utilization and shipment patterns, we rely on questionnaire data, as well as available published data which provide information about the silicomanganese industries in China and Ukraine.

Subject producers in China and Ukraine have massive and increasing silicomanganese production capacity and combined excess capacity, that dwarfs both U.S. production and apparent U.S. consumption. This capacity enables the producers to export significant volumes of silicomanganese to the United States. Based on available trade and industry data, combined production capacity for China and Ukraine increased from *** short tons in 2006 to *** short tons in 2011.[205] Production has not kept pace with increases in capacity, resulting in large quantities of excess capacity. Combined production for China and Ukraine was *** short tons in 2006 and *** short tons in 2011;[206] combined production in China and Ukraine accounted for *** of global silicomanganese production in 2011.[207] Therefore, combined excess capacity has increased from *** short tons in 2006 and *** short tons in 2011.[208] By comparison, in 2011, apparent U.S. consumption was *** short tons and U.S. production was *** short tons (the highest level reported during the period examined).[209]

Not only do the subject industries in China and Ukraine have substantial excess capacity, but they also export substantial volumes of silicomanganese. While combined exports in absolute terms and as a share of Chinese and Ukrainian production declined over the period of review, the combined volume of exports (***) in 2011 was almost double apparent U.S. consumption that year.[210]

China is by far the world's largest producer of silicomanganese and its share of global production has increased from 47.6 percent in 2006 to 54.7 percent in 2010.[211] China's silicomanganese capacity has almost doubled from *** short tons in 2006 to *** short tons in 2011, and its production also increased (from *** short tons in 2006 to *** short tons in 2011), but because production increased at a slower rate than capacity, capacity utilization levels declined from *** percent in 2006 to *** percent in 2011.[212] Chinese exports to all markets generally rose from 2006 to 2008, but then declined sharply in 2009 and have remained at levels far lower than those of 2006-2008.[213] The decline in Chinese exports of silicomanganese occurred as the Chinese government instituted progressively higher export taxes to

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[202] CR/PR at Table I-1. ***. Data for imports from China are based on official Commerce import statistics. ***. CR/PR at Table IV-1 and n.1, and Table IV-2 and n.1.

[203] CR/PR at Table I-1.

[204] CR at IV-22 and IV-31; PR at IV-17 and IV-23.

[205] Calculated from CR/PR at Tables IV-12 and IV-17.

[206] Calculated from CR/PR at Tables IV-12 and IV-17.

[207] Calculated from CR/PR at Table IV-6.

[208] Calculated from CR/PR at Tables IV-12 and IV-17. Combined capacity utilization for China and Ukraine declined from *** in 2011. Id.

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

[210] Calculated from CR at Tables IV-13 and IV-18, and Table C-1.

[211] CR/PR at Table IV-6.

[212] CR/PR at Table I-12.

[213] CR at Tables IV-12, IV-13, and IV-14.

restrict the export of silicomanganese.[214] The economic effect of these policies was to restrict the export of silicomanganese (as well as other steel sector inputs), thereby increasing their supply and lowering their price in the domestic market in China and promoting their incorporation into downstream, "higher value-added" production activities in steel in China.[215] There is some indication that the Chinese government may eliminate or reduce these export taxes as it has done with other similar export taxes on other steel inputs and products in recent years, but as of the closing of the record in these reviews, no such action had been announced.[216] Nonetheless, subject producers in China possess the capacity with which to export significant volumes of silicomanganese to the United States.

Responding Ukrainian producers reported a significant increase in their capacity from 2006 to 2011 and possessed significant excess capacity in 2011.[217] The Ukrainian silicomanganese industry's production capacity increased from 2006 to 2011, its production fluctuated on an annual basis but declined from 2006 to 2011, and its capacity utilization fluctuated between years and declined during the period of review.[218] The percentage of shipments exported fluctuated from 2006 to 2009, and then declined sharply in 2010 and 2011.[219] Nevertheless, the volume of exports in absolute terms reported by Global Trade Atlas remained substantially larger than apparent U.S. consumption.[220]

In sum, we find that producers in China and Ukraine, on a cumulated basis, possess the capacity with which to significantly increase exports to the United States. Subject producers in China and Ukraine also have the incentive to use their excess capacity to increase exports to the United States after revocation, given their significant degree of export orientation, the size of the U.S. market[221] and the higher prices in the U.S. market.[222]

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[214] The Chinese export tax on silicomanganese was five percent at the beginning of 2006, and increased three times in five percent increments, reaching 20 percent on January 1, 2008. CR at II-7 n.79; PR at II-4 n.79.

[215] CR at IV-28; PR at IV-20.

[216] See, e.g., Eramet's Posthearing Brief, Response to Commission questions at 44-48 and Exhs. 30-32; Felman's Posthearing Brief, Aranoff Exhibit 1.1. See also Circular Welded Carbon Quality Steel Line Pipe from China, Inv. No. 701-TA-455 (Final), USITC Pub. 4055 at II-3, VII-2 and VII-3 (Jan. 2009).

[217] UkrFA claimed that *** and that the U.S. market for high phosphorus silicomanganese is very limited. UkrFA's Posthearing Brief at 3-4 and Response to Commission questions at 1-3. While we recognize that differences in chemical composition may limit some uses and sales, we note that Ukrainian producers export large volumes of silicomanganese to Europe which suggests that Ukrainian producers are not precluded either from producing Grade B silicomanganese for the European market or their high phosphorus content silicomanganese is able to compete with Grade B silicomanganese. CR/PR at Table IV-18; Eramet's Final Comments at 13-14 and n.78; Felman's Prehearing Brief at 17; Vale's Response to Commission questions at 77-78.

[218] Ukrainian silicomanganese production capacity from 2006 and 2010 ranged between *** and increased to *** in 2011. Ukrainian production fluctuated on an annual basis but declined from *** in 2011. Capacity utilization fluctuated, ranging from a low of *** in 2009 to a high of *** in 2007, and was *** in 2011. CR/PR at Table IV-15.

[219] The percentage of shipments subject producers in Ukraine exported fluctuated from 2006 to 2009, ranging from a low of *** in 2008 to a high of *** in 2007, and then declined sharply in 2010 (***) and 2011 (***). CR/PR at Table IV-15. As explained below, the direct exports subject producers in Ukraine reported in their questionnaire responses may under state actual exports from Ukraine.

[220] CR/PR at Table IV-16. As previously discussed, for 2010 and 2011 exports reported by Global Trade Atlas are considerably larger than direct exports reported by subject producers in Ukraine. The difference potentially reflects shipments by the subject producers to traders in Ukraine that in turn export the silicomanganese after the initial sale. Id.

[221] See Felman's Prehearing Brief at 51-52 and Exhibit 4.

[222] CR at V-4 - V-6 and Figure V-3; PR at V-3 and V-4 and Figure V-3. Ukrainian producers reported that prices ranged from $*** per ton in Ukraine, $*** per ton in Asia, and $*** per ton in other non-U.S. markets. CR at V-6; PR at V-4. Based on questionnaire responses, U.S. prices for product 1 ranged from $*** and for product 2 ranged

Silicomanganese exports from both China and Ukraine have been subject to numerous third country antidumping duty orders since the Commission's original investigations and currently still are subject to orders issued by the European Union (both China and Ukraine), Mexico (Ukraine), and South Korea (China).[223] These orders provide an additional incentive to direct export shipments to the U.S. market, if the orders are revoked.[224] [225]

For all of these reasons, we conclude that revocation of the orders on subject imports from China and Ukraine would result in a likely significant cumulated volume of subject imports from China and Ukraine within a reasonably foreseeable time.[226]

2. Likely Price Effects

In considering the likely price effects of subject imports from China and Ukraine if the orders were revoked, we observe, as discussed above, that silicomanganese generally is interchangeable between subject imports from each of the sources and the domestic like product. Moreover, the general importance of price in purchasing decisions has not changed since the original investigations. The U.S. silicomanganese market is a highly competitive market, currently served by importers from at least ten countries in addition to the U.S. producers, and the use of widely available pricing information cause any price changes to be rapidly disseminated through the market.

The Commission collected pricing data on sales of two products.[227] Two U.S. producers provided usable pricing data, which represented *** of U.S. shipments of U.S.-produced silicomanganese.[228] Because there were virtually no subject imports of silicomanganese from China or Ukraine during the period of review, responding U.S. importers provided no price data for subject imports.[229]

Over the period examined, prices for domestically produced silicomanganese fluctuated between quarters, but generally increased. U.S. prices for the domestically produced product 1 were relatively stable in 2006 and the first quarter of 2007, then almost tripled, peaking in the second and fourth quarters of 2008, before declining sharply in 2009 but remained at levels higher than 2006; prices for product 1 rose again in 2010, and then declined steadily in 2011 and the first quarter of 2012, but again remained

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from $*** from January 2006 to March 2012. CR/PR at Table V-2.

[223] CR/PR at Table IV-20.

[224] While no U.S. importers of subject imports from China and Ukraine reported any inventories at the end of the period of review, the Ukrainian producers reported increasing inventories over the period of review, ranging from a low of *** in 2011. CR/PR at Table IV-15. The record does not contain meaningful data about inventory levels of subject merchandise maintained by subject producers in China. See Eramet's Posthearing Brief at 9 and Exhibit 5.

[225] Although our finding of likely significant cumulated subject import volume from China and Ukraine relies on other factors, we note that subject producers have the potential to shift production from ferromanganese to silicomanganese. See, e.g., Eramet's Prehearing Brief at 27 and 28; ***. Any such product shifting would increase the subject producers' capacity further.

[226] Commissioner Pinkert finds that this analysis is strengthened when imports of the subject merchandise from Brazil are cumulated with those from China and Ukraine. Combined 2011 silicomanganese production capacity in Brazil, China, and Ukraine was ***, and combined production was ***. Calculated from CR/PR at Tables IV-8, IV-12, and IV-17. In addition, the Brazilian industry had excess capacity of *** short tons in 2011, and Vale alone had inventories of *** in 2011. CR/PR at Tables IV-7 and IV-8.

[227] CR at V-6 and V-7; PR at V-4. Product 1 (ASTM grade B bulk silicomanganese sold to steel producers under quarterly requirement contracts) involved substantial sales quantities and was provided for each quarter whereas Product 2 (ASTM grade B bulk silicomanganese sold as spot sales) involved small quantities and was not available for each quarter. CR/PR at Figures V-4 and V-5 and Table V-1.

[228] CR at V-7; PR at V-4.

[229] CR at V-7 n.186; PR at V-4 n.186.

higher than 2006.[230] U.S. prices for domestically produced product 2 were very limited before the second half of 2008, declined sharply in 2009, and increased moderately in 2010 to levels that remained relatively stable through 2011.[231] In terms of weighted-average f.o.b. selling prices, domestically produced product 1 prices increased from $*** in the first quarter of 2006 to $*** in the first quarter of 2012, and domestically produced product 2 prices increased from $*** in the first quarter of 2006 to $*** in first quarter of 2012.[232]

We have found that the likely cumulated volume of subject imports from China and Ukraine would be significant if the orders are revoked. In light of the already high degree of price-based competition in the U.S. market and the relatively price-inelastic demand for silicomanganese, we conclude that cumulated subject imports would be likely to expand their market share by entering the U.S. market at low prices. Due to the rapid way in which price changes are communicated in this market, any underselling by such subject imports may not be significant or persistent.[233] Nonetheless, the likely significant cumulated volume of subject imports from China and Ukraine likely entering at low prices would trigger price declines in the U.S. market and have likely significant depressing or suppressing effects on the price of the domestic like product.[234]

3. Likely Impact[235]

In evaluating the likely impact of cumulated subject imports on the domestic industry, we recognize that the domestic industry has experienced positive changes (including the addition of Felman to the domestic industry) that may have not been possible without the protection of the orders. Some performance indicators have been positive (e.g., capacity, production, shipments, sales value, and employment) throughout the period examined, but the industry continues to experience weak financial performance. After the initial negative financial performance associated with the start-up of Felman's

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[230] CR/PR at Table V-1 and Figure V-4.

[231] CR/PR at Table V-1 and Figure V-5.

[232] CR/PR at Table V-1 and Figures V-4 and V-5.

[233] In the original investigations, subject imports from China and Ukraine, on a cumulated basis, undersold the domestic like product in 12 of 19 price comparisons; subject imports from China undersold the domestic like product in 10 of 13 price comparisons and subject imports from Ukraine undersold the domestic like product in 2 of 6 price comparisons. CR at V-11 n.188; PR at V-5 n.188.

[234] Commissioner Pinkert finds that this analysis is strengthened when imports of the subject merchandise from Brazil are cumulated with those from China and Ukraine. The Commission has no recent pricing data for subject merchandise from Brazil because Brazilian producers have not been in the market. Nevertheless, in the original investigations, imports of the subject merchandise from Brazil undersold the domestic like product in 10 of 25 instances, with a larger average margin of underselling than imports of the subject merchandise from China. Subject imports from Brazil, China, and Ukraine undersold the domestic like product in 22 of 44 comparisons. CR at V-11, n.188; PR at V-5, n.188; Original CR/PR Tables at 23 and 24.

Commissioner Pinkert concludes that the significant cumulated volume of imports of the subject merchandise from Brazil, China, and Ukraine, which will likely enter the United States at undersold prices, would likely have significant depressing and/or suppressing effects on the prices available to U.S. producers.

[235] Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found likely dumping margins and calculated likely antidumping duty margins of 150.00 percent for all manufacturers/producers/exporters in China and 163.00 percent for all manufacturers/producers/exporters in Ukraine. CR/PR at Table I-2.

silicomanganese production operation, the domestic industry experienced improving performance in all indicators until the economic downturn in 2009. While the industry, which is dependent on the U.S. steel industry, has been slow to recover, there has been some improvement in performance in 2011 and such improvement is likely to continue. Nonetheless, the effect of the economic downturn on this industry demonstrates how rapidly the significant investment by Felman and other improvements in industry performance can be adversely affected by changes in sales volume. Because the domestic industry's financial performance remains poor despite increases in output and market share, we find that the domestic industry is in a vulnerable condition. Were the orders to be revoked, we find that cumulated subject imports from China and Ukraine would likely have a significant adverse impact on the domestic industry.

Domestic industry capacity and production increased from 2006 to 2011, with virtually the same rate of capacity utilization at the beginning and end of the period, as the increase in its production kept pace with the increase in capacity. Domestic industry silicomanganese capacity increased irregularly from *** short tons in 2006 to *** short tons in 2011, a level *** percent higher than in 2006.[236] Domestic industry silicomanganese production increased each year from *** short tons in 2006 to *** short tons in 2011, a level *** percent higher than in 2006.[237] The domestic industry's rate of capacity utilization fluctuated and was *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in 2010 and *** percent in 2011.[238]

Domestic industry employment, hours worked, and wages generally improved during the period of review, although productivity declined slightly. Domestic industry employment increased irregularly from *** production and related workers ("PRWs") in 2006 to *** PRWs in 2011, a level *** percent higher than in 2006.[239] Domestic industry hours worked increased from *** hours in 2006 to *** hours in 2011, a level *** percent higher than in 2006.[240] Domestic industry wages paid increased from $*** in 2006 to $*** in 2011, a level *** percent higher than in 2006.[241] Domestic industry productivity, however, declined *** percent during the period, from *** short tons per 1,000 hours in 2006 to *** short tons per 1,000 hours in 2011.[242]

The domestic industry's net commercial sales quantity tracked production, increasing from *** short tons in 2006 to *** short tons in 2011, a level *** percent higher than in 2006.[243] The domestic industry's U.S. shipments followed a similar trend, increasing from *** short tons in 2006 to *** short tons in 2011, a level *** percent higher than in 2006.[244] The domestic industry's share of apparent U.S.

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[236] CR/PR at Table III-2. The domestic industry's production capacity was *** short tons in interim 2011 and *** short tons in interim 2012.

[237] CR/PR at Table III-2. The domestic industry's production was *** short tons in interim 2011 and *** short tons in interim 2012.

[238] CR/PR at Table III-2. The domestic industry's capacity utilization was *** percent in interim 2011 and *** percent in interim 2012. Inventories were higher in both an absolute and relative basis in 2011 than in 2006. CR/PR at Table III-6.

[239] CR/PR at Table III-8. PRWs were *** in interim 2011 and *** in interim 2012.

[240] CR/PR at Table III-8. Hours worked were *** in interim 2011 and *** in interim 2012.

[241] CR/PR at Table III-8. Wages paid were $*** in interim 2011 and $*** in interim 2012.

[242] CR/PR at Table III-8.

[243] CR/PR at Table III-9. The domestic industry's net commercial sales quantity was *** in interim 2012.

[244] CR/PR at Table III-4. The domestic industry's U.S. shipments were *** short tons in interim 2011 and *** short tons in interim 2012. The domestic industry's export shipments were *** in 2006, 2007 and 2008, but increased to *** short tons in 2009, and then declining to *** short tons in 2010 and *** short tons in 2011. The domestic industry's export shipments were *** short tons in interim 2011 and *** short tons in interim 2012. Id. The domestic industry's end-of-period inventories fluctuated during the period examined, increasing from *** short

consumption increased from *** percent in 2006 to *** percent in 2007, *** percent in 2008 and *** percent in 2009, declined to *** percent in 2010, and then increased to *** percent in 2011, a level *** percentage points higher than in 2006.[245]

The domestic industry's unprofitable financial performance in 2006 improved as prices increased in 2007 and 2008, but declined drastically in 2009 with the downturn in the U.S. economy, and only began to show some improvement in 2011. The domestic industry's net sales value increased steadily from $*** in 2006 to $*** in 2007, and $*** in 2008, then declined to $*** in 2009, before increasing to $*** in 2010 and $*** in 2011, a level *** percent higher than in 2006.[246] Although the domestic industry's operating income fluctuated during the period examined, it was higher in 2011 than in 2006 and the industry's operating income as a share of net sales had returned to a slightly positive position in 2011. The domestic industry's operating income increased from negative $*** in 2006 to positive $*** in 2007 and $*** in 2008, and then declined to negative $*** in 2009 and negative $*** in 2010, before improving to positive $*** in 2011.[247] The industry's operating income as a share of net sales increased from negative *** percent in 2006 to positive *** percent in 2007 and *** percent in 2008, and then declined to negative *** percent in 2009 and negative *** percent in 2010, before improving to positive *** percent in 2011.[248] The domestic industry's return on investment also tracked operating income margins.[249]

The domestic industry made significant investments in its operations during the period examined. The industry's capital expenditures ranged from a high of $*** in 2006 (as ***) to a low of $*** in 2007.[250]

In light of the foregoing analysis, we find that the domestic industry is in a vulnerable condition. The domestic industry's improved financial performance prior to the 2009 downturn resulted largely from the higher prices it received in 2007 and 2008. The domestic industry would not be likely to be able to impose similar price increases in the event the orders on subject imports from China and Ukraine were revoked. Instead, given the general interchangeability of the subject imports and the domestic product and the inelasticity of demand for silicomanganese, we find that the likely significant volume of low priced subject imports from China and Ukraine, when combined with the likely adverse price effects of those imports, would likely have a significant adverse impact on the domestic industry's profitability and return on investment, as well as its ability to raise capital and make and maintain necessary capital investments. We find that the likely volume and price effects of the subject imports also would likely have a significant adverse impact on the production, shipments, sales, market share, revenues, and employment of the domestic industry. We therefore conclude that, if the orders were revoked, subject imports from China and Ukraine would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

In our analysis of the likely impact of subject imports on the domestic industry, we have taken into account whether there are other factors that likely would affect the domestic industry. We recognize that because the domestic industry can only supply a relatively small share of U.S. demand, nonsubject

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tons in 2006 to *** short tons in 2011, a level *** percent higher than in 2006. CR/PR at Table III-5. The industry's end-of-period inventories as a share of its production increased from *** percent in 2006 to *** percent in 2011. The industry's end-of-period inventories as a share of its U.S. shipments increased from *** percent in 2006 to *** percent in 2011. Id.

[245] CR/PR at Table I-6.

[246] CR/PR at Table III-9.

[247] CR/PR at Table III-9.

[248] CR/PR at Table III-9.

[249] CR/PR at Table III-14.

[250] CR/PR at Table III-13.

imports were a significant factor in the U.S. market during the period examined. However, as the domestic industry has been able to supply a greater share of apparent U.S. consumption, the quantity and share of nonsubject imports have declined. Without the discipline of the orders, the likely significant volume of cumulated subject imports will adversely impact the domestic industry because of the direct competition between subject imports and domestically produced silicomanganese, even if nonsubject imports maintain their historical levels. Given that nonsubject imports have declined since Felman's entry into the U.S. market, the record provides no basis for a conclusion that nonsubject imports are likely to increase after revocation of the orders on silicomanganese from China and Ukraine, or that domestic producers' control of a substantial proportion of nonsubject imports is likely to affect nonsubject import quantities.

Accordingly, we find that subject imports from China and Ukraine are likely to have a significant adverse impact on the domestic industry if the orders were revoked, notwithstanding the presence of nonsubject imports in the U.S. market. Thus, we conclude that if the orders were revoked, cumulated subject imports from China and Ukraine would likely lead to the continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.[251]

E. Revocation of the Antidumping Duty Order on Subject Imports from Brazil Would Not Likely Lead to the Continuation or Recurrence of Material Injury to the Domestic Industry within a Reasonably Foreseeable Time[252]

1. Likely Volume of Subject Imports

We find that subject imports from Brazil are not likely to be at significant levels after revocation of the order. As further discussed below, we find that subject producers in Brazil lack the incentive to export significant volumes of silicomanganese to the U.S. market after revocation.

After imposition of the orders, subject imports from Brazil exited the U.S. market and there were no imports reported during the period of review.[253] As discussed above, the Commission received a useable questionnaire response in these reviews from one producer of silicomanganese from Brazil, Vale, that estimates that it accounted for *** of total Brazilian silicomanganese production in 2011.[254] Available trade and industry data for the Brazil industry show trends for capacity, production, and exports during the 2006-2011 period similar to those in the data Vale reported.[255]

The production capacity of the industry in Brazil is relatively small compared to the huge

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[251] Based on the foregoing and his earlier volume and price findings, Commissioner Pinkert finds that imports of subject merchandise from Brazil, China, and Ukraine are likely to have a significant adverse impact on the domestic industry if the orders were revoked. Thus, he concludes that, if the orders were revoked, cumulated imports of subject merchandise from Brazil, China, and Ukraine would likely lead to a continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

[252] Commissioner Pinkert does not join this section.

[253] CR/PR at Table I-1. In the original investigation, the volume of U.S. shipments of subject imports from Brazil increased from 47,613 short tons in 1991 to 63,614 short tons in 1993, but such imports' share of apparent U.S. consumption declined each year from *** in 1993. In the first review, subject imports from Brazil were zero short tons in 1997 and 1998, and 22 short tons in 1999; there were no subject imports from Brazil during the period examined in the second review (2005) or the third review (2006-2011). Id.

[254] CR at IV-13 and Table IV-7; PR at IV-10 and Table IV-7. There are three other principal producers of silicomanganese in Brazil; Commission staff made three attempts to obtain responses from these producers. On Sept. 20, 2012, the Commission received an initial response from one of them, Granha Ligas, but the reported data was unuseable. CR at IV-13 and n.151; PR at IV-10 and n.151.

[255] See CR/PR at Tables IV-8 and 9.

capacity of the industries in the other subject countries and comparable to the current size of the U.S. industry.[256] Moreover, Vale's silicomanganese capacity has remained relatively flat, rising slightly in 2009, and then remaining unchanged through 2011.[257] Its production fluctuated between years but rose slightly over the 2006-2011 period. Its capacity utilization fluctuated during the period, but remained above *** in all but the year affected most by the global economic downturn (2009). Thus, Vale's total excess capacity was *** in 2011.[258]

We find that the Brazilian silicomanganese industry lacks the incentive to resume exports to the United States at significant levels. Vale is the largest silicomanganese producer in Brazil and its exports constitute *** proportion of total reported exports for the industry.[259] Vale's domestic shipments of silicomanganese (combined internal consumption and commercial home market sales) accounted for the majority of total shipments in each year of the period reviewed, ranging from a low of ***.[260] Vale's export shipments by quantity fluctuated on an annual basis and declined slightly during the period of review from *** in 2011.[261] Vale's export shipments in absolute terms and as a share of total shipments have remained relatively stable, as have the markets served by those exports.[262] Reported total exports of silicomanganese from Brazil also declined slightly from 2006 to 2011.[263] The majority of the Brazilian industry's export shipments have been focused on customers located in South and Central America

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[256] CR/PR at Tables III-3 and IV-8. The Commission's analysis is based on data for all Vale's production capacity in Brazil, including facilities that it alleged were idled since 2009. CR at IV-15 and IV-16; PR at IV-11.

[257] Vale's silicomanganese production capacity remained constant from 2006 to 2008 at ***, rose slightly to *** in 2009, and then remained unchanged through 2011. Vales's production fluctuated between years but rose slightly over the 2006-2011 from ***. Vale's capacity utilization fluctuated, ranging from a low of *** in 2009 to a high of *** in 2008, and was *** in 2011. CR/PR at Table IV-7. The Brazilian industry's silicomanganese production capacity increased from *** in 2007, remained unchanged in 2008, increased to *** in 2009, and then remained unchanged through 2011. The Brazilian industry's production fluctuated between years but rose from *** in 2011. The Brazilian industry's capacity utilization fluctuated, ranging from a low of *** in 2009 to a high of *** in 2007, and was *** in 2011. CR/PR at Table IV-8.

[258] CR/PR at Table IV-7.

[259] CR/PR at Tables IV-7 and IV-9; Vale's Posthearing Brief at 5 and Answers to Commission Questions at 7.

[260] CR at Table IV-7. Vale's domestic shipments (combined internal consumption and commercial home market sales) as a share of its total shipments were *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in 2011. Id. The Brazilian industry's domestic shipments as a share of its total production were *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in 2011. Calculated from CR/PR at Table IV-8.

[261] The percentage of shipments Vale exported fluctuated from year to year and rose slightly during the period of review from *** in 2006 to a period high of *** in 2011. CR/PR at Table IV-7.

[262] Commissioner Pearson notes that a period of hyperinflation in Brazil overlapped the period of the original investigations. Staff Worksheet Table BR-1 (showing that the rate of inflation steadily increased from 477.4 percent in 1991 to 2,075.8 percent in 1994). He finds that this hyperinflation likely resulted in higher absolute volumes of subject imports from Brazil than would otherwise have occurred. In response to hearing questions, domestic producer Eramet concedes that "long periods of high inflation can encourage an increase in exports, as domestic companies may have an incentive to sell products abroad in order to obtain foreign 'hard' currency." Eramet Responses to Commissioners' Questions at 31; see also Vale Responses to Commissioners' Questions at 35-37. While acknowledging that the specific impact of hyperinflation is not obvious in all commodity products exported by Brazil, Eramet Post-hearing Brief at Exhibits 17-19 (covering iron ore, sugar, and coffee), Commissioner Pearson nevertheless finds that the relatively low inflation observed in Brazil since the mid-1990s represents a noteworthy change in the conditions of competition. In the event that the antidumping duty order with respect to Brazil is revoked, the relatively low rate of inflation likely to exist in the reasonably foreseeable future reduces the probability that imports from that country into the U.S. market will rise significantly.

[263] CR/PR at Table IV-8.

throughout the period of review, ranging from a low of ***.[264] The remainder of its exports have been shipped by Vale to support its affiliated operations in Europe.[265]

We find that both Vale and the Brazilian industry overall lack an incentive to shift exports from existing third country markets to the U.S. market in significant quantities after revocation. The industry in Brazil is unlikely to shift exports currently directed to Central and South American markets given its focus on such markets.[266] We recognize that Vale's shipments to its affiliates in Europe, which represented *** of the Brazilian industry's exports to this region during the 2006-2011 period, are scheduled to end as it sells all of its European manganese ferroalloys production facilities, including those that it has supplied with silicomanganese.[267] However, the evidence indicates that the silicomanganese previously exported to Europe will not be available for export in significant quantities to the U.S. market as Vale instead will shift production to produce more ferromanganese in Brazil to supply product that Vale's European ferromanganese affiliates had previously exported to Brazil.[268]

While inventories of subject merchandise in Brazil as a share of production and of total shipments are not insignificant and fluctuated between years, they are similar in magnitude to those held by the U.S. industry.[269] Finally, exports of silicomanganese from Brazil have not been subject to any antidumping duty order in third countries during the period of review.[270]

For all of these reasons, we conclude that revocation of the orders on subject imports from Brazil would not result in a likely significant volume of subject imports from Brazil within a reasonably foreseeable time.

2. Likely Price Effects

In considering the likely price effects of subject imports from Brazil if the orders were revoked, we acknowledge, as discussed above, that silicomanganese generally is interchangeable between subject imports from each of the sources and the domestic like product, and the general importance of price in purchasing decisions. The Commission collected pricing data on sales of two products, and over the period examined, prices for domestically produced silicomanganese fluctuated between quarters, but generally increased.[271] Because there were no subject imports of silicomanganese from Brazil during the

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[264] CR/PR at Table IV-9. The Brazilian industry's export shipments to the South and Central American markets as a share of its total exports were *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in 2009, *** percent in 2010, and *** percent in 2011, and *** percent in interim 2012. Id.

[265] CR/PR at Table IV-9. Vale's Posthearing Brief at Exhibit 3 (***. While Vale exported silicomanganese to Canada in 2006 and 2007, it has not exported to the Canadian market since closing out certain contracts in 2007 based on management decisions to focus on other markets. Vale's Posthearing Brief at 5 and Exhibit 3.

[266] The parties disagreed as to the magnitude of transportation and logistics costs for shipping silicomanganese to the U.S. market from Brazil. See, e.g., Vale's Posthearing Brief at 4 and Exhibit 3; Vale's Final Comments at 8-10; Eramet's Final Comments at 2-4; Felman's Final Comments at 15 n.61. We have assumed arguendo that all U.S. imports of silicomanganese face the same or similar logistics costs and thus transportation and logistics costs were not a factor in our decision.

[267] Vale's Posthearing Brief at Exhibit 3 (***). ***.

[268] Vale's Posthearing Brief at Exhibit 3 (***). Consequently, to the extent product shifting is pertinent, Vale states that it will employ it to shift away from silicomanganese production.

[269] CR/PR at Tables III-5 and IV-7.

[270] CR/PR at Table IV-20. While our finding that the likely volume of subject imports from Brazil would not be significant relies on other factors, we recognize that subject producers may the potential to shift production from ferromanganese to silicomanganese. See, e.g., ***.

[271] CR/PR at Table V-1 and Figures V-4 and V-5. More detailed information concerning pricing trends for the domestic like product is provided in section IV.D.2 above.

period of review, responding U.S. importers provided no price data for subject imports.[272] Given our finding that revocation of the order would not result in a likely significant volume of subject imports from Brazil, any imports that enter the U.S. market would be likely to enter at prevailing market prices. Consequently, we conclude that subject imports from Brazil would not be likely to significantly undersell the domestic like product or enter the United States at prices that otherwise would have significant depressing or suppressing effect on the price of the domestic like product.

3. Likely Impact[273]

In evaluating the likely impact of subject imports from Brazil on the domestic industry, we acknowledge our finding that the domestic industry is vulnerable to the continuation or recurrence of material injury, detailed in section IV.D.3 above. However, given that we do not find it likely that there would be a significant volume of subject imports from Brazil or that any such imports likely would have significant adverse price effects, we find that revocation of the antidumping duty order on subject imports from Brazil would not likely lead to a significant adverse impact on the domestic industry within a reasonably foreseeable time.

For all of the foregoing reasons, we conclude that if the antidumping duty order were revoked, subject imports from Brazil would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

CONCLUSION

Accordingly, we determine that revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[274] We also determine that revocation of the antidumping duty order on silicomanganese from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[275]

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[272] CR at V-7 n.186; PR at V-4 n.186. In the original investigations, subject imports from Brazil undersold the domestic like product in only 10 of 25 price comparisons. CR at V-11 n.188; PR at V-5 n.188.

[273] Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce calculated likely antidumping duty margins of 64.93 percent for RDM/CPFL and an all others rate of 17.60 percent for an others rate in Brazil. CR/PR at Table I-2.

[274] Commissioner Pearson dissenting with respect to subject imports from Ukraine.

[275] Commissioner Pinkert dissenting.

ADDITIONAL AND DISSENTING VIEWS OF COMMISSIONER DANIEL R. PEARSON

I. INTRODUCTION

Based on the record in these reviews, I determine, under section 751(c) of the Tariff Act of 1930, as amended ("the Act"),[276] that revocation of the antidumping duty order on imports of silicomanganese from China would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. I further determine that revocation of the antidumping duty orders on silicomanganese from Brazil and Ukraine would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time. Accordingly, I join in the affirmative determination reached by my colleagues with respect to subject imports from China and the negative determination with respect to subject imports from Brazil. I write separately because my analysis with respect to China is different as I do not cumulate subject imports from China with subject imports from Ukraine, and because I reach a negative determination with respect to subject imports from Ukraine.

Consequently, these views consist of: (1) an analysis of why, based on this record, I do not exercise my discretion to cumulate subject imports from any of the three subject countries, (2) my affirmative determination on subject imports from China, and (3) my negative determination on subject imports from Ukraine. I join the discussion of background (section I), domestic like product and industry (section II), legal standard for cumulation and findings in the original investigations and past reviews (section III.A), legal standard and findings in the original investigations (sections IV.A–IV.B), conditions of competition and the business cycle (section IV.C), and the likely injury analysis for subject imports from Brazil (section IV.E), as set forth in the majority views.

II. CUMULATION

Section 752(a) of the Act provides that:

> the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 1675(b) or (c) of this title were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.[277]

Thus, cumulation is discretionary in five-year reviews. The Commission, however, may exercise its discretion to cumulate only if the reviews were initiated on the same day and the Commission determines that the subject imports are likely to compete with each other and the domestic like product in the U.S. market. The statute precludes cumulation if the Commission finds that subject imports from a country are likely to have no discernible adverse impact on the domestic industry.[278] I note that neither the statute nor the Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") provides

[276] 19 U.S.C. § 1675(c).

[277] 19 U.S.C. § 1675a(a)(7).

[278] 19 U.S.C. § 1675a(a)(7).

specific guidance on what factors the Commission is to consider in determining that subject imports "are likely to have no discernible adverse impact" on the domestic industry.[279]

In the original investigations, the Commission majority consisted of two commissioners who found material injury while cumulating all countries[280] and at least one other commissioner who, with varied schemes of cumulation, found that subject imports from one or more of the subject countries presented a threat of material injury. Of the four commissioners who reached a threat determination, three cumulated no countries, while a fourth cumulated Brazil and China.[281]

In these reviews, the statutory requirement that all reviews be initiated on the same day is satisfied as the Commission initiated all the reviews on August 1, 2011.[282] I do not exercise my discretion to cumulate imports of silicomanganese from China with those from Brazil and/or Ukraine because I find that subject imports of silicomanganese from each of the three subject countries would likely face different conditions of competition in the U.S. market if the orders were revoked. Subject producers in the three countries are likely to operate differently from each other in the U.S. market based on (1) pre-order differences in volume and (2) pricing trends among the subject sources, along with differences in the subject countries' (3) export orientation, (4) capacity and capacity utilization levels, and (5) industry structure and business relationships.

As an initial matter, in view of the counterfactual nature of our determinations in five-year reviews, I consider a country's experience during the period examined in the original investigation—the last period during which the country competed free from the restraints of an antidumping duty order—in analyzing the likely volume and pricing patterns of a subject country supplier in the event of revocation of an order. In this regard, those three commissioners who did not cumulate subject imports from any country in their threat analysis noted the differing import trends and pricing behavior and believed that imports from these subject sources would have very different impacts on the U.S. industry.[283]

This conclusion applies with equal force in these reviews. First, it is significant that, during the original investigations, subject imports from Brazil, China, and Ukraine exhibited substantially different trends in volume and market share. Specifically, while imports for all three countries increased over the

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[279] SAA, H.R. Rep. No. 103-316, vol. I (1994).

[280] Commissioners Rohr and Newquist, having found material injury, did not reach the discretionary cumulation factors for threat of material injury, and found a reasonable overlap of competition for all countries. Original Determinations, USITC Pub. 2836 at I-12 to I-15.

[281] Chairman Watson and Commissioners Bragg and Crawford, having not cumulated Ukraine, based on a lack of reasonable overlap of competition, in their negative material injury determination, did not address Ukraine further in their threat analysis. Their decision to not cumulate Ukraine was based primarily on perceived differences in the product characteristics of silicomanganese from Ukraine. Original Determinations at I-29 to I-35. In their threat analysis, both Chairman Watson and Commission Bragg declined to cumulate Brazil and China, due primarily to "diverging trends in the data," specifically "divergent pricing patterns" and divergent import volume trends in the interim period. Original Determinations at I-53. Commissioner Crawford, who joined the views of Chairman Watson and Commission Bragg on threat, while agreeing that this analysis "constitutes sufficient justification" for not cumulating Brazil and China, wrote separately regarding cumulation and cumulated Brazil and China. Her analysis was based primarily on the reasonable overlap factors reviewed under the material injury determination. Original Determinations at I-69. Vice Chairman Nuzum, who had cumulated all countries based on a reasonable overlap of competition under her material injury analysis, did not cumulate any countries in her threat analysis. She also noted the volume trends in the interim periods as well as pricing differences, and found that differences in the composition of the Ukrainian product made pricing comparisons difficult. Original Determinations at I-80 to I-81.

[282] 76 Fed. Reg. 45,856 (Aug. 1, 2011).

[283] Original Determinations at I-53 (Chairman Watson and Commissioner Bragg); Id. at I-80 to I-81 (Vice Chairman Nuzum).

three full years, Brazil's increase was slower than the rate of increase in apparent U.S. consumption,[284] and showed a significant decline over the interim periods.[285] Subject imports from both China and Ukraine, on the other hand, increased much faster than apparent U.S. consumption and both increased over the interim periods.[286] As a result of the different rates of growth relative to apparent U.S. consumption, the market share held by subject imports from Brazil declined steadily[287] while those held by China and Ukraine increased.[288]

Second, with regard to pre-order pricing trends, subject imports from Brazil and Ukraine exhibited mostly *** while subject imports from China showed mostly ***. Subject imports from Brazil *** the U.S. product in *** quarterly comparisons in the contract segment and in *** quarterly comparisons in the *** spot market segment.[289] Subject imports from Ukraine *** the U.S. product in *** quarterly comparisons.[290] Subject imports from China, on the other hand, *** the U.S. product in *** quarterly comparisons in the contract segment and in *** quarterly comparisons in the *** spot market segment.[291]

Third, the comparative degrees of export orientation among the three countries have been markedly different, both during the period of the original investigations and during this period of review. In the original investigations, the industry in Ukraine was *** focused on its home market at the beginning of the period (when Ukraine was still part of the Soviet Union), but began exporting a much higher percentage of its production, increasing steadily from *** percent in 1991 to *** percent in 1993, and then to *** percent in interim 1994.[292] The industry in Brazil also increased the share of its production that it exported, but this share began from a higher level, increasing steadily, but only modestly, from *** percent in 1991 to *** percent in 1993, but declining to *** percent in interim 1994.[293] Data collected on the Chinese industry only covered an estimated *** percent of

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[284] Apparent U.S. consumption increased steadily from *** short tons in 1991 to *** short tons in 1993, a *** percent increase. Apparent U.S. consumption was *** short tons in interim 1994, as compared with *** short tons in interim 1993. 1994 Staff Report at Table 2.

[285] During the period of the original investigations, U.S. shipments of subject imports from Brazil increased steadily from *** short tons in 1991 to *** short tons in 1993, a *** percent increase. Subject imports from Brazil were *** short tons in interim 1994, as compared with *** short tons in interim 1993. 1994 Staff Report at Table 2.

[286] During the period of the original investigations, U.S. shipments of subject imports from China increased irregularly from *** short tons in 1991 to *** short tons in 1993, a *** percent increase. Subject imports from China were *** short tons in interim 1994, as compared with *** short tons in interim 1993. Subject imports from Ukraine were *** in the first two years of the period, increasing to *** short tons in 1993 and were *** short tons in interim 1994, as compared with *** short tons in interim 1993. 1994 Staff Report at Table 2.

[287] During the period of the original investigations, the market share held by subject imports from Brazil decreased steadily from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994, as compared with *** percent in interim 1993. 1994 Staff Report at Table 22.

[288] During the period of the original investigations, the market share held by subject imports from China increased irregularly from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994, as compared with *** percent in interim 1993. The market share held by subject imports from Ukraine was *** in the first two years of the period, and was *** percent in 1993, and was *** percent in interim 1994, as compared with *** percent in interim 1993. 1994 Staff Report at Table 22.

[289] 1994 Staff Report at Tables 23 & 24.

[290] 1994 Staff Report at Table 23 (Ukraine ***).

[291] 1994 Staff Report at Tables 23 & 24.

[292] 1994 Staff Report at Table 19.

[293] 1994 Staff Report at Table 17.

silicomanganese production, and so are less representative than the data for the other two countries, but such data showed the share of production exported rising steadily from *** percent in 1991 to *** percent in 1993.[294]

In the period covered by this third review, the industry in Ukraine routinely exported more than half of its production for the first four years of the period, but then reduced this share sharply in the last two years, declining steadily from *** percent in 2009 to *** percent in 2011.[295] The export orientation of the industry in Brazil fluctuated over a narrower range during the period of review, but ended lower overall, having declined steadily between 2006 and 2009, and then increasing steadily between 2009 and 2011.[296] The industry in China, after exporting between *** percent of its production in the first three years of the period, declined to *** levels in the last three years of the period, ending at *** percent in 2011, due at least in part to Chinese government policies that discourage exports.[297]

Fourth, with regard to current production capacity in the subject countries, I note that while capacity increased significantly during the period of review in China,[298] and modestly in Brazil,[299] capacity actually declined slightly in Ukraine.[300] Also, the absolute production capacity figures show large disparities between the industries in the three countries; in 2011, the production capacity in Ukraine was *** times larger than that of Brazil, while the production capacity in China was *** times larger than that of Brazil.[301] These large discrepancies in production capacity are also evident in the share of global production that each subject country accounts for: in 2010, Brazil produced only 1.9 percent of global silicomanganese while Ukraine produced 9.7 percent, and China 54.7 percent, of global silicomanganese.[302] While there was significant unused capacity in China and Ukraine during this period of review, this was much less true in Brazil, both because Brazil's lower capacity and because Brazil's capacity has been more intensively utilized. While excess capacity in China was higher than *** short tons in each of the last four years of the period of review,[303] and excess capacity in Ukraine was higher than *** short tons in each of the last four years of the period of review,[304] excess capacity in Brazil exceeded *** short tons in only one year of the period of review, the recession year of 2009, when it reached almost *** short tons.[305]

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[294] 1994 Staff Report at Table 18.

[295] CR/PR at Table IV-15.

[296] The share of production exported by the Brazilian industry declined steadily from *** percent in 2006 to *** percent in 2009, before increasing steadily to *** percent in 2011. CR/PR at Table IV-8.

[297] CR/PR at Table IV-12.

[298] Production capacity in China increased steadily from *** short tons in 2006 to *** short tons in 2011, or by *** percent. CR/PR at Table IV-12.

[299] Production capacity in Brazil increased steadily from *** short tons in 2006 to *** short tons in 2011, or by *** percent. CR/PR at Table IV-8.

[300] Production capacity in Ukraine decreased from *** short tons in 2006 to *** short tons in 2011, or by *** percent. CR/PR at Table IV-17.

[301] In 2011, the production capacity of Brazil was *** short tons, the capacity in China was *** short tons, and the capacity in Ukraine was *** short tons. CR/PR at Tables IV-8, -12, and -17.

[302] CR/PR at Table IV-6.

[303] CR/PR at Table IV-12.

[304] CR/PR at Table IV-17.

[305] CR/PR at Table IV-8.

Fifth, and finally, the countries differ in their industry structures and the business relationships between members of the domestic industry and subject foreign producers. Although very little data was provided to the Commission by the Chinese industry, *** indicate that it is a highly fragmented industry, with 423 reported silicomanganese plants in China, of which 13 are licensed to export silicomanganese by the Chinese government.[306] Only one relatively small Chinese firm, Comilog, is related to a member of the domestic industry.[307] In contrast, the Ukrainian industry has only three members, all three of which have significant ties to one another and to *** U.S. producer, both through common ownership interests and through trading arrangements.[308] As I will discuss further in my separate views on imports from Ukraine, I determine that these business relationships would act to attenuate competition between imports from Ukraine and the domestic product in the U.S. market. The industry in Brazil consists of four firms, two of which are significant: Vale, a large global company that accounted for *** percent of Brazilian production, and Maringa, which serviced about *** of Brazilian home market consumption.[309] Vale accounted for a *** of Brazilian exports over the period of review,[310] and is "***."[311] As explained in the majority views on Brazil, the Commission found that conditions of competition applicable to Vale and other Brazilian producers made it unlikely that imports from Brazil would lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Accordingly, based on the information in the record, I find significant differences in the likely conditions of competition that subject imports from Brazil, China, and Ukraine would face in the U.S. market. Therefore, I do not exercise my discretion to cumulate subject imports of silicomanganese from Brazil, China, and Ukraine.

III. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM CHINA WOULD LIKELY LEAD TO THE CONTINUATION OR RECURRENCE OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY WITHIN A REASONABLY FORESEEABLE TIME

1. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty order were revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[312] In doing so, the Commission must consider "all relevant economic factors" including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of such merchandise into countries other than the United

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[306] CR at IV-27 n.158; PR at IV-20 n.158.

[307] Comilog estimated that it accounted for less than *** percent of Chinese production in 2001. CR at IV-22; PR at IV-16. Comilog's production capacity is equal to about *** that of Vale. Compare CR/PR at Table IV-11 with Table IV-7.

[308] CR at I-25 to I-26 & nn.52 & 56; PR at I-20 & nn.52 & 56.

[309] CR at IV-13; PR at IV-10.

[310] Compare CR/PR at Table IV-7 with Table IV-8.

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

[312] 19 U.S.C. § 1675a(a)(2).

States, and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[313]

Imports from China increased significantly during the period covered by the original investigations. By quantity, U.S. shipments of subject imports from China increased irregularly from *** short tons in 1991 to *** short tons in 1993, a *** percent increase. Subject imports from China were *** short tons in interim 1994, as compared with *** short tons in interim 1993.[314] Over the period of the original investigations, the market share held by subject imports from China increased irregularly from *** percent in 1991 to *** percent in 1993, and was *** percent in interim 1994, as compared with *** percent in interim 1993.[315]

Although imports from China essentially disappeared from the U.S. market after imposition of the order,[316] the Chinese industry continued to grow.[317] By 2001, the Chinese industry accounted for 31 percent of global production of silicomanganese and this share grew every year until 2009, by which time the Chinese industry accounted for 58.2 percent of global production.[318] Over the course of the period of this review, Chinese production capacity has increased from *** short tons in 2006 to *** million short tons in 2011, meaning that *** short tons of capacity has been added,[319] an amount equivalent to *** times total apparent U.S. consumption in 2011.[320] Although the Chinese government has choked off silicomanganese exports in the last three years using a combination of trade policy tools,[321] Chinese exports of silicomanganese were *** short tons (representing a *** percent share of production) as recently as 2008[322] (an amount about *** as large as total apparent U.S. consumption in that same year).[323]

Because these policies of the Chinese government are temporary in nature, and because there appears to be some pressure accumulating from within and outside of China to change these trade policies,[324] I do not find such policies to be a significant constraint to the Chinese industry returning to its previous export-oriented behavior within the reasonably foreseeable future. Were the antidumping duty order on China revoked, and then these Chinese trade policies were reversed, the U.S. market would be attractive to the Chinese industry, all the more so because of existing antidumping duty orders in place on Chinese silicomanganese in both the European Union and in South Korea.[325]

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[313] Id.

[314] 1994 Staff Report at Table 2.

[315] Id. at Table 22.

[316] *** CR/PR at Table IV-1 n.1 and Table IV-2 n.1; CR at IV-8 n.135; PR at IV-6 n.135.

[317] Although only one Chinese firm that accounted for *** percent of Chinese production responded to the Commission's questionnaire, I rely on data in the staff report collected by industry groups *** and the International Manganese Institute.

[318] CR/PR at Table IV-6. A slight reduction to 54.7 percent of global production was observed in 2010.

[319] CR/PR at Table IV-12.

[320] Compare CR/PR at Table IV-12 with Table C-1.

[321] CR at IV-25 to IV-28; PR at IV-17 to IV-20. Chinese exports of silicomanganese in 2011 were only *** short tons. CR/PR at Table IV-12.

[322] CR/PR at Table IV-12.

[323] Compare CR/PR at Table IV-12 with Table C-1.

[324] Eramet Responses to Commissioners' Questions at 44-48.

[325] CR/PR at Table IV-20.

Given the relative size of the Chinese silicomanganese industry, and the potential for it to return to its previous export orientation, I find that the volume of subject imports from China would likely be significant, both in absolute terms and relative to production and consumption in the United States, if the order were revoked.

2. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order were revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.[326]

In the first sunset review of these orders, and in related investigations, the Commission has found that subject imports of silicomanganese were sold in the U.S. market primarily on the basis of price and that the market was highly price competitive.[327] During the period of the original investigations, subject imports from China *** the U.S. product in *** quarterly comparisons in the contract segment and in *** quarterly comparisons in the *** spot market segment.[328]

There was no pricing data for China on the record in these reviews. However, the record indicates that price continues to remain the most important factor in silicomanganese purchasing decisions. Price was the highest-ranked factor in purchasing decisions,[329] and 10 of 12 purchasers ranked price as very important.[330]

Due primarily to the likely significant volume of imports, but also to the importance of price in purchasing decisions and the general substitutability of subject and domestic product, I find that subject imports from China would be likely to expand their market share by entering the U.S. market at low prices. The likely significant volume of subject imports from China likely entering at low prices would trigger price declines in the U.S. market and have likely significant depressing or suppressing effects on the price of the domestic like product.

3. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if an antidumping duty order under review were revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including, but not limited to, the following: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more

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[326] 19 U.S.C. § 1675(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[327] Silicomanganese from Brazil, China, and Ukraine, Inv. Nos. 731-TA-671–673 (Review), USITC Pub. 3386, at 14 (Jan. 2001); Silicomanganese from India, Kazakhstan, and Venezuela, Inv. Nos. 731-TA-929–931 (Final), USITC Pub. 3505, at 13 (May 2002).

[328] 1994 Staff Report at Tables 23 & 24.

[329] CR/PR at Table II-6.

[330] CR/PR at Table II-7.

advanced version of the domestic like product.[331] All relevant factors are to be considered "within the context of the business cycle and the conditions of competition that are distinctive to the affected industry."[332] As instructed by the statute, I have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order were revoked.[333]

During the original investigations, two commissioners found that the domestic industry was materially injured.[334] While most, if not all, performance measures of the domestic industry were higher in 1993 than they had been in 1991,[335] the domestic industry's financial indicators showed steady decline. The domestic industry's operating margin declined from *** percent in 1991, to *** percent in 1992, and to *** percent in 1993.

The domestic industry's financial condition has been highly variable since the imposition of the orders. Over the period covered by the first review, the financial condition of the domestic industry showed steady declines.[336] During the period covered by this review, the domestic industry's operating margin has been *** in *** of the six years, and was also *** in the interim period.[337] The only years in which the domestic industry performed well was in the ***. For this reason, I find the domestic industry to be vulnerable. Further, in light of the likely significant volume of subject imports from China and the likely significant adverse price effects that they would have in the U.S. market absent the order, I find that subject imports from China would likely have a significant adverse impact on the production, shipments, sales, market share, and revenues of the domestic industry. For these reasons, I conclude that if the antidumping duty order were revoked, subject imports from China would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

Accordingly, I determine that revocation of the antidumping duty order on silicomanganese from China would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

IV. REVOCATION OF THE ANTIDUMPING DUTY ORDER ON SUBJECT IMPORTS FROM UKRAINE WOULD NOT LIKELY LEAD TO THE CONTINUATION OR RECURRENCE OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY WITHIN A REASONABLY FORESEEABLE TIME

1. Likely Volume of Subject Imports

Imports of silicomanganese from Ukraine are not likely to reach significant levels if the antidumping duty order on such imports were revoked. During the original investigations, imports for the first two years of the period were ***, rising to *** short tons in 1993, and were *** short tons in interim

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[331] 19 U.S.C. § 1675a(a)(4).

[332] Id.

[333] 19 U.S.C. § 1675a(a)(1)(B),(C).

[334] Commissioners Rohr and Newquist. Original Determinations at I-25 to I-28.

[335] Apparent U.S. consumption, domestic production, production capacity, capacity utilization, U.S. shipments, inventories, production and related workers, hours worked, total wages, and total compensation were all higher. Original Determinations at I-26 to I-27.

[336] The domestic industry's operating margin declined from *** percent in 1997, to *** percent in 1998, to *** percent in 1999. CR/PR at Table I-1.

[337] CR/PR at Table I-1.

1994, as compared with *** short tons in interim 1993.[338] The U.S. market share held by imports from Ukraine was *** percent in 1993 and was *** percent in interim 1994, as compared with *** percent in interim 1993.[339] I note that exports from Ukraine increased from *** because Ukraine was a new country that emerged from the breakup of the Soviet Union at the beginning of the period covered by the original investigations.[340] While Ukraine used the Soviet ruble for some period following the breakup, it created its own currency in 1993, a development that led to hyperinflation measured at 4,735 percent in 1993; Ukrainian hyperinflation continued in 1994 at the rate of 891 percent.[341] Such macroeconomic instability leads economic actors within the affected economy to increase exports of products that can be sold for hard currency.[342] This is an important factor when considering the volume of imports from Ukraine during the original investigations. In contrast, inflation in Ukraine over the six full years covered by this review ranged from 8.0 percent to 25.2 percent, and was less than 10 percent in half of these years; the motivations to export for hard currency that existed in the 1993–94 period are no longer present in Ukraine.

My primary reason for concluding that imports of silicomanganese are not likely to reach significant levels is what I conclude to be a significant degree of common interest between the *** U.S. producer, Felman, and the Ukrainian producers. Were the antidumping duty order on imports from Ukraine revoked, I do not consider it likely that those common interests would allow the volume of imports from Ukraine to reach a level that would cause injury to the domestic industry.

A. Facts stipulated by Felman on this record

- From the time that ***[343] CJSC Privat Intertrading had no ownership of Felman Production.[344]

- In March 2009, "a new management team based in Miami, Florida took over."[345]

- Felman's *** Georgian American Alloys was incorporated in Delaware on February 14, 2012 and in Florida on June 15, 2012. ***[346]

- "[T]here are investors who own shares of Georgian American Alloys, Inc., which is the parent company of Felman Production and Felman Trading, as well as Georgian Manganese and the Ukrainian producers."[347] Neither Felman Production nor Felman

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[338] 1994 Staff Report at Table 2.

[339] 1994 Staff Report at Table 22.

[340] 1994 Staff Report at I-71.

[341] Staff worksheet UA-1; Ukrainian Industry Responses to Commissioners' Questions at 1.

[342] Eramet Responses to Commissioners' Questions at 31 ("long period of high inflation can encourage an increase in exports, as domestic companies may have an incentive to sell products abroad in order to obtain foreign 'hard' currency."); Vale Responses to Commissioners' Questions at 35-37 ("[S]ellers prefer to sell their goods to buyers who will allow the sellers to be paid in a currency that retains value.").

[343] Felman Responses to Commissioners' Questions at Williamson-4.

[344] CR at I-25 n.52; PR at I-20 n.52.

[345] Id.; CR at II-10; PR at II-6.

[346] Felman Prehearing Brief at 9 n.36.

[347] Felman Responses to Commissioners' Questions at Williamson-5.

Trading knows how large of a share these common shareholders have in the ownership of the Ukrainian producers.[348]

- Felman Trading has exclusive agreements (covering ***) to market silicomanganese and other ferroalloys from Ukraine ***[349] ***[350] Felman Trading, it is asserted, "does not exercise control over any Ukrainian export of silicomanganese."[351]

B. Facts gathered through discovery in a civil action

Additional facts are known about the relationship between Felman Production, Inc. and the Ukrainian producers by virtue of discovery conducted in the course of a recent civil proceeding in which Felman was involved. The presiding federal district court judge in this matter concluded that what was learned about this relationship was in spite of the fact that "Felman [] actively concealed its relationship with Privat."[352]

- Haftseek Investments, Ltd. (incorporated in the West Indies), the owner of Felman Production until 2012, was wholly owned by Divot Enterprises, Ltd. (incorporated in Cyprus), the stock of which is 100% owned by Igor Kolomoiskiy, a citizen of Ukraine who is, in turn, one of three shareholders of Privat Bank.[353]

- The other shareholders of Privat Bank are Alexey Martynov and Gennadiy Bogolyubov.[354] E-mails indicate that both of these shareholders were actively involved in the management of Felman during 2008.[355]

- Privat Bank is "a financial institution organized under the laws of Ukraine."[356]

- As late as August 2008, Felman CEO Steven Pragnell was "informed that Felman, as an operational unit of Privat Group, is subject 'to controlling by the Group's Tender Committee which examines ALL the purchase positions of the plants, including even services.'"[357]

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[348] Id.

[349] Felman Responses to Commissioners' Questions at Williamson-3.

[350] Felman Responses to Commissioners' Questions at Williamson Exhibit 2.1.

[351] Hearing Tr. at 87 (Mr. Salonen). This claim, that Felman does not control exports of silicomanganese from Ukraine, was repeated by the Ukrainian producers. Ukrainian Industry Responses to Commissioners' Questions at 3.

[352] Vale Posthearing Brief, Exhibit 7, Felman Production, Inc. v. Industrial Risk Insurers, 2011 WL 4547012 at *4 (S.D.W.V. Sept. 29, 2011).

[353] Vale Posthearing Brief, Exhibit 7, Mt. Hawley Ins. Co. v. Felman Production, Inc., 269 F.R.D. 609, 611 & 615 (S.D.W.V. 2010).

[354] Id. at 614–15; CR at II-9 n.87; PR at II-6 n.87.

[355] Id. at 615.

[356] Id. at 615.

[357] Id. at 614 (quoting e-mails from Privat Intertrading produced in discovery).

- On October 22, 2008, Felman's CEO, Mr. Pragnell, wrote a memorandum to Privat Intertrading indicating that if the Felman West Virginia plant were shut down, "Privat Shareholders would suffer a loss of $3 million."[358]

C. Uncontested statements on this record

Additionally, there are some statements that counsel for Vale put on the record that were not contested by Felman.

- An article from *Ukraine Business Daily* in October 2011 stated that the "Privat Group, owned by Ukrainian businessmen Hannady Boholiubov and Ihor Kolmoisky, is currently the majority shareholder in all the Ukraine-based ferroalloy enterprises. Privat's owners also control U.S. enterprises Felman Production, Inc and CC Metal Alloys, LLC; Georgian Manganese, based in Georgia; SC Feral SRL in Romania; and the manganese ore producer Consolidated Mineral (Consmin) in Australia."[359]

- An article from *Platts* in March 2012 stating that "Felman is part of the Ukraine Privat banking group, which is also one of the largest producer [sic] of ferroalloys in the world and one of the world's biggest manganese ore producers."[360]

- An article from *Interfax* in September 2011 stating that the "Privat Group, owned by Ukrainian businessmen Hennady Boholyubov and Ihor Kolomoysky, is currently the majority shareholder in all the Ukraine-based ferroalloy enterprises. Privat's owners also control U.S. enterprises Felman Production, Inc. and CC Metals Alloys, LLC; Georgian Manganese, based in Georgia; SC Feral SRL in Romania; and manganese ore producer Consolidated Mineral (Consmin) in Australia." [361]

D. Conclusions on relationship between Felman and Ukrainian producers

Despite the broad scope of the Commissioners' questions to Felman about its relationship with the Ukrainian producers, much remains unsaid by Felman about what U.S. Magistrate Judge Stanley referred to as Felman's "peculiar" corporate structure/ownership.[362] To the extent that it was within the power of Felman to provide clarity to these issues, I must conclude that the responses would have been adverse to the positions that Felman has taken during the course of this review.

- The identities of the admitted common shareholders between Georgian American Alloys, Inc. and the Ukrainian producers was not provided. Given the uncontested statements in the articles provided by Vale, I conclude that this refers to the shareholders of the Privat Group. This is supported by the direct involvement of Privat shareholders in the operation of Felman during 2008, as documented in the findings of the federal district court judge.

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[358] Id. at 614.

[359] CR at I-26 n.56; PR at I-20 n.56.

[360] Vale Responses to Commissioners' Questions at Exhibit 8.

[361] Vale Responses to Commissioners' Questions at Exhibit 8.

[362] Mt. Hawley Ins. Co., 269 F.R.D. at 611.

- The relationship between the Privat Group, Privat Bank, and CJSC Privat Intertrading was not discussed. Since no information was provided, I assume that the same shareholders have at least a controlling interest in all of these related entities.

- While Felman states that they do not know what share of ownership the shareholders of Privat Group hold in the Ukrainian producers, Felman presumably knows what ownership share these shareholders have in Georgian American Alloys, Inc., a fact that was not provided. Based on this, and on uncontested statements in the above-cited articles, I conclude that Georgian American Alloys, and thus Felman, likely is controlled by shareholders of the Privat Group. I further conclude, based on uncontested statements in the articles, that shareholders of the Privat Group likely hold a controlling interest in the Ukrainian producers. At a minimum, there is a strong relationship and commonality of interests among these firms and individuals.

- Therefore, the line of argument presented by Felman that CJSC Privat Intertrading is no longer involved in the management of Felman is of limited, if any, relevance. As admitted by Felman, CJSC Privat Intertrading never owned Felman. What is relevant is that both entities appear to be owned and controlled by shareholders of the Privat Group, which also appears to hold a controlling interest in the Ukrainian producers.

- Felman did not provide any information about who controls the new Miami-based management team. Although it was not explicitly stated, Vladislav Mikhyeyev's appearance at the hearing on behalf of Felman Production, creates a strong impression that he is a member of that team.[363] Miami-based Mr. Mikhyeyev stated that he had provided consulting advice for Felman Production as far back as January 2006 and that he joined Felman Trading when it was first established in 2008.[364] Thus, Mr. Mikhyeyev is also an employee of a company controlled by Privat Group. The irrelevance of the establishment of a new management team to the question of ownership is highlighted by the fact that although the new team is asserted to have taken over in March 2009, there was no move to incorporate Georgian American Alloys, Inc. in Florida until mid-2012.[365]

- The nature of the *** is not elaborated, leading me to conclude that it is also likely controlled by shareholders of the Privat Group.

All of the above conclusions lead me to the finding that the Ukrainian producers, Felman Production, Felman Trading, *** are related entities likely co-owned by the same shareholders of the Ukraine-based multinational Privat Group. It may well be true, as the counsel for both Felman and the Ukrainian producers state, that Felman does not "have or exercise control over exports of SiMn from Ukraine."[366] However, it is not my intention to parse that statement. Rather, my view is that decision makers in the closely related entities discussed above would be unlikely to act in such a way that imports from any of its foreign operations (including Ukraine) reach a significant level likely to cause injury to its operations in the U.S. market. As the October 2008 e-mail from Felman CEO to Privat Intertrading

[363] CR/PR at appendix B.

[364] Hearing Tr. at 24 (Mr. Mikhyeyev).

[365] Felman Prehearing Brief at 9 n.36.

[366] Felman Final Comments at 5 (quoting Ukrainian Industry Posthearing Brief).

indicated, idled facilities in West Virginia would directly cause $3 million harm to the Privat shareholders.[367]

Given the changed macroeconomic conditions in Ukraine, as compared with the period of the original investigations, and the strong interrelationships and the commonality of interests between the Ukrainian producers and the largest domestic producer, Felman, I find that revocation of the orders on subject imports from Ukraine would not result in a likely significant volume of subject imports from Ukraine within a reasonably foreseeable time.

2. Likely Price Effects of Subject Imports

I find that subject imports from Ukraine are not likely to undersell the domestic like product or depress or suppress U.S. prices to a significant degree after revocation of the orders. In the original investigations, subject imports of silicomanganese from Ukraine *** the domestic product in *** quarterly comparisons.[368]

On this record, and particularly as it relates to the original investigations and the limited likely volume of subject imports from Ukraine, I find that subject imports from Ukraine are not likely to undersell the domestic like product significantly, much less suppress or depress like product prices to any significant degree, in the event of revocation of the orders.

3. Likely Impact of Subject Imports

I further find that subject imports from Ukraine would not likely have a significant adverse impact on the domestic industry in the event of revocation. As discussed above, I have found that the domestic industry is vulnerable to the continuation or recurrence of material injury in the reasonably foreseeable future. With regard to subject imports from Ukraine, there is not likely to be any correlation between the likely volume of subject imports from Ukraine and the domestic industry's condition. As detailed above, the same shareholders who have significant interests in the Ukrainian producers and the intermediary trading companies also have significant interests in the largest domestic producer, Felman. I find it unlikely that the owners of these closely related entities would allow the interests of one of its affiliates to injure the interests of another affiliate. On this record, I am not persuaded that revoking the order on Ukraine is likely to lead to an adverse impact on the condition of the domestic industry.

In light of the fact that I do not find that the likely volume of subject imports from Ukraine will be significant or that those imports will likely have significant adverse price effects, I find that the revocation of the order on Ukraine would not likely lead to a significant adverse impact on the domestic industry.

V. CONCLUSION

For the above-stated reasons, and those set forth in the sections of the majority views that I join, I determine that revocation of the antidumping duty order on imports of silicomanganese from China would be likely to lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty orders on silicomanganese from Brazil and Ukraine would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.

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[367] Mt. Hawley Ins. Co., 269 F.R.D. at 614.

[368] 1994 Staff Report at Table 23 (Ukraine ***).

PART I: INTRODUCTION AND OVERVIEW

BACKGROUND

On August 1, 2011, the U.S. International Trade Commission ("Commission" or "USITC") gave notice, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"),[1] that it had instituted reviews to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would likely lead to the continuation or recurrence of material injury to a domestic industry.[2] [3] On November 4, 2011, the Commission determined that it would conduct full reviews pursuant to section 751(c)(5) of the Act.[4] The following tabulation presents information relating to the schedule of these reviews:[5]

Effective date	Action
September 14, 2006	Commerce's continuation of antidumping duty orders (71 FR 54272)
August 1, 2011	Commission's institution of five-year reviews (76 FR 45856)
August 1, 2011	Commerce's initiation of five-year reviews (76 FR 45778)
November 4, 2011	Commission's determinations to conduct full five-year reviews (76 FR 72212, November 22, 2011)
November 29, 2011	Commerce's final results of expedited five-year reviews (76 FR 73587)
April 4, 2012	Commission's scheduling of the reviews (77 FR 22344, April 13, 2012)
September 5, 2012	Commission's hearing[1]
October 11, 2012	Commission's vote
October 24, 2012	Commission's determinations transmitted to Commerce
[1] Appendix B is reserved for the witnesses appearing at the Commission's hearing.	

[1] 19 U.S.C. 1675(c).

[2] *Silicomanganese From Brazil, China, and Ukraine Institution of a Five-Year Review Concerning the Antidumping Duty Orders on Silicomanganese From Brazil, China, and Ukraine,* 76 FR 45856, August 1, 2011. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

[3] In accordance with section 751(c) of the Act, the U.S. Department of Commerce ("Commerce") published a notice of initiation of five-year reviews of the subject antidumping and countervailing duty orders concurrently with the Commission's notice of institution. *Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778, August 1, 2011.

[4] *Silicomanganese From Brazil, China, and Ukraine; Notice of Commission Determinations To Conduct Full Five-Year Reviews*, 76 FR 72212, November 22, 2011. With respect to Brazil and Ukraine, all six Commissioners concluded that both the domestic group response and the respondent group responses were adequate and voted for full reviews. With respect to China, all six Commissioners found that the domestic group response was adequate and the respondent group response was inadequate, but that circumstances warranted a full review.

[5] The Commission's notice of institution, notice to conduct full reviews, and scheduling notice appear in appendix A and may also be found at the Commission's web site (internet address *www.usitc.gov*). Commissioners' statement on adequacy and votes on whether to conduct expedited or full reviews may also be found at the web site.

The Original Investigations

The original investigations resulted from petitions filed by Elkem Metals Co. ("Elkem"), Pittsburgh, PA, and the Oil, Chemical and Atomic Workers ("OCAW") Local 3-639, Belpre, OH, on November 12, 1993, alleging that an industry in the United States was materially injured and threatened with material injury by reason of less-than-fair-value ("LTFV") imports of silicomanganese from Brazil, China, Ukraine, and Venezuela.[6] On October 31, 1994, Commerce suspended the antidumping investigation regarding imports of silicomanganese from Ukraine based on an agreement by the Government of Ukraine to restrict the volume of exports of silicomanganese to the United States and to sell such exports at or above a "reference price" in order to prevent the suppression or undercutting of price levels of U.S. domestic silicomanganese.[7] On November 7, 1994, Commerce made final affirmative determinations that imports of silicomanganese from Brazil, China, and Venezuela were sold at LTFV in the U.S. market.[8] On December 14, 1994, the Commission determined that an industry in the United States was materially injured or threatened with material injury by reason of LTFV imports of silicomanganese from Brazil, China and Ukraine, but was not materially injured or threatened with material injury by reason of LTFV imports of silicomanganese from Venezuela.[9] Following the Commission's determinations, Commerce issued antidumping duty orders on silicomanganese from Brazil and China.[10]

First Five-Year Reviews

In January 2001, the Commission completed full five-year reviews of the antidumping duty orders on imports of silicomanganese from Brazil and China, and the suspended investigation on imports of silicomanganese from Ukraine, and determined that revocation of the antidumping duty orders on silicomanganese from Brazil and China and termination of the suspension agreement on silicomanganese

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[6] *Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela, Inv. Nos. 731-TA-671-674 (Final)*, USITC Publication 2836, December 1994. Confidential version: *Investigations Nos. 731-TA-671 through 674 (Final): Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela--Staff Report*, Office of Investigations Memo No. INV-R-187, November 29, 1994.

[7] *Antidumping: Silicomanganese from Ukraine; Suspension of Investigation*, 59 FR 60951, November 29, 1994. On December 2, 1994, Commerce notified the Commission that it continued its investigation on silicomanganese from Ukraine. Accordingly, the Commission continued its investigation and made a determination regarding silicomanganese from Ukraine.

[8] *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Brazil*, 59 FR 55432, November 7, 1994; *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from the People's Republic of China*, 59 FR 55435, November 7, 1994; and, *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Venezuela*, 59 FR 55438, November 7, 1994.

[9] *Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela*, 59 FR 65788, December 21, 1994. As noted in the original determinations, Commissioners Rohr and Newquist determined that an industry in the United States was materially injured, and Chairman Watson determined that an industry in the United States was threatened with material injury, by reason of of LTFV imports of silicomanganese from Brazil (*i.e.*, it was a 3 to 3 vote, with two votes on the basis of present injury and one on the basis of threat); Commissioners Rohr and Newquist determined that an industry in the United States was materially injured, and Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg determined that an industry in the United States was threatened with material injury, by reason of LTFV imports of silicomanganese from China (*i.e.*, it was a 5 to 1 vote, with two votes on the basis of present injury and three on the basis of threat); and, Commissioners Rohr and Newquist determined that an industry in the United States was materially injured, and Vice Chairman Nuzum determined that an industry in the United States was threatened with material injury, by reason of LTFV imports of silicomanganese from Ukraine (*i.e.*, it was a 3 to 3 vote, with two votes on the basis of present injury and one on the basis of threat).

[10] 59 FR 66003, December 22, 1994. Commerce did not issue an antidumping duty order on imports of silicomanganese from Ukraine, at the time, as the suspension agreement was in force.

from Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[11] [12] On February 16, 2001, Commerce issued a notice continuing the antidumping duty orders on imports of silicomanganese from Brazil and China and the suspended antidumping duty investigation on silicomanganese from Ukraine.[13] On July 19, 2001, the Government of Ukraine officially requested termination of the suspension agreement on exports of silicomanganese to the United States, and effective September 17, 2001, Commerce issued an antidumping duty order on imports of silicomanganese from Ukraine.[14]

Second Five-Year Reviews

In August 2006, the Commission completed expedited five-year reviews of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine, and determined revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[15] [16] On September 14, 2006, Commerce issued a notice continuing the antidumping duty orders on imports of silicomanganese from Brazil, China, and Ukraine.[17]

Third Five-Year Reviews

These reviews, initiated in August 2011, are the third five-year reviews concerning the antidumping duty orders on imports of silicomanganese from Brazil, China, and Ukraine. Table I-1 presents comparative data from the original investigations and all subsequent reviews including the current third five-year reviews.

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[11] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review),* USITC Pub. 3386, January 2001. Confidential version: *Investigations Nos. 731-TA-671-673 (Review): Silicomanganese from Brazil, China, and Ukraine--Staff Report,* Office of Investigations Memo No. INV-X-256, December 20, 2000.

[12] *Silicomanganese From Brazil, China, and Ukraine*, 66 FR 8981, February 5, 2001.

[13] *Continuation of Antidumping Duty Orders on Silicon Metal From Brazil and China and on Silicomanganese From Brazil and China, and Continuation of Suspended Antidumping Duty Investigation on Silicomanganese From Ukraine*, 66 FR 10669, February 16, 2001.

[14] *Suspension Agreement on Silicomanganese From Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 66 FR 43838, August 21, 2001.

[15] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review),* USITC Pub. 3879, August 2006. Confidential version: *Investigations Nos. 731-TA-671-673 (Second Review): Silicomanganese from Brazil, China, and Ukraine--Staff Report,* Office of Investigations Memo No. INV-DD-074, June 1, 2006.

[16] *Silicomanganese From Brazil, China, and Ukraine*, 71 FR 52145, September 1, 2006.

[17] *Silicomanganese from Brazil, Ukraine, and the People's Republic of China: Continuation of Antidumping Duty Orders*, 71 FR 54272, September 14, 2006.

Table I-1
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						
	Original investigations			First reviews			Second reviews
	1991	1992	1993	1997	1998	1999	2005
	Quantity (*short tons*)						
Apparent U.S. consumption	***	***	***	***	***	***	***
	Share of quantity (*percent*)						
Share of apparent U.S. consumption.--							
U.S. producers	***	***	***	***	***	***	***
U.S. imports from.--[1]							
Brazil	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***
All sources	***	***	***	***	***	***	***
	Value (*1,000 dollars*)						
Apparent U.S. consumption	***	***	***	***	***	***	***
	Share of value (*percent*)						
Share of apparent U.S. consumption.--							
U.S. producers	***	***	***	***	***	***	***
U.S. imports from.--[1]							
Brazil	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***
All sources	***	***	***	***	***	***	***

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						January to March	
	Third (current) reviews							
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
Apparent U.S. consumption	***	***	***	***	***	***	***	***
Share of quantity (*percent*)								
Share of apparent U.S. consumption.--								
U.S. producers	***	***	***	***	***	***	***	***
U.S. imports from.--[1]								
Brazil	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***	***
All sources	***	***	***	***	***	***	***	***
Value (*1,000 dollars*)								
Apparent U.S. consumption	***	***	***	***	***	***	***	***
Share of value (*percent*)								
Share of apparent U.S. consumption.--								
U.S. producers	***	***	***	***	***	***	***	***
U.S. imports from.--[1]								
Brazil	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***	***
All sources	***	***	***	***	***	***	***	***

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Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						
	Original investigations			First reviews			Second reviews
	1991	1992	1993	1997	1998	1999	2005
Quantity (*short tons*)							
U.S. imports from.--[3]							
Brazil	47,613	55,494	63,614	0	0	22	0
China	6,064	3,670	24,092	0	0	0	0
Ukraine	0	0	29,468	8,259	0	9,025	0
Subject sources	53,677	59,164	117,174	8,259	0	9,047	0
Nonsubject sources	180,577	203,555	201,286	328,653	381,886	322,301	360,920
All sources	234,254	262,719	318,460	336,911	381,886	331,348	360,920
Value (*1,000 dollars*)							
U.S. imports from.--[3]							
Brazil	25,183	26,578	29,750	0	0	20	0
China	2,923	1,760	10,637	0	0	0	0
Ukraine	0	0	14,253	4,570	0	3,317	0
Subject sources	28,106	28,338	54,640	4,570	0	3,337	0
Nonsubject sources	102,134	103,592	93,831	157,543	171,976	128,789	249,364
All sources	130,240	131,930	148,471	162,114	171,976	132,126	249,364
Unit value (*dollars per short ton*)							
U.S. imports from--[3]							
Brazil	$529	$479	$468	([4])	([4])	909	([4])
China	482	480	442	([4])	([4])	([4])	([4])
Ukraine	([4])	([4])	484	553	([4])	368	([4])
Subject sources	524	479	466	553	([4])	369	([4])
Nonsubject sources	566	509	466	479	450	400	691
All sources	556	502	466	481	450	399	691

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						January to March	
	Third (current) reviews							
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	0	0	0	0	0	0	0	0
China	0	38	2	591	38	1	0	0
Ukraine	0	0	0	0	22	0	0	0
Subject sources	0	38	2	591	60	1	0	0
Nonsubject sources	442,300	457,204	368,123	204,323	316,524	347,497	87,064	105,363
All sources	442,300	457,242	368,125	204,915	316,584	347,498	87,064	105,363
Value (*1,000 dollars*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	0	0	0	0	0	0	0	0
China	0	120	7	999	56	3	0	0
Ukraine	0	0	0	0	24	0	0	0
Subject sources	0	120	7	999	80	3	0	0
Nonsubject sources	345,131	587,059	730,524	217,327	406,542	426,712	107,090	123,716
All sources	345,131	587,179	730,531	218,326	406,622	426,715	107,090	123,716
Unit value (*dollars per short ton*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
China	(4)	3,170	3,134	1,690	1,467	2,196	(4)	(4)
Ukraine	(4)	(4)	(4)	(4)	1,082	(4)	(4)	(4)
Subject sources	(4)	3,170	3,134	1,690	1,326	2,196	(4)	(4)
Nonsubject sources	780	1,284	1,984	1,064	1,284	1,228	1,230	1,174
All sources	780	1,284	1,984	1,065	1,284	1,228	1,230	1,174

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						
	Original investigations			First reviews			Second reviews
	1991	1992	1993	1997	1998	1999	2005
	Quantity (*short tons*)						
U.S. producers' capacity (*quantity*)	***	***	***	***	***	***	([4])
Production (*quantity*)	***	***	***	***	***	***	***
Capacity utilization (*ratio*)	***	***	***	***	***	***	([4])
U.S. shipments (*quantity*)	***	***	***	***	***	***	***
(*value*)	***	***	***	***	***	***	***
(*unit value*)	***	***	***	***	***	***	***
Ending inventories (*quantity*)	***	***	***	***	***	***	([4])
Ending inventories to total shipments (*ratio*)	***	***	***	***	***	***	([4])
Production-related workers (*individuals*)	***	***	***	***	***	***	([4])
Hours worked (*1,000 hours*)	***	***	***	***	***	***	([4])
Wages paid (*value*)	***	***	***	***	***	***	([4])
Hourly wages (*dollars*)	***	***	***	***	***	***	([4])
Productivity (*short tons per 1,000 hours*)	***	***	***	***	***	***	([4])

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						January to March	
	Third (current) reviews							
	2006	2007	2008	2009	2010	2011	2011	2012
	Quantity (*short tons*); Value (*1,000 dollars*); Unit value (*dollars per short ton*); and Ratio (*percent*)							
U.S. producers' Capacity (*quantity*)	***	***	***	***	***	***	***	***
Production (*quantity*)	***	***	***	***	***	***	***	***
Capacity utilization (*ratio*)	***	***	***	***	***	***	***	***
U.S. shipments (*quantity*)	***	***	***	***	***	***	***	***
(*value*)	***	***	***	***	***	***	***	***
(*unit value*)	***	***	***	***	***	***	***	***
Ending inventories (*quantity*)	***	***	***	***	***	***	***	***
Ending inventories to total shipments (*ratio*)	***	***	***	***	***	***	***	***
Production-related workers (*individuals*)	***	***	***	***	***	***	***	***
Hours worked (*1,000 hours*)	***	***	***	***	***	***	***	***
Wages paid (*value*)	***	***	***	***	***	***	***	***
Hourly wages (*dollars*)	***	***	***	***	***	***	***	***
Productivity (*short tons per 1,000 hours*)	***	***	***	***	***	***	***	***

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						
	Original investigations			First reviews			Second reviews
	1991	1992	1993	1997	1998	1999	2005
	Quantity (*short tons*); Value (*1,000 dollars*); Unit value (*dollars per short ton*); and Ratio (*percent*)						
U.S. producers' Net sales: (*quantity*)	***	***	***	***	***	***	([4])
(*value*)	***	***	***	***	***	***	([4])
(*unit value*)	***	***	***	***	***	***	([4])
Cost of goods sold ("COGS") (*value*)	***	***	***	***	***	***	([4])
Gross profit (or loss) (*value*)	***	***	***	***	***	***	([4])
Operating income (or loss) (*value*)	***	***	***	***	***	***	([4])
Unit COGS (*unit value*)	***	***	***	***	***	***	([4])
Unit operating income (or loss) (*unit value*)	***	***	***	***	***	***	([4])
COGS to net sales (*ratio*)	***	***	***	***	***	***	([4])
Operating income (or loss) to net sales (*ratio*)	***	***	***	***	***	***	([4])

Table continued next page. Footnotes at the end of the table.

Table I-1--*Continued*
Silicomanganese: Summary data from the original investigations and subsequent five-year reviews, 1991-1993, 1997-1999, 2005-2011, January to March 2011, and January to March 2012

Item	Calendar year						January to March	
	Third (current) reviews							
	2006	2007	2008	2009	2010	2011	2011	2012
	Quantity (*short tons*); Value (*1,000 dollars*); Unit value (*dollars per short ton*); and Ratio (*percent*)							
U.S. Producers' Net sales: (*quantity*)	***	***	***	***	***	***	***	***
(*value*)	***	***	***	***	***	***	***	***
(*unit value*)	***	***	***	***	***	***	***	***
Cost of goods sold ("COGS") (*value*)	***	***	***	***	***	***	***	***
Gross profit (or loss) (*value*)	***	***	***	***	***	***	***	***
Operating income (or loss) (*value*)	***	***	***	***	***	***	***	***
Unit COGS (*unit value*)	***	***	***	***	***	***	***	***
Unit operating income (or loss) (*unit value*)	***	***	***	***	***	***	***	***
COGS to net sales (*ratio*)	***	***	***	***	***	***	***	***
Operating income (or loss) to net sales (*ratio*)	***	***	***	***	***	***	***	***

[1] Share of apparent U.S. consumption was calculated using U.S. importers' U.S. shipments of imports in both the original investigations (*i.e.*, 1991-1993) and in these third five-year reviews (*i.e.*, 2006-2011), while U.S. imports were used for the first and second five-year reviews (*i.e.*, 1997-1999 and 2005). Also note that data relating to Venezuela from the original investigations (*i.e.*, 1991-1993) presented here are reclassified as "nonsubject" to reflect the Commission's negative final determination.

[2] Less than 0.05 percent.

[3] For the original investigations (*i.e.*, 1991-1993), the data labeled U.S. imports actually represent U.S. importers' U.S. shipments of imports from the specified source. Data relating to Venezuela from the original investigations (*i.e.*, 1991-1993) presented here are reclassified as "nonsubject" to reflect the Commission's negative final determination.

[4] Not applicable.

Source: *Investigations Nos. 731-TA-671 through 674 (Final): Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela--Staff Report*, Office of Investigation Memo INV-R-187, November 29, 1994; ; *Investigation Nos. 731-TA-671-673 (Second Review): Silicomanganese from Brazil, China, and Ukraine --Staff Report*, Office of Investigation Memo INV-DD-074, June 1, 2006; and information compiled from responses to Commission questionnaires.

RELATED INVESTIGATIONS

Imports of silicomanganese from India, Kazakhstan, and Venezuela are currently subject to antidumping duty orders.[18] The orders on silicomanganese from India, Kazakhstan, and Venezuela resulted from a petition that was filed in 2001 by Eramet Marietta, Inc. and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639.[19]

STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

Statutory criteria

Section 751(c) of the Act requires Commerce and the Commission to conduct a review no later than five years after the issuance of an antidumping or countervailing duty order or the suspension of an investigation to determine whether revocation of the order or termination of the suspended investigation "would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury."

Section 752(a) of the Act provides that in making its determination of likelihood of continuation or recurrence of material injury--

> *(1) IN GENERAL.-- . . . the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account--*
>
> > *(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,*
> > *(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,*
> > *(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and*
> > *(D) in an antidumping proceeding . . ., (Commerce's findings) regarding duty absorption . . ..*
>
> *(2) VOLUME.--In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—*

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[18] *Continuation of Antidumping Duty Orders on Silicomanganese from India, Kazakhstan, and Venezuela*, 73 FR 841, January 4, 2008.

[19] *Silicomanganese from India, Kazakhstan, and Venezuela, Investigation Nos. 731-TA-929-931 (Review)*, USITC Pub. 3963, November 2007.

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

(3) PRICE.--In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether--

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and

(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

(4) IMPACT ON THE INDUSTRY.--In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to–

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

The Commission shall evaluate all such relevant economic factors . . . within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

Section 752(a)(6) of the Act states further that in making its determination, "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved, the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement."

Organization of and Data Sources for the Report

Information obtained during the course of the reviews that relates to the statutory criteria is presented throughout this report. A summary of trade and financial data for silicomanganese as collected in these third five-year reviews is presented in appendix C. U.S. industry data are based on the questionnaire responses of two U.S. producers of silicomanganese that account for 100 percent of known

production of silicomanganese in the United States in the period under review. U.S. import data and related information are based on the questionnaire responses of ten (10) U.S. importers of silicomanganese that account for the vast majority of overall U.S. imports (see part IV of this report for a discussion of the data). Foreign industry data and related information are based on the questionnaire responses of six (6) producers of silicomanganese in the subject countries, industry association statistics, and global trade data. Responses by U.S. producers, importers, purchasers, and foreign producers of silicomanganese to a series of questions concerning the significance of the existing antidumping and countervailing duty orders and the likely effects of revocation of such orders are presented in appendix D.

COMMERCE'S REVIEWS

Administrative Reviews

Since the issuance of the antidumping duty order on Brazil, Commerce has concluded four administrative reviews concerning one or more of the following exporters: Rio Doce Manganês, S.A. ("RDM" predecessor to Vale Manganês, S.A.), Companhia Paulista de Ferro-Ligas ("CPFL"), Sibra Electro-Siderurgia Brasileria S.A. ("SIBRA") (predecessor to RDM), or Urucum Mineração (Mangenese mine owned by RDM/Vale) (all these entities are currently part of Vale Manganês, S.A.).[20] Since the issuance of the antidumping duty order on China, Commerce has concluded administrative reviews concerning the two following exporters in China: Guangxi Bayi Ferroalloy Works ("Bayi") and Sichuan Emei Ferroalloy Import and Export Co., Ltd. ("Emei").[21] Since the issuance of the antidumping duty order on Ukraine, Commerce has concluded no administrative reviews.[22]

Most Recent Five-Year Reviews

On November 29, 2011, Commerce determined that the revocation of the antidumping duty orders on Brazil, China, and Ukraine would likely lead to continuation or recurrence of dumping.[23] Table I-2 presents information on the weighted-average margins of dumping that would occur in the absence of the antidumping duty orders on imports of silicomanganese from Brazil, China, and Ukraine.

[20] *Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Silicomanganese from Brazil, the People's Republic of China, and Ukraine,* U.S. Department of Commerce Public Memorandum, November 22, 2011, p. 2.

[21] Ibid.

[22] Ibid.

[23] *Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 76 FR 73587, November 29, 2011.

Table I-2
Silicomanganese: Weighted-average margin of dumping, 2011

Country / Manufacturer or Exporter	Weighted-average margin of dumping (*percent*)
Brazil.--	
RDM/CPFL	64.93
All others	17.60
China.--	
All Manufacturers/Producers/Exporters	150.00
Ukraine.--	
All Manufacturers/Producers/Exporters	163.00

Note.--Imports from RDM/CPFL (Brazil) are currently subject to 0 percent duties, imports from Bayi (China) are subject to 126.22 percent duties, and imports from Emei (China) are subject to 182.97 duties, based on their most recent administrative reviews.

Source: *Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 76 FR 73587, November 29, 2011; *Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Silicomanganese from Brazil, the People's Republic of China, and Ukraine*, U.S. Department of Commerce Public Memorandum, November 22, 2011.

THE SUBJECT MERCHANDISE

Commerce's Scope

Commerce has defined the scope of this investigation as follows:

> *The merchandise covered by the orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of the order, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.*
>
> *Silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. The orders cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the orders remain dispositive.*[24]

[24] *Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders,* 76 FR 73587, November 29, 2011.

Tariff Treatment

Silicomanganese is classifiable in the Harmonized Tariff Schedule of the United States ("HTS") subheading 7202.30.00 as "ferrosilicon manganese," under the terms of note 1(c) to chapter 72.[25] The normal trade relations (NTR) rate of duty for silicomanganese under subheading 7202.30.00 of the HTS is 3.9 percent ad valorem and is applicable to imports of silicomanganese from subject sources.[26] At the time of the original investigations, imports of silicomanganese from Ukraine were eligible for duty-free entry under the Generalized System of Preferences ("GSP") and continue to be so.[27]

THE PRODUCT

Physical Characteristics and Uses

Silicomanganese, a metallic silvery ferroalloy,[28] is composed principally of manganese, silicon, and iron. It is produced in a number of grades and sizes. Most, but not all, silicomanganese is manufactured and sold to ASTM International[29] specification A 483, which covers three grades, designated "A," "B," and "C" and differentiated by their silicon and carbon contents.[30] Most silicomanganese produced and sold in the United States conforms to the specification for grade B. Silicomanganese is sold in small pieces of fairly uniform sizes. A typical size of silicomanganese is 3 inches by 1/4 inch.[31] [32]

Silicomanganese is consumed in bulk form primarily by the steel industry as a source of both silicon and manganese, although some silicomanganese is used as an alloying agent in the production of

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[25] Some "off-specification" silicomanganese or silicomanganese slag may be imported under HTS subheading 7202.99.50, which covers "other" (*i.e.*, nonenumerated) ferroalloys. In the original investigations, no silicomanganese was found to have been imported under this HTS subheading. *Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela, Investigations Nos. 731-TA-671-674 (Final),* USITC Pub. 2836, December 1994, p. 1-17.

[26] The 3.9 percent rate of duty was in effect at the time of the original investigations.

[27] While Brazil is currently (and was at the time of the original investigations) a GSP-eligible country, imports of silicomanganese from Brazil are excluded from the GSP program. *See* General Notes (GN) p. 15 of the HTS.

[28] A ferroalloy is an alloy of iron containing one or more other elements. It is used to add these other elements to molten metal, usually in the manufacture of steel or cast iron.

[29] ASTM International, formerly known as the American Society for Testing and Materials (ASTM), is a developer of international voluntary consensus standards.

[30] According to the ASTM standard specification, each of the three grades must contain 65 to 68 percent manganese, a maximum of 0.20 percent phosphorus, and a maximum of 0.04 percent sulfur, by weight. Grade A contains 18.5 to 21.0 percent silicon and a maximum of 1.5 percent carbon. Grade B contains 16.0 to 18.5 percent silicon and a maximum of 2.0 percent carbon. Grade C contains 12.5 to 16.0 percent silicon and a maximum of 3.0 percent carbon. Additionally, the content of minor elements arsenic, tin, lead, chromium, nickel, and molybdenum, is limited. See ASTM Designation A 483-04 (approved 2004), *Standard Specification for Silicomanganese,* tables 1 and 2 (chemical requirements).

[31] The dimensions refer to the diameters of the openings used in the standard screens or sieves that are used to size silicomanganese. The first number refers to the screen through which the material must pass, and the second number refers to the screen on which the material is retained, with smaller particles passing through to be recycled or sold as a smaller size. Silicomanganese is a friable product, susceptible to appreciable reduction in size by repeated handling. This generates small lumps and fines (the diameter of small lumps may be one-half that of regular-sized pieces, but there is no specified minimum diameter for fines).

[32] The discussion in this section is based on information from the following sources: Staff Report, December 20, 2000 (INV-X-256), pp. I-11-I-12; and *Silicomanganese From India, Kazakhstan, and Venezuela, Investigations Nos. 731-TA-929-931 (Final),* USITC Publication 3505, May 2002, p. I-4.

iron castings.[33] Manganese, intentionally present in nearly all steels, is used as a steel desulfurizer and deoxidizer. By removing sulfur from steel, manganese prevents the steel from becoming brittle during the hot rolling process. In addition, manganese increases the strength and hardness of steel. Silicon is used as a deoxidizer, aiding in making steels of uniform chemistry and mechanical properties. As such, it is not retained in the steel, but forms silicon oxide, which separates from the steel as a component of the slag. As an alloying agent, silicon increases the hardness and strength of hot-rolled steel mill products, and enhances the toughness, corrosion resistance, and magnetic and electrical properties of certain steel mill products.

Use depends upon the steelmaking practices of a given producer. Silicomanganese may be introduced directly into the steelmaking furnace or added as a chemistry addition/deoxidizer to molten steel at a separate ladle metallurgy station. As a furnace addition, it is typically used in lump sizes and melted along with other steelmaking raw materials; as a ladle addition, silicomanganese is used in smaller sizes. Silicomanganese is mostly consumed by electric furnace steelmakers in the production of long products, including bars and structural shapes. This use in long products may be due to less restrictive specifications for silicon for these products than for flat-rolled carbon steel mill products, such as sheet and strip.[34] Silicomanganese is believed to account for only a small share of the total cost of end-use steel mill products.[35]

A low-carbon grade of silicomanganese containing around 60 percent of manganese with around 30 percent of silicon and less than 0.10 percent carbon is also available and is used primarily in the production of stainless steel, not in the applications of the more common standard grade silicomanganese.[36] Low-carbon silicomanganese is produced by upgrading standard grade material by the addition of silicon wastes from the ferrosilicon industry.[37] It is produced primarily in Norway by a firm related to Eramet, and ***.[38]

Manufacturing Process

Silicomanganese is produced by smelting together in a submerged arc furnace sources of silicon, manganese, iron, and a carbonaceous reducing agent, usually coke.[39] The reducing agent and the other items are combined in a "charge" (which may include wood chips, dolomite, and a fluxing agent) and electrically heated. Impurities from the ore or other manganese sources are released and form slag, which rises to the top of the furnace and floats on top of the molten silicomanganese. Following smelting, molten metal and slag are removed or "tapped" from the furnace. The molten silicomanganese is poured into large molds (called "chills"), where it cools and hardens. Once the alloy has hardened, the chills are emptied and the alloy is crushed into small pieces and screened to fairly uniform sizes. Figure I-1 presents the basic process for the production of silicomanganese and ferromanganese at Eramet Marietta.

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[33] Other elements are carbon, which is the principal hardening element in steel, and phosphorus and sulfur, which are impurities in steel that cause brittleness and cracking.

[34] Producers of flat-rolled steel mill products reportedly tend to use a combination of ferromanganese and ferrosilicon, which allows them greater control of each individual element.

[35] *Response of Eramet*, February 22, 2006, p. 11. Purchasers estimated the cost of silicomanganese to represent less than three percent of the cost of the end-use product. *Silicomanganese From India, Kazakhstan, and Venezuela, Investigations Nos. 731-TA-929-931 (Final)*, USITC Pub. 3505, May 2002, pp. II-4 to II-5.

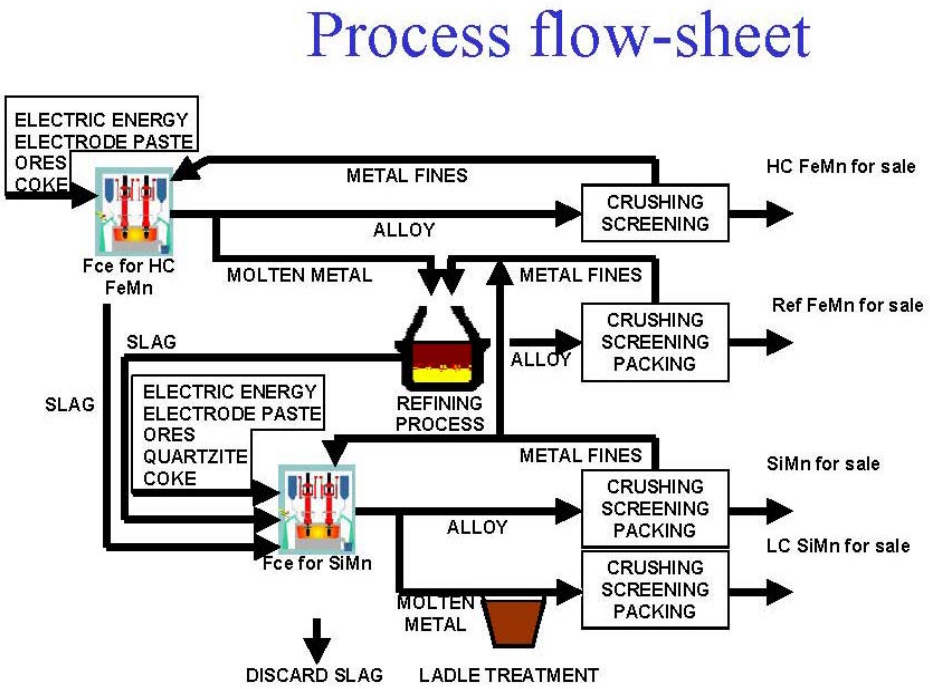
[36] Eramet Comilog product data sheet, *Low Carbon SilicoManganese*, http://www.eramet.fr/fr/PRODUCTION_GALLERY_CONTENT/DOCUMENTS/Nos_metiers/Manganese/LC_SiMn_Aug05.pdf, accessed Aug. 28, 2012.

[37] Olsen, S.E. and M. Tangstad, *Silicomanganese Production-Process Understanding, in Proceedings*: Tenth International Ferroalloys Congress, 2004, p. 231.

[38] Email from ***, September 11, 2012.

[39] For a discussion of inputs, see *Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela, Investigations Nos. 731-TA-671-674 (Final)*, USITC Pub. 2836, December 1994.

Figure I-1
Silicomanganese and ferromanganese: Production processes at Eramet



Source: http://www.eramet.fr, retrieved August 1, 2012.

Domestic producer Eramet produces silicomanganese at a plant in Marietta, OH, that it purchased in July 1999 from Elkem. Eramet also produces other manganese ferroalloys as well as other alloying agents at that plant. Silicomanganese is manufactured in the same or similar facilities as those used to produce high carbon ferromanganese, although switching from one grade or type of manganese ferroalloy to another involves costs in terms of lost production, reduced productivity, or possible contamination of the higher grade product.

Domestic producer Felman produces silicomanganese at a plant in New Haven, WV that was once dedicated to the production of silicon alloys. Felman reopened the plant as a producer of silicomanganese in September 2006. On its web site, Felman describes both silicomanganese and high-carbon ferromanganese as products it produces ***.

In general, little difference appears to exist between the production processes in the domestic industry and those used abroad to produce silicomanganese. This fact reflects the maturity of the industry, and may be attributed to the diffusion of process technology, techniques, and equipment on a world-wide basis; the similarity of steelmaking techniques; and the commonality of steel recipes.

DOMESTIC LIKE PRODUCT ISSUES

In the original investigations, the Commission defined the domestic like product as all silicomanganese.[40] In the first and second five-reviews, the Commission also defined the domestic like

[40] *Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela, Investigations Nos. 731-TA-671-674 (Final)*, USITC Pub. 2836, December 1994, pp. I-6 to I-7 and I-21 to I-22.

product as all silicomanganese.[41] [42] In these five-year reviews, no party has argued for a different domestic like product definition.

U.S. MARKET PARTICIPANTS

U.S. Producers

During the original investigations, Elkem Metals Co. ("Elkem"), a subsidiary of the Norwegian firm Elkem S/A, was the only known U.S. producer of silicomanganese.[43] In July 1999, Eramet SA of France purchased the production facility in Marietta, OH, which included all of Elkem's silicomanganese assets, from Elkem S/A, and created the U.S. company Eramet Marietta, Inc. ("Eramet").[44] From 2002 to 2005, Highlander Alloys, LLC ("Highlander"), attempted to produce silicomanganese at a silicon and silicon alloy facility in New Haven, WV, but was beset by a number of problems ranging from financial woes, service cutoffs, strikes by unpaid workers, and production difficulties resulting in only sporadic production of silicomanganese.[45] In January 2006, Felman Production, LLC ("Felman") purchased the silicomanganese assets out of Highlander's bankruptcy proceedings[46] and ***.[47] Eramet and Felman account for all known U.S. production of silicomanganese in the period under review.[48]

Table I-3 presents information on the two U.S. producers of silicomanganese, each company's position on continuation of the orders, production location(s), related and/or affiliated firms, and share of reported production of silicomanganese in 2011.

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[41] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review),* USITC Publication 3386, January 2001, p. 5.

[42] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review),* USITC Pub. 3879, August 2006, p. 5.

[43] *Investigations Nos. 731-TA-671 through 674 (Final): Silicomanganese from Brazil, the People's Republic of China, Ukraine, and Venezuela--Staff Report*, Office of Investigation Memo INV-R-187, November 29, 1994, p. I-20.

[44] *Investigation Nos. 731-TA-671-673 (Review): Silicomanganese from Brazil, China, and Ukraine --Staff Report*, Office of Investigation Memo INV-X-256, December 20, 2000, pp. I-14-15.

[45] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review),* USITC Publication 3879, August 2006, p. I-18.

[46] Ibid, p. I-18.

[47] *** U.S. producers' questionnaire response, questions II-6 and II-10.

[48] In the second five-year review, information on a brief period in 2005 of silicomanganese production by Globe Metallurgical, Inc. ("Globe") (Beverly, OH) was reported. Currently, Globe is a producer of metallurgical and chemical-grade silicon metal, http://www.glbsm.com/globemetallurgical/, retrieved August 1, 2012.

Table I-3
Silicomanganese: U.S. producers, production location(s), positions on order, related or affiliated firms, and share of U.S. production, 2011

Firm	Production location(s)	Position on continuation of orders	Related or affiliated firm(s)	Share of reported production in 2011 (*percent*)
Eramet	Marietta, OH[1]	Supports all three orders[2]	***	***
Felman	New Haven, WV[3]	Supports all three orders	***	***

[1] Eramet produces silicomanganese with ***.
[2] In respone to question I-3 of the Commission's U.S. producers' questionnaire, Eramet indicated that "***."
[3] Felman produces silicomanganese in a facility outside of New Haven, WV (with offices in nearby Letart, WV) using ***. Felman's U.S. producers' questionnaire response, question II-7.

Source: Compiled from data submitted in response to Commission questionnaires.

At the time of the second five-year reviews of these orders (*i.e.*, in 2006), Counsel for Felman submitted an entry of appearance with the Commission indicating that Felman had "plans to restart the plant {it had purchased from Highlanders Alloys, Inc.} and produce {ferroalloys}, including silicomanganese" and that "Felman {was} related to {Zaporozhye}, a Ukrainian producer of silicomanganese, and also is a potential importer of silicomanganese from Ukraine."[49] Counsel for Felman subsequently withdrew the entry of appearance and neither Felman nor Zaporozhye, the Ukrainian producer, submitted responses to the Commission's notice of institution in those reviews.[50] In these five-year reviews, Felman indicated that ***.[51] Felman provided further clarification regarding its relationships in response to staff[52] and Commission[53] inquiry. Public data appear to indicate that the Privat Group, which owns the Ukrainian producers, has an ownership interest in ***[54] but confidential statements from the Ukrainian producers ***.[55] Additional record evidence submitted by the Brazilian interested party appears to connect Felman and the Ukrainian producers through common ownership interests (*i.e.*, the Privat Group) in 2011,[56] [57] and a court proceeding involving Felman's business

[49] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review)*, USITC Pub. 3879, August 2006, p. I-3 and fn. 5.
[50] Ibid.
[51] Felman's U.S. producers' questionnaire response, part I.
[52] Felman's full response to staff inquiry regarding potential related party issue, Felman's e-mail response dated July 26, 2012:
"***" Response to staff questions, July 26, 2012.
[53] Felman's posthearing brief, app. Williamson 2, p. Williamson-3 through Williamson-5.
[54] http://new.metalexpert-group.com/alldirectory/en/company.html&sourceUNID=0F6657083DC18E5BC22573CA0040F987Q, accessed August 1, 2012.
[55] Ukrainian responses on September 14, 2012 to staff questions from August 17, 2012.
[56] "The Privat Group, owned by Ukrainian businessmen Hannady Boholiubov and Ihor Kolmoisky, is currently the majority shareholder in all the Ukraine-based ferroalloy enterprises. Privat's owners also control U.S. enterprises Felman Production, Inc and CC Metal Alloys, LLC; Georgian Manganese, based in Georgia; SC Feral SRL in Romania; and the manganese ore producer Consolidated Mineral (Consmin) in Australia." Brazilian respondent interested party, response to September 19, 2011 Letter Regarding Response to Notice of Institution, October 5, 2011, p. 1-2, exhibit 2 *Ukraine Business Weekly* article.

activities in 2008 in which the court said "Privat representatives were intimately involved in the decisions regarding sales and pricing of Felman's production."[58] Felman contends that ***.[59] Felman Trading's[60] website itself indicates that the company currently has "exclusive contracts {with the Ukrainian producers as well as the Georgian and Romanian producers} for ferroalloys deliveries on the markets of North, Central, and South Americas",[61] but Felman contends that these contracts do not demonstrate control over Ukrainian exports ***.[62] Florida state records of incorporation indicate that *** Georgian American Alloys, Inc. (Miami, FL) first registered in the state of Florida on June 15, 2012, and that it had, in turn, first incorporated in the state of Delaware on February 14, 2012.[63] Felman indicated that ***.[64] In the court proceeding provided by the Brazilian respondent interested party, the court found that Haftseek Investments, Ltd. was ultimately owned by Igor Kolomoiskiy, a "Privat representative."[65]

U.S. Importers

Table I-4 presents information on U.S. importers of silicomanganese.

Table I-4
Silicomanganese: U.S. importers, locations, related or affiliated firms, and share of total U.S. imports, 2006-2011

Firm	Location(s)	Related or affiliated firm(s)	Share of total imports from 2006 to 2011 (*percent*)
Allegheny Alloys, LLC[1]	Pittsburgh, PA	***	***
Alloy Sales Co.[2]	Weirton, WV	***	***
Asia Minerals, Ltd.[3]	Sewickley, PA	***	***
BHP Billiton Marketing Inc.	Pittsburgh, PA[4] Houston, TX	***	 ***
CCMA, LLC[5]	Amherst, NY	***	***
Eramet Marietta, Inc.[6]	Marietta, OH	***	***
Felman Trading, Inc.[7]	Miami, FL	***	***

Table continued next page.

[57] Felman itself has stated that there are common investors in both the Ukrainian producers and Felman Production and Felman Trading, but Felman Trading has no control over Ukrainian exports. See Felman's posthearing brief, app. Williamson 2, p. Williamson-5, Felman's e-mail response staff inquiry dated July 26, 2012, and hearing transcript, p. 87 (Salonen).

[58] Vale's posthearing brief, exh. 7, p. 15.

[59] Felman's posthearing brief, app. Williamson 2, p. Williamson-4, fn. 6.

[60] Felman is related to Felman Trading ***.

[61] http://www.felmantrading.com/en/producers/?PHPSESSID=7c07fcf40633de2726871f8c2af6594a, retrieved August 1, 2012.

[62] Hearing transcript, p. 87 (Salonen), and Felman's posthearing brief, app. Williamson 2, p. Williamson-3 through Williamson-4, and app. Williamson 2.1.

[63] Georgian American Alloys, Inc.'s application to register in the state of Florida as a foreign for profit corporation, June 14, 2012.

[64] See Felman's prehearing brief, p. 9, fn. 36.

[65] Vale's posthearing brief, exh. 7, p. 4.

Table I-4--*Continued*
Silicomanganese: U.S. importers, locations, related or affiliated firms, and share of total U.S. imports, 2006-2011

Firm	Location(s)	Related or affiliated firm(s)	Share of total imports from 2006 to 2011 (*percent*)
Glencore, Ltd.[8]	Stamford, CT	***	***
Minerais US, LLC	Hillsborough, NJ	***	***
Nizi International, S.A.[9]	Akron, OH	***	***
All other firms[10]			***

[1] ***.
[2] ***.
[3] ***.
[4] ***.
[5] ***.
[6] ***. *** See e-mail from ***, September 11, 2012.
[7] See discussion of affiliated firm issues for Felman in the U.S. producers section above.
[8] ***.
[9] ***.
[10] Data for remaining "all other firms" was compiled from Customs data used to develop official import statistics. ***.

Source: Compiled from data submitted in response to Commission questionnaires and Customs data used to develop official import statistics (in part).

U.S. Purchasers

The Commission sent purchaser questionnaires to all 12 of the purchasers reported by the parties to these investigations. All 12 purchasers responded, and indicated that they were end users/steel producers. These purchasers accounted for 85.3 percent of apparent U.S. consumption in 2011. All but one purchaser, ***, reported purchasing U.S. silicomanganese. One purchaser, ***, reported purchasing a small amount from one subject country, China. Eleven purchasers used electric arc furnaces; one, ***, was an integrated producer; and one, ***, reported that it was a specialty metals producer in addition to the electric arc furnace.[66] The two largest purchasers were ***. Between 2006 and 2011, their purchases represented between *** percent of the silicomanganese purchases reported by all 12 purchasers. ***. One purchaser, ***.

APPARENT U.S. CONSUMPTION AND MARKET SHARES

Table I-5 presents information on apparent consumption of silicomanganese in the U.S. market over the period of these reviews.

[66] ***.

Table I-5
Silicomanganese: Apparent U.S. consumption, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
U.S. producers' U.S. shipments	***	***	***	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--								
Brazil	0	0	0	0	0	0	0	0
China[1]	0	38	2	591	38	1	0	0
Ukraine	0	0	0	0	22	0	0	0
Subject sources	0	38	2	591	60	1	0	0
Nonsubject sources	442,300	457,204	368,123	204,323	316,524	347,497	87,064	105,363
All import sources	442,300	457,242	368,125	204,915	316,584	347,498	87,064	105,363
Apparent U.S. consumption	***	***	***	***	***	***	***	***
Value (*1,000 dollars*)								
U.S. producers' U.S. shipments	***	***	***	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--								
Brazil	0	0	0	0	0	0	0	0
China[1]	0	120	7	999	56	3	0	0
Ukraine	0	0	0	0	24	0	0	0
Subject sources	0	120	7	999	80	3	0	0
Nonsubject sources	345,131	587,059	730,524	217,327	406,542	426,712	107,090	123,716
All import sources	345,131	587,179	730,531	218,326	406,622	426,715	107,090	123,716
Apparent U.S. consumption	***	***	***	***	***	***	***	***

Table continued next page. Footnotes at the end of the table.

Table I-5--*Continued*
Silicomanganese: Apparent U.S. consumption, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Unit value (*dollars per short ton*)								
U.S. producers' U.S. shipments	***	***	***	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--								
Brazil	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
China[1]	(2)	3,170	3,134	1,690	1,467	2,196	(2)	(2)
Ukraine	(2)	(2)	(2)	(2)	1,082	(2)	(2)	(2)
Subject sources	(2)	3,170	3,134	1,690	1,326	2,196	(2)	(2)
Nonsubject sources	780	1,284	1,984	1,064	1,284	1,228	1,230	1,174
All import sources	780	1,284	1,984	1,065	1,284	1,228	1,230	1,174
Apparent U.S. consumption	***	***	***	***	***	***	***	***

[1] Data for China represents official U.S. import statistics. See discussion in part IV.
[2] Not applicable.

Source: Compiled from data submitted in response to Commission questionnaires and Customs data used to generate official import statistics (in part).

Table I-6 presents information on market shares in the U.S. market for silicomanganese by source over the period of these reviews.

Table I-6
Silicomanganese: Market shares, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Share of quantity (*percent*)								
U.S. producers' U.S. shipments	***	***	***	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--								
Brazil	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***	***
All import sources	***	***	***	***	***	***	***	***
Share of value (*percent*)								
U.S. producers' U.S. shipments	***	***	***	***	***	***	***	***
U.S. importers' U.S. shipments of imports from.--								
Brazil	***	***	***	***	***	***	***	***
China	***	***	***	***	***	***	***	***
Ukraine	***	***	***	***	***	***	***	***
Subject sources	***	***	***	***	***	***	***	***
Nonsubject sources	***	***	***	***	***	***	***	***
All import sources	***	***	***	***	***	***	***	***

[1] Less than 0.05 percent.

Source: Calculated from table I-5.

PART II: SUPPLY AND DEMAND INFORMATION

U.S. MARKET CHARACTERISTICS

The U.S. market for silicomanganese is characterized by a small number of producers and a limited number of purchasers. Most product sold in the United States is imported, and U.S. producers' capacity is below U.S. demand. Silicomanganese is sold mainly to steel producers, and thus silicomanganese demand is derived from the level of demand for the steel products in which it is used. This in turn depends on demand for downstream products and reflects the state of the overall economy.

CHANNELS OF DISTRIBUTION

Table II-1 presents data on the share of U.S. producers' and U.S. importers' U.S. shipments of silicomanganese in the United States by channel of distribution. During 2006-11, the overwhelming majority of shipments of U.S.-produced silicomanganese was sold directly to end users; ***, and always accounted for less than *** percent of total U.S. shipments in any given calendar year. Importers provided no channels of distribution data for subject imports. Importers sold nonsubject imports mainly to end users with sales to distributors peaking at 13.0 percent in 2009.

Table II-1
Silicomanganese: U.S. producers' and U.S. importers' U.S. shipments by channels of distribution, 2006-11

Item	2006	2007	2008	2009	2010	2011
	Share of U.S. shipments (*percent*)					
U.S. producers' U.S. shipments to:						
Distributors	***	***	***	***	***	***
End users	***	***	***	***	***	***
U.S. importers' U.S. shipments of nonsubject imports to:						
Distributors	7.4	7.0	10.8	13.0	9.4	7.6
End users	92.6	93.0	89.2	87.0	90.6	92.4

Note.—No importers reported channels of distribution data for subject material, and not all importers of nonsubject material reported data on their channels of distribution.

Source: Compiled from data submitted in response to Commission questionnaires.

GEOGRAPHIC DISTRIBUTION

U.S. producers and importers reported sales of silicomanganese to *** regions in the contiguous United States (table II-2). The Northeast, Midwest, Southeast, and Central Southwest were the most common reported sales destinations.

Domestic producers reported shipping the majority (*** percent) of U.S. shipments to customers between 101 and 1,000 miles of their production facility, *** percent was shipped 0 to 100 miles, and *** percent were shipped over 1,000 miles.[67]

[67] No importers reported information on shipping distances.

Table II-2
Silicomanganese: U.S. producers' and U.S. importers' U.S. shipments by region

Regions	U.S. producers	Imports (nonsubject)
Northeast	***	9
Midwest	***	9
Southeast	***	9
Central Southwest	***	8
Mountains	***	4
Pacific Coast	***	3
Other	***	0
Source: Compiled from data submitted in response to Commission questionnaires.		

In 2011, U.S. producers sold mainly (*** percent) produced-to-order product, and the balance was from inventories. Lead times averaged ***.[68]

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic production

Based on available information, U.S. producers of silicomanganese have the ability to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced silicomanganese to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply include moderate amounts of unused capacity, inventories, and production of alternate products.

Four of the nine responding purchasers reported changes in factors affecting the supply of U.S. produced silicomanganese since 2006. Reported changes include: the closure of a manufacturing facility resulting in increased prices; U.S. manufacturers' switch from production of silicomanganese to production of high carbon ferromanganese causing the market for silicomanganese to be tight; exchange rates and demand in other regions affecting the availability of imports; ore availability affecting production; high energy costs causing South Africa to reduce production; and EPA regulations resulting in limited investment in production in the United States.

Industry capacity

Domestic capacity increased unevenly from *** short tons in 2006 to *** short tons in 2011, while capacity utilization increased from *** percent in 2006 to *** percent in 2011. This moderately high level of capacity utilization suggests that U.S. producers may have a limited ability to increase production of silicomanganese in response to an increase in prices.

Export markets

Exports accounted for a small-to-moderate share of reported U.S. producers' shipments of silicomanganese over the period of review. Exports were *** percent of U.S. producers' total shipments

[68] No importers reported information on lead times.

in 2006 to 2008, increased to *** percent in 2009, and then fell to *** percent in 2011. U.S. producers exported silicomanganese primarily to ***.[69] Over the period, U.S. producers' exports, as a share of their total shipments, fluctuated at low levels indicating that they may have some limited ability to shift production into or out of the U.S. market.

Inventory levels

U.S. producers' inventories increased from *** percent of U.S. shipments in 2006 to *** percent in 2011. These inventory levels suggest that U.S. producers may have some capability to respond to changes in demand with changes in quantity shipped from inventories.

Production alternatives

***. *** from *** percent in 2006 to *** percent in 2011.
Eramet reported that ***. ***. Felman reported that "***."

Subject imports

Based on available information, producers of silicomanganese from Brazil, China, and Ukraine have the ability to respond to changes in demand with large changes in the quantity of shipments of silicomanganese to the U.S. market. The main contributing factors to the high degree of responsiveness of supply are high capacity, low capacity utilization rates, existence of alternative markets, and ability to produce alternate products. Country specific factors relating to supply responsiveness are presented in table II-3.

Table II-3
Silicomanganese: Foreign producers' capacity, capacity utilization, inventories, and sales to home market, by country, 2011

	Capacity[1]	Capacity utilization[1]	Sales to home market[1]	Inventories to shipments
	short tons	*Percent*		
Brazil[2]	***	***	***	***
China[3]	***	***	***	***
Ukraine[4]	***	***	***	***

[1] Capacity, capacity utilization, and share of sales to home market for Brazil and China are from *** and for Ukraine are from questionnaire data. Data for sales to home market are derived from the share of each country's production that was exported (see *part IV* of this report). Note that subject countries exported only a small quantity of silicomanganese to the U.S. market during the current period of review. Inventories to shipments ratios are from foreign producers' questionnaire responses.
[2] Brazilian inventories to shipments are from *** questionnaire; it was the only Brazilian producer that provided data. *** capacity was estimated to be *** percent of Brazilian overall silicomanganese capacity. ***, p. 183 from Eramet's response to institution.
[3] Chinese inventories to shipments are from Comilog's questionnaire. Note that Comilog was not an exporter of silicomanganese over the period, except for a ***.
[4] All Ukrainian data are from the foreign producers' questionnaires which were received from all known Ukrainian producers.

Source: Compiled from data submitted in response to Commission questionnaires, ***, and Eramet's response to institution.

[69] ***.

Brazil

Brazil's capacity, moderate level of capacity utilization; share of exports, and relatively high inventories support its ability to export to the U.S. market.

One Brazilian (Vale) producer responded to the questionnaire. It reported that *** to produce silicomanganese.

Vale reported that it has decided to ***.[70] ***. In 2011, it sold *** percent of its shipments to the EU market.[71] Vale stated that its sales to the Netherlands in 2011 were to meet "the obligations of Vale's European operations"[72] and that "***" of its exports to Europe were sold to this affiliate.[73] The share it shipped to *** declined from *** percent in 2006 to *** percent in 2009, and then rose to *** percent in 2011. It reported *** exports to the United States over the period reviewed.

Vale reported that ***. Most silicomanganese sold in the United States is grade B.

Brazilian apparent consumption was *** short tons in 2011.[74] Vale estimated its sales to be approximately *** percent of the total Brazilian market. According to ***, Brazil has three other major silicomanganese producers supplying *** percent of Brazil's market, with small producers supplying *** percent, and imports supplying *** percent. Vale reported that it was "by far Brazil's largest silicomanganese producer and the only Brazilian producer that has ever made any significant exports to the United States"[75] and that it is "***."[76] It reported closing its New York distribution office in 2006;[77] however, Vale maintains a U.S. distribution in arm the United States, Vale Americas, Inc.[78]

China

China's very large and growing capacity, and its level of capacity utilization, support a strong ability to export to the U.S. market, although, current Chinese domestic policies may deter exports of silicomanganese. Increasing consumption of silicomanganese within China also may reduce its incentive to export to the U.S. market.

The one Chinese responding producer, Comilog, reported that ore and electricity costs are *** costs, and that it expected power prices ***. It reported that the 20 percent export tax affects Chinese exports.[79] It also reported that ***. Comilog reported that there are hundreds of Chinese silicomanganese producers, causing intense competition, and that overcapacity is a major problem. It reported no import competition in China. It also reported that the European Union has an 8.2 percent dumping duty on Chinese product.

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[70] Felman responded that while shipping costs to the U.S. market were higher than within Brazil, Vale exports substantial volumes of "much-lower value products such as iron ore" to the United States. Felman's posthearing brief p. 10. Eramet reports that its own import costs are lower than those reported by Vale, claiming that Vale is overstating its costs. Eramet's posthearing report, answers to questions pp. 23-24.

[71] The share of exports to the EU ranged from ***.

[72] Hearing transcript, pp. 128 and 157 (Stoel and Lewis).

[73] Vale's posthearing brief, answers to questions, p. 19.

[74] See table II-8.

[75] Hearing transcript, p. 144 (Lewis).

[76] Vale's posthearing brief, answers to questions, p. 7.

[77] Vale's posthearing brief, p. 4.

[78] Vale Americas, Inc. ***.

[79] This tax was 5 percent at the beginning of 2006, and increased three times in 5 percent increments reaching 20 percent on January 1, 2008. Domestic interested parties also report that similar export constraints on other products have been interpreted as being export restraints that violate China's international obligations. Hearing transcript, pp. 100-101 (Kramer).

Vale reports that Chinese producers face a number of barriers to exporting silicomanganese including an export tariff and a minimum export price that is higher than U.S. prices.[80]

Ukraine

Ukraine's large but stable capacity, moderate capacity utilization rate, and exports as a share of its shipments is consistent with a strong ability to increase sales to the U.S. market.

Parties identified three Ukrainian producers; and all three responded to the Commission's questionnaire. Ukrainian producers reported that electricity and ore prices are important costs and that energy prices had increased and were expected to continue to increase. Two producers reported that input costs affect prices, but one reported that there is too much product available in the market, preventing the price of silicomanganese from closely following input costs.

Two of three responding Ukrainian producers reported changes in factors related to supply. One reported that ***
***.[81] One reported ***.

All three Ukrainian producers reported that their current long-term contracts would be a barrier to shifting sales to the U.S. market. *** reported that it faced price increases for raw material and energy as well as credit and capital shortages.[82] It also reported that it would take considerable time to reestablish links with U.S. purchasers, and thus did not anticipate that it would be possible to have commercial deliveries before the end of 2013. *** reported that it would be difficult to get back into the U.S. market, but did not report how soon this would be possible. *** reported having no material available in 2012 to ship to the U.S. market, and that if the duty were removed and if sales to U.S. purchasers were profitable, it might consider shipments to the U.S. market in 2013.

All three Ukrainian producers reported that because of the high phosphorus content of Ukrainian manganese ore, the silicomanganese that they produce for their home market has a much higher phosphorus content (up to 0.6 percent) than that required for U.S. producers (which is up to 0.2 percent phosphorus), and that this limits the U.S. purchasers they can sell to. *** reported that to produce the silicomanganese normally used in the U.S. market it would have to use up to 75 percent imported manganese ores, which cost more than Ukrainian ores. ***.[83] *** also reported that its home market sales are on a prepaid basis while payment for export shipments is delayed.

The three Ukrainian producers reported they compete with each other for the Ukrainian market. In addition, two of the three Ukrainian producers report increased import competition with product from other countries including Macedonia, Korea, Kazakhstan, Russia, Slovakia, South Africa, China, Poland, and Norway.

The three Ukrainian producers' export shipments to *** ranged from a high of *** percent of their total shipments in 2009 to a low of *** percent in 2011. Exports to *** ranged from a high of *** percent in 2009 to a low of *** percent in 2011, and exports to *** ranged from *** percent in 2006 to *** percent in 2011. Exports to ***. Exports reported by the Ukrainian producers probably understate silicomanganese exports from Ukraine (see table IV-16).

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[80] Hearing transcript, p. 127 (Stoel). The Chinese minimum price for silicomanganese exports was $2,300 per ton in October 2011, well above U.S. prices in 2011, see table V-7. Actual prices for silicomanganese exported from China in 2011, however, was well below this minimum, see table IV-13. None the less, overall Chinese exports have fallen from 930,556 short tons in 2007 to only 19,006 short tons in 2011.

[81] This firm also reported ***.

[82] Ukraine interested parties report that electricity costs are almost twice as high as the costs faced by the U.S. producers, as well current and traditional subject and nonsubject import sources including: BHP in South Africa; Vista in Brazil; and producers in Georgia, China, and Norway. Posthearing brief, responses to questions, p. 2.

[83] Ukraine interested parties' posthearing brief, p. 3.

Based on its website, Felman Trading has exclusive delivery contracts with the three large Ukrainian producers for sales in North, Central, and South America.[84] The parties disagree on the extent to which Felman determines the volume and timing of most, if not all, Ukrainian imports into the U.S. market.[85] The Federal District Court found that in 2007-2008 "Privat representatives were intimately involved in decisions regarding sales and pricing of Felman's production."[86] "Privat representatives operate Felman Production, Inc. as if it is their sole proprietorship; Feldman has little independence."[87] "Privat controlled Felman's pricing and other features of the business, including balancing Felman's sales with other Privat holdings."[88] Felman maintains that ***.[89] (See Part I for more discussion).

Nonsubject imports

The largest sources of nonsubject imports during 2006-2011 were South Africa, Georgia, Norway, and Australia. Combined these countries accounted for 85 percent of nonsubject imports in 2006-2011. BHP Billiton, which accounted for "the vast majority of" South African silicomanganese production, has stopped silicomanganese production in South Africa.[90]

Five of 12 responding purchasers were aware of new suppliers of silicomanganese to the U.S. market. Two purchasers reported Felman as a new supplier, one purchaser each reported other new suppliers including: Indian producers Indsil and Maithan Alloys; Specialty Super Alloys Inc. (a distributor); and producers in China and India (although these countries represented minor sources of imports).

Both Felman and Eramet import from nonsubject producers to which they are related. Felman imports product from Georgia, and Eramet imports product from Norway. Norwegian product is typically low carbon silicomanganese, which is typically more expensive than normal grade B.

U.S. Demand

Based on available information, it is likely that a change in the price level of silicomanganese will result in a relatively small change in the quantity of silicomanganese demanded. The main contributing factors to the low responsiveness of demand to price are the small cost share of silicomanganese in steel, and the limited substitutes available.

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[84] Felman Trading's website, http://felmantrading.com/en/producers/. It also reported "exclusive contracts for ferroalloy deliveries" in the Americas for U.S. producers Felman and CC Metals and Alloys, SC Feral of Romania, and Georgina Manganese of Georgia. Felman, however, reported that "Felman Trading does not have exclusive marketing agreements with the Ukrainian producers." Hearing transcript, p. 97 (Salonen).

[85] Ukraine interested parties state that they have no direct contractual relations or affiliation with Felman. Posthearing brief, answers to questions, p. 3. Felman's posthearing brief, app. Williamson 2 pp. Williamson 3-5. Compare Vale posthearing brief at 13-14, Q&As at 50-53.

[86] Vale's posthearing brief, exhibit 17, Mt. Hawley Insurance v. Felman, No. 3:09-00481, Slip Op. at 15 (S.D.W.V. Aug. 19, 2010).

[87] Ibid. p. 21. "The corporate formalities normally associated with an independent corporation are utterly lacking with respect to Felman. It does not have a functioning board of directors. Chief Executive Officer Pragnell was 'in charge' of Felman Production in name only; the exhibits demonstrate that he was not authorized to decide whether he could increase employment or to sell scrap metal which was taking up needed space. He apparently did not participate in negotiating the agency agreement with Glencore or in setting the price for the plant's production. He was not permitted to communicate directly with Mr. Bogolyubov, but only through Ms. Vatutina and Mr. Maximenko. The Privat representatives were responsible for making decisions on the distribution of money and expenditures."

[88] Vale's posthearing brief, exhibit 17, Felman Productions v. Industrial Risk Insures, No. 3:09-0481, 2011 WL 4547012 at 9 (S.D.W.V. Sept. 29, 2011).

[89] Felman's posthearing brief, app. Williamson 2, p. Williamson-4, fn. 6.

[90] Hearing transcript, pp. 140-141 (Prusa).

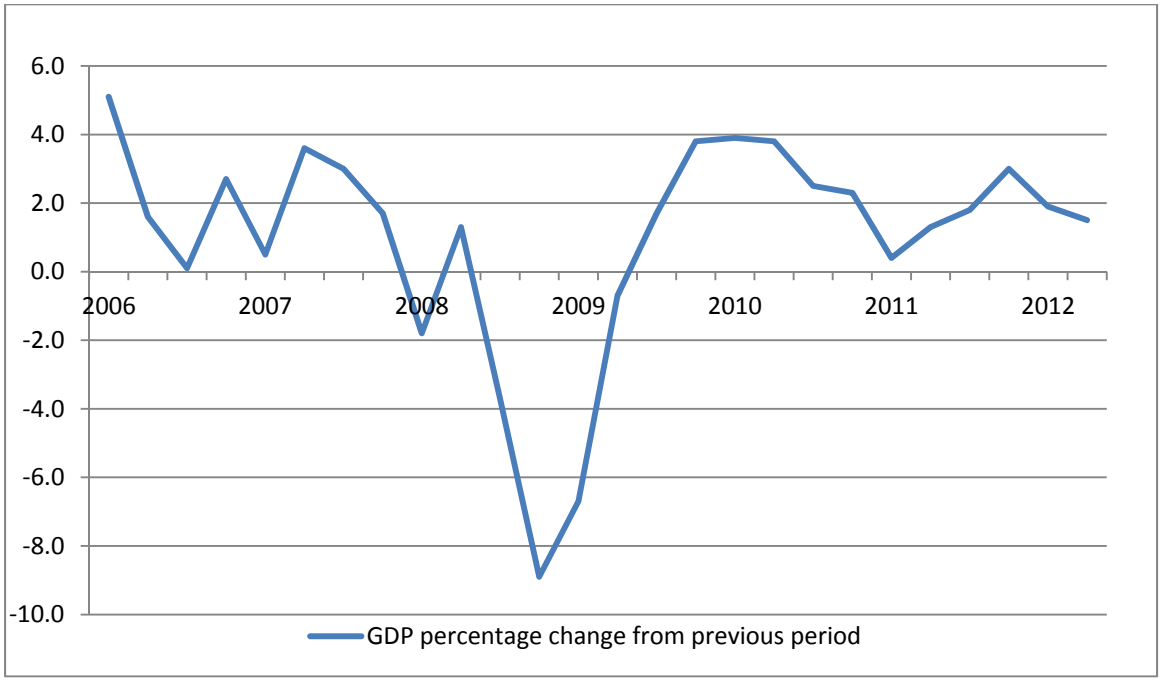
End Uses

Silicomanganese is mainly used in steel production.[91] It is typically used by electric arc furnaces producers; 11 of 12 responding purchasers produce steel using electric arc furnaces. *** reported being an integrated producer. Both U.S. producers, all 9 responding importers, all 4 responding foreign producers, and 10 of 12 responding purchasers reported no changes in end uses since 2006 and none of these firms anticipated any changes in end uses. The two purchasers reporting changes in end uses included *** which reported increased use of silicomanganese at the expense of ferromanganese and ferrosilicon and *** which reported increased production of steel products requiring higher quantities of manganese.

Business Cycle

Although demand for silicomanganese is driven primarily by steel production, subsequent downstream demand reflects overall economic activity. As figure II-1 shows, quarterly GDP growth fell significantly during 2008 and 2009, but rebounded thereafter, and has since been between just above 0 and 4 percent. Firms also indicated that demand for silicomanganese generally tracks overall economic conditions; real GDP increased by 2.6 percent between 2006 and 2011.[92]

Figure II-1
Percentage change in real GDP from previous quarter, first quarter 2006- second quarter 2012



Source: Department of Commerce, Bureau of Economic Analysis, http://www.bea.gov/national/index.htm, retrieved July 27, 2012.

Both U.S. producers, 6 of 10 importers and 3 of 11 responding purchasers reported that demand for silicomanganese is subject to business cycles or distinctive conditions of competition. Distinctive

[91] One foreign producer reported end uses other than steel products including the "manufacturing of refined manganese alloys in the metallurgical industries."

[92] BEA reports that the value of real GDP (in 2005 dollars) increased from $12,624 billion in 2006 to $13,299 billion in 2011. http://www.bea.gov/national/index.htm retrieved July 27, 1012.

characteristics for silicomanganese demand reflected its role in steel making, including: antidumping measures affect the amount and type of steel produced in the United States; silicomanganese is mainly used to produce long products for construction; summer construction causes seasonal demand; competition between independent steel producers (which typically use silicomanganese) and integrated steel producers (which typically do not); and exchange rates and demand outside the U.S. market affect the level of steel imports. Both U.S. producers, six importers, and two of four responding purchasers reported changes in conditions of competition since 2006, including: growing presence of Felman which has reduced the need to purchase imports; increased imports from countries not covered by the antidumping duties; available production from Georgia; increased imports as the European crisis reduced demand in Europe; and changes in steel demand including increased demand for infrastructure and in the auto industry**.**

Apparent Consumption

Apparent U.S. consumption of silicomanganese fluctuated, with an overall decline during the 6-year period. Apparent consumption increased from *** short tons in 2006 to *** short tons in 2007 and then fell to *** short tons in 2009 before increasing to *** short tons in 2011. Overall apparent U.S. consumption in 2011 was *** percent lower than in 2006. Apparent consumption increased between interim 2011 and 2012.

Demand Perceptions

Most firms reported that U.S. demand fluctuated between 2006 and 2011 (table II-4), indicating that demand fluctuated with the economy or with demand for steel.[93] Firms attributed decreased demand to reduced demand for long products.[94] Increased demand was attributed to the depreciation of the U.S. dollar. Domestic interested parties stated that the U.S. construction industry remains depressed, operating at only 60 to 65 percent capacity utilization.[95]

Table II-4
Silicomanganese: Reported actual and anticipated changes in demand in the United States

Supplier	Number reporting actual changes in U.S. demand since 2006			
	Increased	No change	Decreased	Fluctuated
U.S. producers	***	***	***	***
Importers	2	2	2	4
Purchasers	1	1	0	8
Foreign producers	0	2	1	0
	Number reporting changes in demand for purchasers' products since 2006			
Purchasers	5	1	0	7

Table continued next page.

[93] ***.

[94] Long products include bars, rods, wires, structural shapes, rails, and tubes. http://www.britannica.com/EBchecked/topic/564627/steel/81366/Flat-products#toc81367 retrieved August 9, 2012.

[95] Hearing transcript, p. 19 (Burdette).

Table II-4--*Continued*
Silicomanganese: Reported actual and anticipated changes in demand in the United States

Supplier	Number anticipating changes in future U.S. demand			
	Increase	No change	Decrease	Fluctuate
U.S. producers	***	***	***	***
Importers	3	2	0	5
Purchasers	1	5	0	3
Foreign producers	0	5	0	0

Note.—Some, firms reported both U.S. demand had fluctuated and decreased and that they expected demand to fluctuate and increase.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked how demand for their products had changed since 2006 and if this change had affected their demand for silicomanganese. Seven firms reported that demand had fluctuated; five reported that it had increased, and one reported that it was unchanged. All firms reporting changes in demand for their products also reported a change in their silicomanganese consumption, with most responding that their silicomanganese demand reflected steel demand. Two purchasers reported changing their use of silicomanganese since 2006; one reported increased use of silicomanganese at the expense of ferromanganese and ferrosilicon, and one reported that it had changed the grades of steel it produced to those that required more manganese. No purchasers anticipated any changes in use of silicomanganese.

Firms were asked how demand had changed outside the U.S. market and what changes in demand they anticipated (table II-5). The most common response was that demand had increased mainly due to increased steel demand, particularly in developing countries for use in infrastructure and construction. Fluctuating demand was also frequently reported due to fluctuations in steel demand and overall economic activity. Most purchasers reported that demand outside the United States fluctuated for the same reasons that U.S. demand changed; however, two reported that demand increased with increased economic growth in China, India, and South America.

Table II-5
Silicomanganese: Reported actual and anticipated changes in demand outside of the United States

Supplier	Number reporting actual changes in demand outside the United States since 2006			
	Increased	No change	Decreased	Fluctuated
U.S. producers	***	***	***	***
U.S. importers	6	1	0	2
U.S. purchasers	2	0	0	5
Foreign producers -- home market	2	0	1	2
Foreign producers -- other markets	3	0	0	2

Table continued next page.

Table II-5 --*Continued*
Silicomanganese: Reported actual and anticipated changes in demand outside of the United States

Supplier	Number anticipating changes in future demand outside the United States			
	Increase	No change	Decrease	Fluctuate
U.S. producers	***	***	***	***
U.S. importers	6	1	0	2
U.S. purchasers	2	1	0	2
Foreign producers -- home market	2	1	0	2
Foreign producers -- other markets	2	1	0	2

Note.--Some, firms reported demand outside the United States had both fluctuated and increased and that they expected demand to fluctuate and increase.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers were asked about changes in their purchases of silicomanganese from U.S., subject, and nonsubject suppliers since 2006. Five purchasers reported fluctuations in their purchases of U.S. product, citing: reduction in demand for steel; U.S. product was not competitive; and price changes. One firm reported that its purchases of U.S. product had both decreased and fluctuated, and that its consumption of nonsubject product had both increased and fluctuated because of the economic downturn, production difficulties, and risk aversion. Two purchasers provided explanations for increased purchases of U.S. product: one firm reported that it began to purchase silicomanganese from U.S. sources, and one firm reported that it ***. Four purchasers reported reasons for fluctuating purchases from nonsubject countries including: changed suppliers due to price and terms; initiating purchases from U.S. sources; changes in steel production; and price changes.

Substitute products

Both U.S. producers, six of nine importers, and seven of nine purchasers reported that high-carbon ferromanganese and ferrosilicon were substitutes for silicomanganese in steel production.[96] ***, four of seven responding importers, two of seven responding purchasers, and one foreign producer reported that the price of the substitutes affects the price of silicomanganese. Firms also reported that not every steel mill could use these substitutes, that these substitutes were more expensive, and that plants gradually shift between use of silicomanganese and substitutes based on price. No firms anticipated changes in substitutes.

Cost share

U.S. producers, importers, and purchasers were asked to estimate the cost of silicomanganese as a share of the cost of steel from integrated mills and steel from electric arc furnaces. U.S. producers reported that silicomanganese represented *** percent of the cost of steel production in both integrated mills and electric arc furnaces.[97] The 10 responding purchasers reported that silicomanganese represented up to 3 percent of their relevant input costs.

[96] No firm reported other substitutes. U.S. producers report that the use of silicomanganese is more efficient in steel production than the use of ferromanganese and ferrosilicon. Hearing transcript, p. 50 (Mikhyeyev).

[97] *** also reported that silicomanganese represented 1 percent of the cost for "foundries." ***.

SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported silicomanganese depends upon such factors as relative prices, quality (levels of silicon and manganese, the levels of other chemicals, consistency, lump size), and conditions of sale (*e.g.*, lead times, payment terms, and discounts). Based on available data, staff believes that there is moderate-to-high degree of substitutability between domestically produced silicomanganese and silicomanganese imported from subject sources.

Nine of 12 responding purchasers reported that they had changed suppliers since 2006. Eight purchasers provided details about their changes. Four reported changing suppliers two times.[98] The four remaining reported more frequent changes in suppliers.[99]

Knowledge of Country Sources

Ten purchasers reported that they had marketing/pricing knowledge of domestic silicomanganese. Two reported knowledge of product from Ukrainian producers and one each reported knowledge of product from Brazil and China. Seven reported knowledge of silicomanganese from nonsubject countries including South Africa (5 firms), Georgia (4), Mexico (4), Norway (3), Australia (2), India (1), Macedonia (1), Romania (1), and Spain (1).

As shown in the following tabulation, most purchasers at least sometimes purchase silicomanganese based on the producer, but most purchasers reported never purchasing based on country of origin. All six responding purchasers reported that their customers never purchase steel based on the producers or the country of origin of the silicomanganese.

Purchaser/customer decision	Always	Usually	Sometimes	Never
Purchaser makes decision based on producer	3	2	5	2
Purchaser makes decision based on country	1	0	3	8
Purchaser's customer makes decision based on producer	0	0	0	6
Purchaser's customer makes decision based on country	0	0	0	6

Factors Affecting Purchasing Decisions

Major factors in purchasing

Purchasers were asked to list the top three factors that they consider when choosing a supplier of silicomanganese (table II-6). Factors cited by more than one firm were price (11 firms), availability (9 firms), quality (6 firms), and chemistry (3 firms). Price was reported most frequently as both the first and second most important factor. Availability was the most frequently cited third most important factor.

---

[98] *** reported dropping *** because it stopped producing and adding *** because it acquired an existing facility; one purchaser reported adding and dropping suppliers due to price; one purchaser added two suppliers, ***, as contracts were rebid; and one purchaser dropped *** for *** and added *** for *** and reported that it did not change suppliers frequently.

[99] *** reported that changes in its suppliers were "too numerous to list;" one purchaser reported that it had added or dropped eight suppliers over the period and that most changes were based on price and availability; one purchaser reported six suppliers and reported changing suppliers two to three times a year; and one reported making all of its purchases based on price and credit terms, but did not list the suppliers that were added or dropped.

Table II-6
Silicomanganese: Ranking of factors used in purchasing decisions as reported by U.S. purchasers

Factor	Number of firms reporting			
	First	Second	Third	Total
Price	5	4	2	11
Availability[1]	1	3	5	9
Quality	2	3	1	6
Chemistry[2]	2	1	0	3
Other[3]	2	0	2	4

[1] Availability includes "supply," and "availability of material and reliability."
[2] Chemistry includes "low carbon."
[3] Other includes: *** and "security of production" for the first factor, and "just in time delivery," "lump size," and "credit terms" for the third factor.

Note.—One purchaser only reported one factor, ***.

Source: Compiled from data submitted in response to Commission questionnaires.

When asked if they purchased silicomanganese from one source although a comparable product was available at a lower price from another source, half of responding purchasers reported that they did not. The six remaining purchasers reported that they had for various reasons including: spreading supply risk by using multiple suppliers; credit terms; more expensive product may be less expensive per unit of manganese; quality; logistics; reliability; availability; and ***. Two of the 10 responding purchasers reported that certain types of silicomanganese were only available from a single source: one reported that high grade/high phosphorus material (72% manganese) is primarily available from Georgia and the other reported that low phosphorus material was only available from South Africa.

Importance of specific purchase factors

Purchasers were asked to rate the importance of 19 factors in their purchasing decisions (table II-7). Factors rated as very important by more than half of purchasers were delivery time (11 firms), availability (10), lump size (10), price (10), reliability of supply (10), delivery terms (9), product consistency (9), quality meets industry standards (9), and discounts offered (7). In contrast, five or more of the responding purchasers identified the following factors as not important: the availability of grade B (8); availability of other grades (6); availability of low carbon (5); quality exceeds industry standards (5); and product range (5).

Table II-7
Silicomanganese: Importance of purchase factors, as reported by U.S. purchasers

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Availability	10	2	0
Availability of grade B	2	2	8
Availability of low carbon	2	5	5
Availability of other grades	2	4	6
Delivery terms	9	2	1
Delivery time	11	0	1

Table continued on next page.

Table II-7 --*Continued*
Silicomanganese: Importance of purchase factors, as reported by U.S. purchasers

Factor	Number of firms reporting		
	Very important	Somewhat important	Not important
Discounts offered	7	4	1
Extension of credit	3	5	4
Lump size	10	2	0
Minimum quantity requirements	3	5	4
Packaging	6	5	1
Product consistency	9	3	0
Quality meets industry standards	9	3	0
Quality exceeds industry standards	1	6	5
Price	10	1	0
Product range	0	7	5
Reliability of supply	10	2	0
Technical support/service	1	10	1
U.S. transportation costs	6	3	3

Note.—Not all purchasers responded for all factors.

Source: Compiled from data submitted in response to Commission questionnaires.

Factors determining quality

Most purchasers reported that the chemical composition of silicomanganese was an important determinant of quality, including manganese, silicon, carbon, phosphorus, sulfur, and boron content. In addition, some purchasers reported that lump size, minimal fines, and meeting specifications were important.

Purchasers were asked if product from subject and nonsubject countries always, usually, sometimes, rarely, or never met minimum quality specifications. Ten of 11 responding purchasers reported that U.S. product always or usually met minimum quality specifications. Similarly all three responding for Brazil and Ukraine, all eight responding for South Africa, all eight for Georgia, and all six for Australia reported that product always or usually met minimum quality standards.[100] In contrast one of the two responding purchasers reported that Chinese product only sometimes meets minimum standards.[101]

Supplier certification

Five of 12 responding purchasers reported that all of the silicomanganese they purchase must be certified or prequalified.[102] Purchasers reported qualifying a producer by the following: matching specifications; quality; price; ISO certification; evidence of quality system; location of production; chemistry; ability to meet global demand; energy sources; logistics; investment plans; capacity; cost

[100] All responding purchasers reported product from other nonsubject countries including Mexico, Norway, India, South Korea, and Macedonia either always or usually met minimum quality standards.

[101] The other purchaser reported that Chinese product always met minimum standards.

[102] This includes one purchaser that reported that some product must be prequalified but did not report the share that needed to be prequalified. No purchasers required ASTM qualification.

drivers; and delivery reliability. Six firms reported that the time required to qualify silicomanganese ranged from 1 to 120 days, four of which reported qualification times of less than 30 days.

No purchaser reported that any supplier, domestic or foreign, had failed in its attempt to qualify its product or had lost its approved status since 2006.

Changes in purchasing patterns

Purchasers were asked about changes in their purchasing patterns from different sources since 2006 (table II-8). None of the purchasers reported purchasing silicomanganese from any of the subject countries in this question.[103] Purchasers reporting that their demand for silicomanganese fluctuated cited changes in the economy, changes in steel demand, and changes in steel grades demanded (with some grades having higher manganese content).

Table II-8
Silicomanganese: Change in purchases from different country sources, as reported by purchasers

Source of purchase	Increase	Constant	Decrease	Fluctuate	Did not purchase
U.S.	4	0	1	6	1
Nonsubject	1	2	0	9	0

Note.—None of the nine responding purchasers reported purchasing subject product during the period.

Source: Compiled from data submitted in response to Commission questionnaires.

Importance of Purchasing Domestic Product

Most purchasers (9 of 11) reported that purchasing U.S.-produced product was not an important factor in their purchasing decisions. One purchaser preferred domestic product for security of supply, one sought domestic sources for 66 percent of its purchases, and one ***.

Comparisons of Domestic Products, Subject Imports, and Nonsubject Imports

Purchasers were asked a number of questions comparing silicomanganese produced in the United States, subject countries, and nonsubject countries. First purchasers were asked to compare U.S. product with subject product based on the same 19 factors (table II-9) for which they were asked to rate the importance. Only three purchasers compared U.S. and subject product. In comparing domestic product with that from Brazil, China, and Ukraine, answers were identical for the three countries (with the exception of comparisons on “price”), and the majority of purchasers reported that they were comparable for all factors.

[103] ***.

Table II-9
Silicomanganese: U.S. purchasers' comparisons of product by subject country source

Factor	U.S. vs. Brazil			U.S. vs. China			U.S. vs. Ukraine		
	S	C	I	S	C	I	S	C	I
	Number of firms responding								
Availability	1	2	0	1	2	0	1	2	0
Availability of grade B	1	2	0	1	2	0	1	2	0
Availability of low carbon	1	2	0	1	2	0	1	2	0
Availability of other grades	1	2	0	1	2	0	1	2	0
Delivery terms	1	2	0	1	2	0	1	2	0
Delivery time	1	2	0	1	2	0	1	2	0
Discounts offered	0	3	0	0	3	0	0	3	0
Extension of credit	0	3	0	0	3	0	0	3	0
Lump size	0	3	0	0	3	0	0	3	0
Minimum quantity requirements	0	3	0	0	3	0	0	3	0
Packaging	0	3	0	0	3	0	0	3	0
Product consistency	1	2	0	1	2	0	1	2	0
Quality meets industry standards	1	2	0	1	2	0	1	2	0
Quality exceeds industry standards	1	2	0	1	2	0	1	2	0
Price	0	3	0	0	2	1	0	3	0
Product range	0	3	0	0	3	0	0	3	0
Reliability of supply	1	2	0	1	2	0	1	2	0
Technical support/service	1	2	0	1	2	0	1	2	0
U.S. transportation costs	0	3	0	0	3	0	0	3	0

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.

Source: Compiled from data submitted in response to Commission questionnaires.

Purchasers compared U.S. and nonsubject product based on 15 factors (table II-10).[104] The majority of responding purchasers reporting that U.S. and nonsubject product was comparable for all factors.[105] The only factors for which more than one purchaser reported something other than comparable were that U.S. product was superior on availability, delivery times, and technical support/services.

[104] The factors specific to this case were not included in this question by mistake.

[105] No purchasers compared product from subject countries with product from other subject countries or with nonsubject countries.

Table II-10
Silicomanganese: U.S. purchasers' comparisons of product by nonsubject country source

Factor	U.S. vs. Nonsubject		
	Superior	Comparable	Inferior
	Number of firms responding		
Availability	2	4	1
Delivery terms	0	7	0
Delivery time	3	4	0
Discounts offered	0	7	0
Extension of credit	0	7	0
Minimum quantity requirements	0	7	0
Packaging	0	7	0
Product consistency	0	4	0
Quality meets industry standards	0	7	0
Quality exceeds industry standards	0	7	0
Price	0	3	1
Product range	0	4	0
Reliability of supply	0	7	0
Technical support/service	2	5	0
U.S. transportation costs	1	6	0

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior. Not all firms compared product for all factors.

Source: Compiled from data submitted in response to Commission questionnaires.

Producers, importers, and purchasers were asked whether the products can "always," "frequently," "sometimes," or "never" be used interchangeably, and whether there are differences other than price among sources (tables II-11 and II-12). Most firms reported that product from all country pairs was always or frequently interchangeable. Interchangeability was reported to be limited by the chemical composition of the material, and one purchaser reported that U.S. producers did not produce low carbon product. All producers and purchasers reported that there were only sometimes or never differences other than price for product from all country pairs. In contrast, importers reported greater differences other than price. Only one of the eight responding importers reported that there were never differences other than price for U.S product compared to subject product; three reported that there were always differences other than price between U.S. product and product from Brazil and China; and two reported there were always differences other than price between U.S. product and product from Ukraine. Six of the nine responding importers (three each) reported that there were never or that there were sometimes differences other than price between U.S. and nonsubject product. All but one importer reported that there were at least sometimes differences other than price between product from Brazil and China, and Brazil and Ukraine, while all but two reported that there were at least sometimes differences other than price between product from China and Ukraine and between product from nonsubject countries and subject countries. Differences other than price reported by the importers, however, tended to be related to costs, including costs of long haul deliveries, differences in ore and energy costs, and duties preventing the entry of subject product.

Table II-11
Silicomanganese: Perceived interchangeability, by country pairs

Country pair	Number of firms											
	U.S. producers				U.S. importers				Purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Subject												
U.S. vs. Brazil	***	***	***	***	6	3	0	0	2	2	0	1
U.S. vs. China	***	***	***	***	6	3	0	0	2	2	0	0
U.S. vs. Ukraine	***	***	***	***	4	3	2	0	2	2	0	0
U.S. vs. Nonsubject	***	***	***	***	6	3	1	0	5	4	0	0
Subject vs. Subject												
Brazil vs. China	***	***	***	***	5	2	1	0	2	2	0	0
Brazil vs. Ukraine	***	***	***	***	4	3	1	0	2	2	0	0
China vs. Ukraine	***	***	***	***	4	3	1	0	2	2	0	0
Subject vs. Nonsubject												
Brazil vs. Nonsubject	***	***	***	***	5	3	0	0	3	2	0	0
China vs. Nonsubject	***	***	***	***	5	3	0	0	3	2	0	0
Ukraine vs. Nonsubject	***	***	***	***	4	3	1	0	3	2	0	0

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Table II-12
Silicomanganese: Perceived differences other than price, by country pairs

Country pair	Number of firms											
	U.S. producers				U.S. importers				Purchasers			
	A	F	S	N	A	F	S	N	A	F	S	N
U.S. vs. Subject												
U.S. vs. Brazil	***	***	***	***	3	1	3	1	0	0	2	2
U.S. vs. China	***	***	***	***	3	1	3	1	0	0	2	1
U.S. vs. Ukraine	***	***	***	***	2	1	4	1	0	0	2	2
U.S. vs. Nonsubject	***	***	***	***	2	1	3	3	0	0	6	2
Subject vs. Subject												
Brazil vs. China	***	***	***	***	2	1	4	1	0	0	2	1
Brazil vs. Ukraine	***	***	***	***	2	1	4	1	0	0	2	2
China vs. Ukraine	***	***	***	***	1	1	4	2	0	0	2	3
Subject vs. Nonsubject												
Brazil vs. Nonsubject	***	***	***	***	2	1	3	2	0	0	2	2
China vs. Nonsubject	***	***	***	***	2	1	3	2	0	0	2	2
Ukraine vs. Nonsubject	***	***	***	***	1	1	4	2	0	0	2	2

Note.--A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

ELASTICITY ESTIMATES

This section discusses elasticity estimates. No parties commented on these estimates in their prehearing or posthearing briefs.

U.S. Supply Elasticity

The domestic supply elasticity[106] for silicomanganese measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of silicomanganese. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced silicomanganese. Analysis of these factors earlier indicates that the U.S. industry is likely to be able to increase or decrease shipments to the U.S. market; an estimate in the range of 5 to 7 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for silicomanganese measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of silicomanganese. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the silicomanganese in the production of any downstream products. Based on the available information, the aggregate demand for silicomanganese is likely to be inelastic; a range of -0.4 to -0.7 is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products. Product differentiation depends upon such factors as quality (e.g., chemistry, appearance) and conditions of sale (e.g., availability, sales terms/ discounts/ promotions). Based on available information, the elasticity of substitution between U.S.-produced silicomanganese and imported silicomanganese is likely to be in the range of 3 to 6.

[106] A supply function is not defined in the case of a non-competitive market.

PART III: CONDITION OF U.S. INDUSTRY

Table III-1 summarizes important events that have taken place in the U.S. industry in the past 10 years.

Table III-1
Silicomanganese: Events in the U.S. industry, 2000-2011

Period	Company	Event
February 2002	Highlanders	Began sporadic silicomanganese operations.
Spring of 2005	Globe Metallurgical	Began and closed silicomanganese operations.
2005	Highlanders	Bankruptcy
January 2006	Felman	Purchased Highlanders' assets
September 2006	Felman	Began production of silicomanganese

Source: *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review)*, USITC Pub. 3879, August 2006.

CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

Table III-2 and figure III-1 present information on U.S. producers' capacity, production, and capacity utilization data for silicomanganese.

Table III-2
Silicomanganese: Capacity, production, and capacity utilization, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Figure III-1
Silicomanganese: Capacity, production, and capacity utilization, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Source: Table III-2.

Capacity

Between 2006 and 2011, overall capacity dedicated to silicomanganese in the United States more than doubled increasing by *** short tons (*** percent). Felman's new U.S. silicomanganese operations accounted for *** of this increase as *** increased capacity by *** short tons between 2006 and 2011; ***. While over the period total capacity dedicated to silicomanganese increased, there were noticeable fluctuations in the industry's capacity in individual years over the period. For example, *** decreased capacity dedicated to silicomanganese between 2007 and 2008, but then *** increased capacity between

2008 and 2009. From 2009 forward, however, overall capacity in the United States declined ***.[107] Eramet indicated that *** and that ***. Felman indicated that it ***.

Production and Product Shifting

Eramet operates *** electric-arc furnaces that were used to produce silicomanganese over the period. Eramet indicated that approximately *** total furnace hours of these *** furnaces is typically dedicated to silicomanganese production. The other product that Eramet produced on its silicomanganse furnaces over the period was ferromanganese. According to Eramet, it takes approximately *** to switch production from silicomanganese to ferromanganese. Given the costs associated with the re-tooling of the furnaces between silicomanganese and ferromanganese production, Eramet produced *** of its silicomanganese on *** over the period.[108] The *** furnace was used *** in the production of ferromanganese, but was converted to silicomanganese for ***. *** in the latter part of the period.[109]

Felman has *** electric-arc furnaces that were used to produce silicomanganese over the period. Felman indicated that *** of its furnaces *** to the production of silicomanganese.[110]

Table III-3 presents information on U.S. producers' total furnace capacity and production of silicomanganese and ferromanganese over the period.

Table III-3
Silicomanganese and ferromanganese: Overall furnace capacity, production, and capacity utilization, 2006-2011

* * * * *

As table III-2 indicates, U.S. producers as a whole increased U.S. production of silicomanganese each year from 2006 to 2011. Figure III-2 shows, however, that Felman accounts for *** of these increases, while Eramet *** of the period under review.

Figure III-2
Silicomanganese: Change in production by producer, 2006 to 2011

* * * * *

Source: Table III-4.

U.S. PRODUCERS' SHIPMENTS

Table III-4 and figure III-3 present information on U.S. producers' shipments over the period under review. The vast majority of U.S. producers' shipments went to the U.S. market, with some production being exported. Felman accounted for *** of the increase in U.S. producers' shipments over

[107] The overall decline in capacity in the United States between 2009 and the end of the period of review, was related to ***. ***.

[108] This furnace was used *** to produce silicomanganese throughout the period, but was converted to the production of ferromanganese for *** days in 2010, *** days in 2011, and *** days in the January to March 2012 period.

[109] Eramet's posthearing brief, Responses of Eramet Marietta, Inc. to Commission Questions, p. 49.

[110] Felman indicated that ***

the period *** from 2006 to 2011. Both producers ***, but regardless of these export operations U.S. shipments were the largest type of shipment for both U.S. producers. For Felman, ***[111]

Table III-4
Silicomanganese: U.S. producers' shipments, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Figure III-3
Silicomanganese: U.S. shipments by producer, 2006 to 2011, January to March 2011, and January to March 2012

* * * * *

Source: Table III-4.

U.S. PRODUCERS' INVENTORIES

Table III-5 presents information on U.S. producers' end-of-period inventories and the ratio of these inventories to U.S. producers' production, U.S. shipments, and total shipments over the period examined.

Table III-5
Silicomanganese: U.S. producers' inventories, 2006-2011, January to March 2011, and January to March 2012

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

*** U.S. producer, ***, reported importing silicomanganese from *** over the period under review.[112] [113] *** U.S. producers reported importing silicomanganese from ***.[114] *** U.S. producers reported purchasing silicomanganese from ***. Tables III-6 and III-7 present data on individual U.S. producers' U.S. production and U.S imports of silicomanganese from all sources over the period examined.

Table III-6
Silicomanganese: Eramet's U.S. production, imports, and import ratios to U.S. production, 2006-2011, January to March 2011, and January to March 2012

* * * * *

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[111] ***.
[112] For the purpose of this analysis, ***.
[113] ***.
[114] ***.

Table III-7
Silicomanganese: Felman Productions' U.S. production and Felman Trading's imports, and import ratios to U.S. production, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Eramet reported the reason for its importation of silicomanganese as follows: ***[115]

Felman reported the reason for its importation of silicomanganese as follows: ***.[116]

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-8 presents information on U.S. producers' employment-related data during the period examined. *** U.S. producers *** increased employment in their U.S. silicomanganese operations over the period review. By 2011, employment in silicomanganese was nearly *** times larger than in 2006 largely reflecting ***.

Table III-8
Silicomanganese: U.S. producers' employment-related data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

FINANCIAL EXPERIENCE OF U.S. PRODUCERS

Background

Two U.S. producers of silicomanganese provided useable financial data.[117] Neither producer reported internal consumption or transfers to related firms of silicomanganese.[118]

The company records underlying the financial data of Felman were reviewed at Commission offices. Felman submitted revised financial data during the office review of its financial data. The office review adjustments have been incorporated in this final report. The financial data of Felman were changed to ***. The adjustments for Felman after the office review generally resulted in ***.[119]

Operations on Silicomanganese

The results of the responding U.S. producers' silicomanganese operations are presented in table III-9. While net sales quantity and value generally increased over the period examined, operating income (loss) fluctuated significantly during the same period, especially an operating income of $*** in 2008

[115] Eramet's response to the Commission's U.S. importers' questionnaire, question II-6.
[116] Felman Trading's response to the Commission's U.S. importers' questionnaire, question II-6.
[117] Both producers, Eramet and Felman, have their fiscal years ending on December 31.
[118] ***.
[119] ***. E-mails from ***, September 1, 4, 5, 6, 7, 10, 11, and 12, 2012.

changed to an operating loss of $*** in 2009. The domestic producers (data combined) incurred operating losses in 2006, 2009, and 2010 and January-March ("interim") 2011 and interim 2012, while a small amount of operating income was reported in 2011. From 2010 to 2011, despite a decrease in average unit value ("AUV") ($*** per short ton), a substantial decrease in per-unit total costs ($*** per short ton), i.e., cost of goods sold ("COGS") and selling, general, and administrative ("SG&A") expenses combined, resulted in a small operating income in 2011 (from an operating loss of $*** per short ton in 2010 to an operating income of $*** per short ton in 2011). The operating loss margin of a *** percent in 2010 changed to a *** percent in 2011. In 2011, all three financial measures improved, both net sales quantity and value increased while an operating loss of over $*** in 2010 decreased noticeably to an operating income, due mainly to a substantial decrease in per-short ton total costs (from $***), while per-short ton selling price decreased slightly (from $***). The largest change in the operating income occurred between 2008 and 2009, an operating income of $*** in 2008 changed to an operating loss of $*** in 2009, due primarily to a substantial decrease of AUV in 2009 (a 45 percent decrease in AUV from $*** per short ton in 2008 to $*** per short ton in 2009, in spite of somewhat lower total cost per short ton in 2009. The ratio of the domestic industry's operating loss to net sales in interim 2012 was a *** percent, while its operating loss ratio in interim 2011 was a *** percent. Per-short ton net sales values decreased in interim 2012 (by $***) from interim 2011, while per-unit total costs also decreased by $***, resulting in an operating loss of $*** per short ton in interim 2012 compared to an operating loss of $*** per short ton in interim 2011, a deterioration of $*** per short ton in terms of profitability.

Table III-9
Silicomanganese: Results of operations of U.S. producers, fiscal years 2006-11, January-March 2011, and January-March 2012

* * * * *

Selected company-by-company data are presented in table III-10. Total net sales (quantities and values), per-unit values (sales, COGS, SG&A, and operating income), operating income, and the ratio of operating income (loss) to net sales are presented in this table on a firm-by-firm basis. ***.[120] Both producers experienced ***. ***. Both producers reported ***. ***. ***.[121] ***.[122] ***.[123]

[120] E-mail from ***, July 26, 2012.
[121] E-mail from ***, July 26, 2012.
[122] E-mail from ***, July 23, 2012.
[123] According to GAAP (Statement of Financial Accounting Standards (SFAS) No. 144, "Accounting for the impairment or disposal of long-lived assets"), restructuring charges and impairment losses on long-lived assets to be held and used shall be reported as components of income from continuing operations, with appropriate footnote disclosure. These charges and losses could have many components, such as severance-related costs and write-down of certain fixed assets and inventories which are usually recorded in cost of sales and/or SG&A, or as separate items above the operating income line. The results of operations of a component that has been disposed of or is classified as held for sale may be reported in discontinued operations if the operations of the component have been eliminated from the ongoing operations of the entity as a result of the disposal and the entity will have no significant continuing involvement in the operations of the component after the disposal transaction (SFAS No. 144, para. 42). Furthermore, SFAS No. 146, "Accounting for costs associated with exit or disposal activities," para. 18 states that costs associated with an exit or disposal activity that does not involve a discontinued operation shall be included in income from continuing operations before income taxes..... Costs associated with an exit or disposal activity that involves a discontinued operation shall be included in the results of discontinued operations.

Table III-10
Silicomanganese: Results of operations of U.S. producers (by firm), fiscal years 2006-11, January-March 2011, and January-March 2012

* * * * *

Selected cost data of the producers on their silicomanganese operations are presented in table III-11. As indicated in this table, producers exhibited somewhat different patterns of change in unit sales value and profitability, especially during the period between 2009 and interim 2012. Per-unit raw material cost fluctuated during the period examined, but it decreased in 2011 from 2010 and between the two interim periods. The per-unit conversion cost (direct labor and factory overhead costs combined) also decreased slightly from 2010 to 2011 and between the two interim periods. Per-unit SG&A expenses remained relatively the same over the period (except an increase in 2010 due to *** as explained above). Per-unit total costs increased substantially in 2008 and 2010 and decreased from 2010 to 2011 and from interim 2011 to interim 2012, due primarily to the changes of raw materials cost per short ton.

Table III-11
Silicomanganese: Average unit costs of U.S. producers, fiscal years 2006-11, January-March 2011, and January-March 2012

* * * * *

A variance analysis showing the effects of prices and volume on the producers' sales of silicomanganese, and of costs and volume on their total cost, is shown in table III-12.[124] The analysis is summarized at the bottom of the table. The variance analysis indicates that the decrease in operating loss of $*** between 2006 and 2011 resulted from the combined positive effect of higher average price ($***) which was partially offset by the negative effects of higher costs/expenses ($***) and increased sales volume ($***).

Table III-12
Silicomanganese: Variance analysis of operations of U.S. producers, between fiscal years 2006-11, January-March 2011, and January-March 2012

* * * * *

Capital Expenditures and Research and Development Expenses

The U.S. producers' capital expenditures and research and development ("R&D") expenses are presented in table III-13. Capital expenditures fluctuated between 2006 and 2011 while they increased

[124] The Commission's variance analysis is calculated in three parts: sales variance, COGS variance, and SG&A expenses variance. Each part consists of a price variance (in the case of the sales variance) or a cost variance (in the case of the COGS and SG&A variances) and a volume variance. The sales or cost variance is calculated as the change in unit price/cost times the new volume, while the volume variance is calculated as the change in volume times the old unit price/cost. Summarized at the bottom of the respective tables, the price variance is from sales, the cost/expense variance is the sum of those items from COGS and SG&A, respectively, and the net volume variance is the sum of the price, COGS, and SG&A volume variance. All things being equal, a stable overall product mix generally enhances the utility of the Commission's variance analysis.

substantially in 2008 and 2010 from the previous years, due mainly to ***, especially in those two years.[125] ***.[126] *** reported R&D expenses and they were small and remained relatively the same throughout the period.

Table III-13
Silicomanganese: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2006-11, January-March 2011, and January-March 2012

* * * * *

Assets and Return on Investment

U.S. producers were requested to provide data on their assets used in the production and sale of silicomanganese during the period for which data were collected to assess their return on investment ("ROI"). Data on the U.S. producers' total net assets and their ROI are presented in table III-14.

Total assets utilized by the U.S. producers in their operations to produce and sell silicomanganese generally increased between 2006 and 2011, due to ***.[127] Since the U.S. producers' operating income (loss) fluctuated considerably between 2006 and 2011, their ROI also changed from a ratio of *** percent in 2006 to a ratio of *** percent in 2011. The trend of ROI over the period was the same as the trend of the operating income margin shown in table III-9.

Table III-14
Silicomanganese: Value of assets and return on investment of U.S. producers, fiscal years 2006-11

* * * * *

[125] Hearing Transcript, p.15 (Willoughby).
[126] E-mail from ***, July 26, 2012.
[127] E-mail from ***, July 26, 2012.

PART IV: U.S. IMPORTS AND FOREIGN INDUSTRIES

The Commission requested information on the operations of U.S. importers accounting for 98 percent of all U.S. imports of silicomanganese based on Customs data used to develop official Commerce import statistics. The Commission received useable questionnaire responses from ten firms accounting for 96 percent of U.S. imports according to the Customs data used to develop official Commerce import statistics.[128] For the purposes of compiling data on apparent U.S. consumption, data from U.S. importers' questionnaire responses were combined with Customs data for the remaining firms in official Commerce import statistics (*i.e.*, the remaining 4 percent) that did not provide data to the Commission for the purpose of these reviews.[129]

U.S. IMPORTS

Over the period examined, South Africa was the largest supplier of imported silicomanganese to the U.S. market. Georgia was the second largest and an increasing supplier of imported silicomanganese in the U.S. market over the period. Table IV-1 and figure IV-1 present information on U.S. imports of silicomanganese over the period examined based on official Commerce statistics.

Table IV-1
Silicomanganese: U.S. imports, 2006-2011, January to March 2011, and January to March 2012

Source	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
	Quantity (*short tons*)							
Brazil	0	0	0	0	0	0	0	0
China[1]	0	38	2	591	38	1	0	0
Ukraine[2]	0	0	0	0	0	0	0	0
Subject imports	0	38	2	591	38	1	0	0
Australia	32,019	40,050	40,211	20,235	34,384	49,382	5,802	3,232
Georgia	54,487	57,928	65,921	22,403	87,318	110,460	47,162	17,329
Norway	85,723	61,392	79,876	16,790	42,209	36,892	8,421	9,391
South Africa	184,711	182,652	168,328	61,076	134,798	157,917	45,614	32,859
All other sources	84,036	114,573	47,841	22,615	28,353	29,161	5,727	10,083
Nonsubject imports	440,976	456,594	402,176	143,119	327,062	383,812	112,726	72,895
Total imports	440,976	456,632	402,178	143,711	327,100	383,813	112,726	72,895

Table continued on next page.

[128] The import data reported by these ten firms equaled 98.2 percent of official import statistics over the 2006 to 2011 period.

[129] The use of U.S. importers' U.S. shipments data for apparent U.S. consumption provides a better picture of the U.S. market for silicomanganese as both inventories and (re)exports of imported silicomanganese were important according to the responding U.S. importers.

Table IV-1--*Continued*
Silicomanganese: U.S. imports, 2006-2011, January to March 2011, and January to March 2012

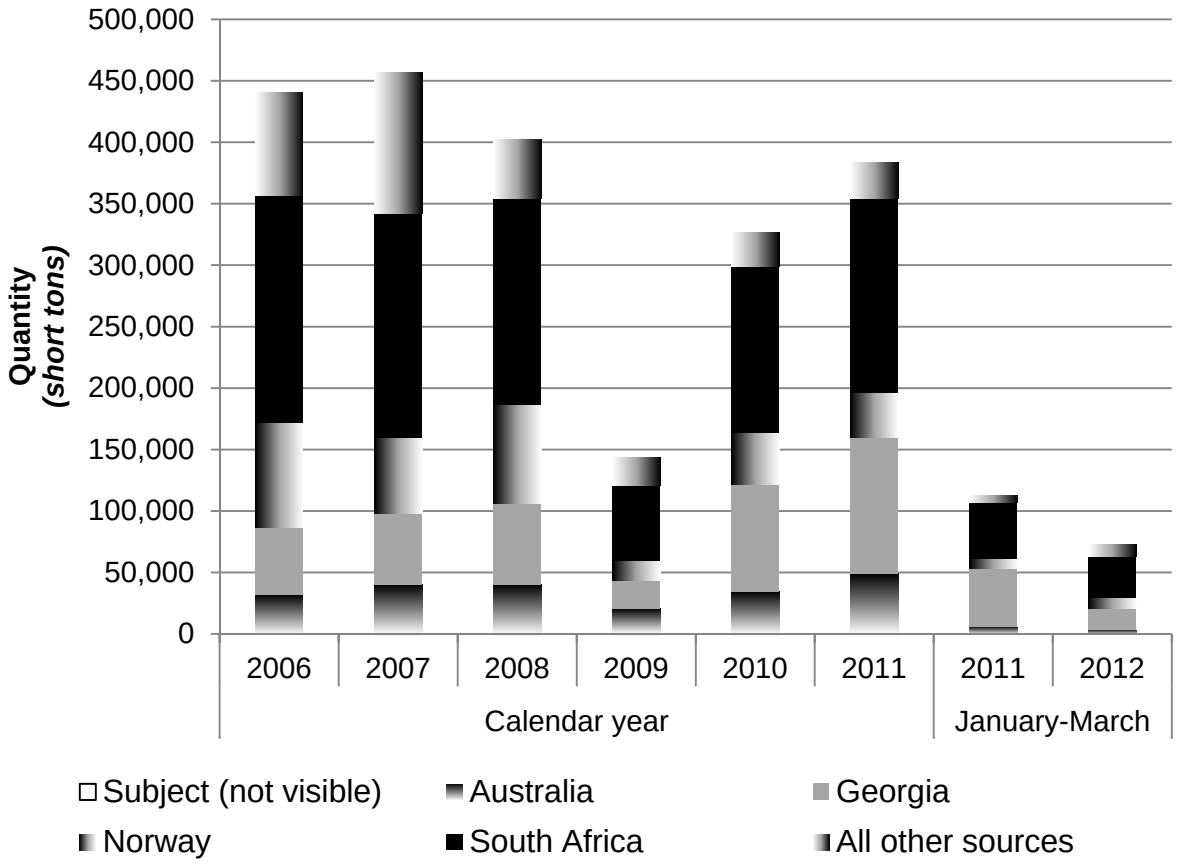
Source	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Customs value (*1,000 dollars*)								
Brazil	0	0	0	0	0	0	0	0
China[1]	0	115	6	937	54	3	0	0
Ukraine[2]	0	0	0	0	0	0	0	0
Subject imports	0	115	6	937	54	3	0	0
Australia	19,363	40,157	68,796	17,244	32,673	45,514	4,985	2,408
Georgia	32,629	68,463	115,754	15,630	98,074	119,730	54,160	13,580
Norway	68,185	72,659	135,605	22,319	61,563	55,280	13,595	13,952
South Africa	114,606	180,803	284,350	60,476	145,305	162,650	46,423	29,909
All other sources	52,978	127,017	77,682	18,674	35,313	33,455	7,626	11,844
Nonsubject imports	287,761	489,099	682,187	134,343	372,929	416,629	126,789	71,692
Total imports	287,761	489,214	682,193	135,280	372,983	416,631	126,789	71,692
Unit value (*dollars per short ton*)								
Brazil	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
China[1]	(3)	$3,032	$2,722	$1,585	$1,411	$1,772	(3)	(3)
Ukraine[2]	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Subject imports	(3)	3,032	2,722	1,585	1,411	1,772	(3)	(3)
Australia	$605	1,003	1,711	852	950	922	$859	$745
Georgia	599	1,182	1,756	698	1,123	1,084	1,148	784
Norway	795	1,184	1,698	1,329	1,459	1,498	1,614	1,486
South Africa	620	990	1,689	990	1,078	1,030	1,018	910
All other sources	630	1,109	1,624	826	1,246	1,147	1,332	1,175
Nonsubject imports	653	1,071	1,696	939	1,140	1,086	1,125	984
Total imports	653	1,071	1,696	941	1,140	1,086	1,125	984

Note.--Questionnaire data on U.S. importers' U.S. shipments of U.S. imports were used to develop apparent U.S. consumption tables in part I of this report. Data on imports from individual nonsubject countries was not requested in Commission questionnaires.

[1] ***.
[2] ***.
[3] Not applicable.

Source: Official import statistics for HTS 7202.30.00.

Figure IV-1
Silicomanganese: U.S. imports, 2006-2011, January to March 2011, and January to March 2012



Source: Table IV-1.

U.S. IMPORTERS' SHIPMENTS OF IMPORTS

Table IV-2 presents data on U.S. importers' U.S. shipments of imports over the period examined.

Table IV-2
Silicomanganese: U.S. importers' U.S. shipments of imports, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
U.S. shipments of imports from.--								
Brazil	0	0	0	0	0	0	0	0
China[1]	0	38	2	591	38	1	0	0
Ukraine[2]	0	0	0	0	22	0	0	0
Subject	0	38	2	591	60	1	0	0
Nonsubject	442,300	457,204	368,123	204,323	316,524	347,497	87,064	105,363
All sources	442,300	457,242	368,125	204,915	316,584	347,498	87,064	105,363
Value (*1,000 dollars*)[3]								
U.S. shipments of imports from.--								
Brazil	0	0	0	0	0	0	0	0
China[1]	0	120	7	999	56	3	0	0
Ukraine[2]	0	0	0	0	24	0	0	0
Subject	0	120	7	999	80	3	0	0
Nonsubject	345,131	587,059	730,524	217,327	406,542	426,712	107,090	123,716
All sources	345,131	587,179	730,531	218,326	406,622	426,715	107,090	123,716
Unit value (*dollars per short ton*)								
U.S. shipments of imports from.--								
Brazil	([4])	([4])	([4])	([4])	([4])	([4])	([4])	([4])
China[1]	([4])	3,170	3,134	1,690	1,467	2,196	([4])	([4])
Ukraine[2]	([4])	([4])	([4])	([4])	1,082	([4])	([4])	([4])
Subject	([4])	3,170	3,134	1,690	1,326	2,196	([4])	([4])
Nonsubject	780	1,284	1,984	1,064	1,284	1,228	1,230	1,174
All sources	780	1,284	1,984	1,065	1,284	1,228	1,230	1,174

[1] ***. Data for China are based on official Commerce statistics.
[2] ***.
[3] Value represents sales price of imports sold to U.S. purchasers, except where data were supplemented with official Commerce statistics where value represents land-duty paid value.
[4] Not applicable.

Source: Compiled from data submitted in response to Commission questionnaires (96 percent) and official Commerce data (remaining 4 percent).

Table IV-3 presents data on U.S. importers' (re)export shipments of imports over the period examined.

Table IV-3
Silicomanganese: U.S. importers' (re)export shipments of imports, 2006-2011, January to March 2011, and January to March 2012

* * * * *

BHP Billiton was a *** supplier of imported silicomanganese in the U.S. market over the period of review, accounting for *** percent of U.S. importers' U.S. shipments of silicomanganese in the U.S. market in 2011.[130] On February 3, 2012, however, BHP Billiton announced the permanent closure of silicomanganese production at its Metalloys facility in South Africa.[131] According to Felman, the closure in South Africa resulted in a price increase in the U.S. market that lasted from March through June until other sources of supply came into the market from other nonsubject sources.[132] *** suppliers of imported silicomanganese in the U.S. market.

Table IV-4 and figure IV-2 present information on the average unit values of U.S. producers' and U.S. importers' U.S. shipments over the period under review.[133]

Table IV-4
Silicomanganese: Average unit values of U.S. importers' U.S. shipments of imports by importer, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Figure IV-2
Silicomanganese: Average unit value of U.S. producers' and U.S. importers' U.S. shipments, 2006-2011, January to March 2011, and January to March 2012

* * * * *

U.S. IMPORTERS' INVENTORIES

None of the U.S. importers reported inventories of silicomanganese from Brazil, China, or Ukraine.[134] Nearly all U.S. importers reported inventories of imported silicomanganese (nonsubject) over the period reviewed. Table IV-5 presents information on U.S. importers' reported inventories of silicomanganese imported from nonsubject sources.

[130] ***

[131] ***.

[132] Hearing transcript, p. 80 (Mikhyeyev). The price reached 72 cents per pound.

[133] These data relate to U.S. shipments of imports from all responding U.S. importers, but are primarily average unit value of U.S. shipments of imports from nonsubject sources since ***.

[134] Largely reflecting the absence of imports from subject sources, but also because ***.

Table IV-5
Silicomanganese: U.S. importers' inventories from nonsubject sources, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
	Quantity (*short tons*)							
U.S. imports from nonsubject sources.-- Inventories	104,324	100,463	125,375	74,575	95,204	117,335	128,049	95,747
	Ratio (*percent*)							
Ratio to U.S. imports from nonsubject sources	21.9	21.9	31.7	45.6	27.3	31.5	31.2	28.5
Ratio to U.S. shipments of U.S. imports from nonsubject sources	23.6	22.0	34.1	36.5	30.1	33.8	36.8	22.7

Source: Compiled from data submitted in response to Commission questionnaires.

CUMULATION CONSIDERATIONS

In assessing whether subject imports are likely to compete with each other and with the domestic like product with respect to cumulation, the Commission generally has considered the following four factors: (1) the degree of fungibility, including specific customer requirements and other quality-related questions; (2) presence of sales or offers to sell in the same geographic markets; (3) common channels of distribution; and (4) simultaneous presence in the market. There is little new information on the record in these five-year reviews in relation to these traditional factors and subject imports.[135]

Fungibility

In the first and second five-year reviews, the Commission found that domestic and all imported silicomanganese were fungible.[136] [137] One domestic interested party had argued that domestic and all imported silicomanganese continue to be fungible.[138] Additional information on end uses and interchangeability of domestic and imported silicomanganese is provided in part II of this report.

[135] There were no imports of silicomanganese from Brazil and *** imports of silicomanganese from Ukraine over the period under review. Imports of silicomanganese from China were not sold in commercial quantities in the United States over the period reviewed and accounted for only *** percent of total imports over the 2006 to 2011 period. Further, the Customs and Border Protection Agency of the U.S. Department of Homeland Security ***.

[136] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review),* USITC Pub. 3386, January 2001, p. 9. The Commission included imports from Ukraine as fungible despite those imports having a "higher phosphorus" content and therefore partially limited in end-use applications.

[137] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review),* USITC Pub. 3879, August 2006, p. 11.

[138] Eramet's response to the notice of institution, p. 7.

Channels of Distribution

In the first and second five-year reviews, the Commission found that domestic and all imported silicomanganese used the same channels of distribution, *i.e.*, mostly sold directly to end users.[139] [140] In these five-year reviews, U.S. producers indicated *** percent of their shipments went to end users in 2011, while importers (all nonsubject) reported 92.4 percent of their shipments went to end users in 2011.

Geographical Markets

In the first and second five-year reviews, the Commission found that domestic and all imported silicomanganese would likely serve overlapping geographical markets.[141] [142] U.S. producers reported serving every geographical market of the contiguous United States.[143] Felman Trading has "exclusive contracts for ferroalloys deliveries on the markets of North, Central and South Americas with" all three of the Ukrainian producers of silicomanganese[144] and currently reports ***.[145] The small amount of imports from China reported under subheading 7202.30.00 of the HTS was imported at a number of Customs districts across the contiguous United States.[146] No new information is available on imports from Brazil. Imports of silicomanganese from nonsubject sources are sold in all geographical areas of the contiguous United States based on responses to Commission questionnaires.

Simultaneous Presence in the Market

In the first five-year review, the Commission did not expressly address this factor in its cumulation analysis,[147] while in the second-five year review, the Commission discussed the limited presence of subject imports over the period of review but indicated that "{b}ecause we have concluded that subject imports from Brazil, China, and Ukraine will likely enter the U.S. market in sufficient quantities to have a discernible adverse impact on the domestic industry, it logically follows that such imports would likely enter the United States on a regular basis, as they did during the original investigations."[148] No new information is available in relation to the presence of subject imports in the U.S. market in absence the discipline of the orders. With the discipline of the orders, there were no imports reported from Brazil in the period; imports from China were reported for only 7 out of 75 months

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[139] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review)*, USITC Pub. 3386, January 2001, p. 8.

[140] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review)*, USITC Pub. 3879, August 2006, p. 8.

[141] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review)*, USITC Pub. 3386, January 2001, pp. 9-10.

[142] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review)*, USITC Pub. 3879, August 2006, p. 11.

[143] U.S. producers' questionnaire responses, question IV-9.

[144] http://www.felmantrading.com/en/producers/, retrieved August 1, 2012. Although Felman claims its contracts are with Ukrainian exporters as opposed to directly with the producers themselves and that its exclusive contract for ferroalloy deliveries does not denote control over Ukrainian exports. See Felman's posthearing brief, app. Williamson-2, pp. Williamson 3 through Williamson 4, and Williamson Exhibit 2.1.

[145] Felman Trading's U.S. importers' questionnaire, question III-9.

[146] These include New York, NY; Los Angeles, CA; New Orleans, LA; Chicago, IL; Laredo, TX; Buffalo, NY; and, Baltimore, MD.

[147] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Review)*, USITC Publication 3386, January 2001, p. 9-10.

[148] *Silicomanganese From Brazil, China, and Ukraine: Investigations Nos. 731-TA-671-673 (Second Review)*, USITC Pub. 3879, August 2006, p. 12.

in the period under review; and imports from Ukraine were reported for only 1 out of 75 months in the period under review.

SUBJECT COUNTRY PRODUCERS

Table IV-6, figures IV-3 and IV-4 present information on production and apparent consumption in each of the subject countries between 2001 and 2010 (public data are not available for 2011).

Table IV-6
Silicomanganese: Global production, apparent consumption, and ratio of apparent consumption to production, 2001-2010

Country	Calendar year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production (*1,000s of short tons*)										
Brazil	217	214	263	281	298	177	236	237	88	186
China	1,323	1,742	2,172	2,778	3,031	3,516	4,688	5,109	4,723	5,236
Ukraine	788	787	1,047	1,043	1,038	1,113	1,214	935	689	927
Subject countries	2,328	2,743	3,482	4,102	4,367	4,807	6,138	6,281	5,501	6,349
All other countries (*i.e.*, including U.S.)	1,932	2,153	2,157	2,523	2,299	2,574	3,088	2,927	2,619	3,218
Total, world	4,260	4,895	5,639	6,625	6,667	7,381	9,225	9,208	8,120	9,567
Share of global production (*percent*)										
Brazil	5.1	4.4	4.7	4.2	4.5	2.4	2.6	2.6	1.1	1.9
China	31.0	35.6	38.5	41.9	45.5	47.6	50.8	55.5	58.2	54.7
Ukraine	18.5	16.1	18.6	15.7	15.6	15.1	13.2	10.2	8.5	9.7
Subject countries	54.6	56.0	61.7	61.9	65.5	65.1	66.5	68.2	67.7	66.4
All other countries (*i.e.*, including U.S.)	45.4	44.0	38.3	38.1	34.5	34.9	33.5	31.8	32.3	33.6
Total, world	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apparent consumption (*1,000s of short tons*)										
Brazil	132	132	130	151	173	134	162	151	99	126
China	888	1,233	1,575	2,073	2,596	2,966	3,834	4,179	4,686	5,180
Ukraine	262	228	285	185	190	220	268	243	137	179
Subject countries	1,283	1,594	1,991	2,410	2,959	3,321	4,264	4,572	4,922	5,484
All other countries (*i.e.*, including U.S.)	2,971	3,271	3,673	4,160	3,770	3,928	4,876	4,411	3,349	4,249
Total, world	4,254	4,864	5,664	6,570	6,729	7,249	9,139	8,984	8,271	9,733

Table continued next page.

Table IV-6--*Continued*
Silicomanganese: Global production, apparent consumption, and ratio of apparent consumption to production, 2001-2010

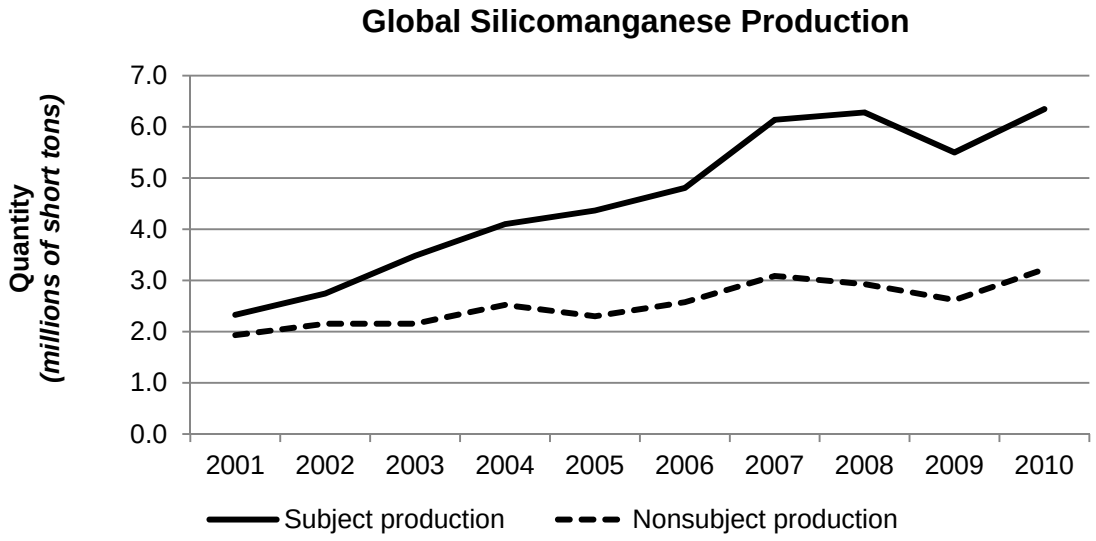
Country	Calendar year									
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
	Ratio of production to apparent consumption (*percent*)									
Brazil	164.2	161.7	202.5	186.1	172.0	132.0	145.6	156.9	88.9	148.2
China	148.9	141.2	137.9	134.0	116.8	118.5	122.3	122.3	100.8	101.1
Ukraine	300.4	344.9	366.8	563.1	547.7	505.0	453.1	385.5	504.0	519.1
Subject countries	181.4	172.1	174.9	170.2	147.6	144.7	144.0	137.4	111.8	115.8
All other countries (*i.e.*, including U.S.)	65.0	65.8	58.7	60.7	61.0	65.5	63.3	66.3	78.2	75.7
Total, world	100.2	100.6	99.6	100.8	99.1	101.8	100.9	102.5	98.2	98.3

Note.--These public data differ slightly from ***. Apparent consumption is the country's reported production plus its net international trade position in silicomanganese (*i.e.*, production less exports plus imports).

Source: *2010 Annual Market Research Report*, The International Manganese Institute.

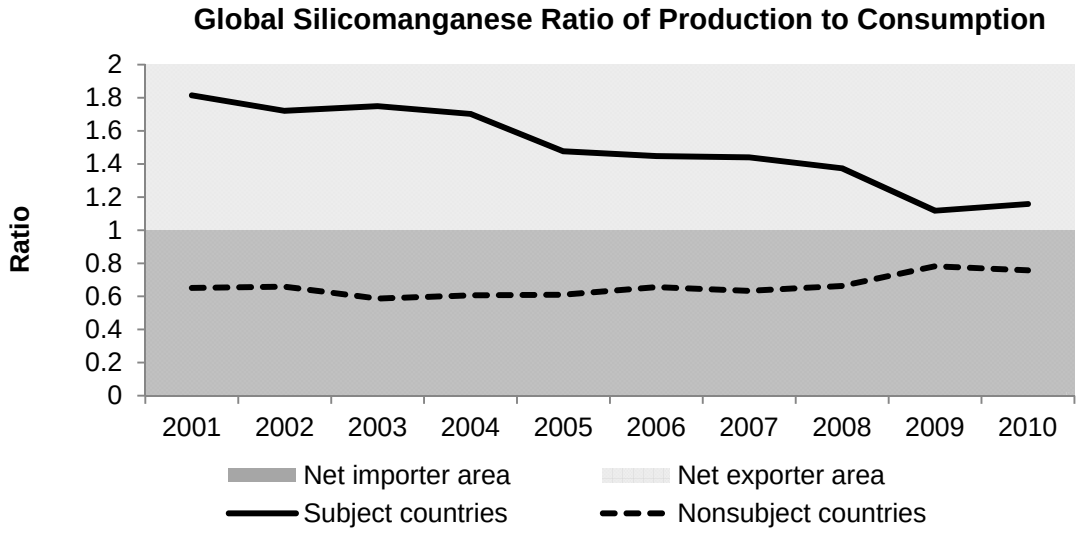
Subject countries accounted for a larger share of global production in 2011 than in 2006, although China accounted for nearly all of this growth. Over that same period, China's silicomanganese production became more home-market oriented and less export-oriented as measured by the ratio of the country's production to its apparent consumption. Between 2006 and 2010, the export-orientation of Brazil decreased slightly, while the export-orientation of Ukraine remained elevated and the highest of the three subject countries.

Figure IV-3
Silicomanganese: Global production by source, 2001-2010



Source: Table IV-6.

Figure IV-4
Silicomanganese: Ratio of production to consumption by source, 2001-2010



Source: Table IV-6.

The Industry in Brazil

There are four (4) principal producers of silicomanganese in Brazil currently (listed in order of importance): Companhia de Cimento Portland Maringa ("Maringa"), which supplies approximately *** percent of the Brazilian market for silicomanganese; Vale Manganês, S.A. ("Vale"), which supplies approximately *** percent of the Brazilian market for silicomanganese; Granha Ligas, Ltda. ("Granha Ligas"), which supplies approximately *** percent of the Brazilian market for silicomanganese; and Ferro Liga, Ltda. ("Ferlig"), which supplies approximately *** percent of the Brazilian market for silicomanganese.[149] Vale, which estimates that it accounts for *** percent of total Brazilian silicomanganese production in 2011,[150] was the only Brazilian producer to provide useable data on its silicomanganese operations for the purpose of these five-year reviews.[151] Table IV-7 presents Vale's silicomanganese operations over the period examined.

Table IV-7
Silicomanganese: Vale's operations, 2006-2011

* * * * *

[149] Vale's foreign producers' questionnaire response, question III-18.
[150] *Brazilian interested party's response to the notice of institution*, p. 14.
[151] Commission staff attempted for a third time to contact the other three primary producers in Brazil following the Commission's hearing. In response to staff follow-up, Granha Ligas provided a questionnaire response on September 20, 2012, however, its data were unusable. Granha Ligas has initially reported only *** tons of production in 2011, which would indicate that the estimates provided by Vale *** the size of this firm by a factor of ***. There are a number of concerns, however, with the data as reported in Granha Ligas' initial submission, and so its data have not been compiled into table IV-7, pending revisions.

Data reported by Vale includes all of its production facilities in Brazil, including ***. Vale concentrates its silicomanganese operations, however, in its ***.[152] Over the period of review, Vale ceased silicomanganese operations on *** while expanding capacity *** the net effect of which was to increase reported capacity *** in 2009.[153] Vale has kept an additional *** short tons of capacity idled at its *** facilities since the economic downturn in 2009.[154]

Table IV-8 presents data on the silicomanganese industry in Brazil as reported to ***[155] and based on trade data maintained within the Global Trade Atlas ("GTA") by Global Trade Information Services, Inc. Between 2006 and 2011 capacity *** increased in Brazil (likely as a result of ***), but overall capacity in Brazil was still lower than in 2004 and 2005. Over the period, capacity utilization in Brazil fluctuated significantly, with the low point in 2009 corresponding to the global financial crisis and subsequent recessions. The rate in 2011 was roughly equivalent to the rate at the beginning of the period in 2006. Brazil produces more silicomanganese than it consumes and is a net exporter of silicomanganese. Over the period, exports decreased as a share of production in Brazil as did the ratio of production to consumption in the country. In 2011, however, exports still accounted for about one third of the country's production and production of silicomanganese was approximately 1.5 times the country's consumption.

[152] Vale's foreign producers' questionnaire response, question I-2 and II-8.

[153] Vale's foreign producers' questionnaire response, question II-2 and II-14.

[154] Vale's foreign producers' questionnaire response, question II-7. This *** short tons of idled capacity is included in the data reported in table IV-6.

[155] *** data includes only Vale and Maringa.

Table IV-8
Silicomanganese: Industry in Brazil, 2004-2011

Item	Calendar year							
	2004	2005	2006	2007	2008	2009	2010	2011
Quantity (*short tons*)								
Capacity	***	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***	***
Exports	111,906	127,009	75,518	74,115	66,542	24,944	56,886	73,790
Imports	1,295	1,619	1,606	3,605	8,331	6,899	7,137	4,729
Apparent Brazilian consumption	***	***	***	***	***	***	***	***
Shares and Ratios (*percent*)								
Capacity Utilization	***	***	***	***	***	***	***	***
Indicators of export-orientation.--								
Brazil's exports as a share of production in Brazil	***	***	***	***	***	***	***	***
Ratio of production to apparent Brazilian consumption	***	***	***	***	***	***	***	***

Note.--*** contains data reported by Vale and Maringa (the two largest Brazilian producers of silicomanganese) and not all producers, while GTA data (imports and exports) includes all silicomanganese trade to or from Brazil. Also note that *** data differ slightly from the public data on silicomanganese production in Brazil reported by the International Manganese Institute.

Source: *** and GTA.

Table IV-9 presents data on Brazil's exports of silicomanganese based on GTA data over the period for which questionnaire data were gathered, while table IV-10 presents data on Brazil's monthly exports of silicomanganese based on GTA data for the period of January 2010 through July 2012 (the most recent month for which data are available). Figures IV-5 and IV-6 present data on Brazil's exports of silicomanganese within the January 2010 to July 2012 period.

Table IV-9
Silicomanganese: Exports from Brazil by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
Brazilian exports to.--Africa and Middle East	0	0	110	1,131	0	0	0	0
Asia and Pacific	0	0	66	0	337	0	0	0
Europe and Central Asia	5,016	19,941	21,333	3,288	13,150	24,022	7,673	3,423
NAFTA countries[1]	19,372	8,208	0	0	238	331	331	0
South and Central America and Caribbean (ex Mexico)	51,130	45,965	45,033	20,524	43,160	49,436	11,562	14,651
Total	75,518	74,115	66,542	24,944	56,885	73,789	19,565	18,073
Value (*1,000 dollars*)								
Brazilian exports to.--Africa and Middle East	0	0	204	856	0	0	0	0
Asia and Pacific	0	0	101	0	415	0	0	0
Europe and Central Asia	2,603	20,223	36,722	2,351	14,639	25,422	7,931	3,498
NAFTA countries[1]	11,250	5,675	0	0	289	429	429	0
South and Central America and Caribbean (ex Mexico)	32,603	47,066	80,594	19,575	53,486	58,757	15,146	13,939
Total	46,455	72,964	117,621	22,783	68,830	84,608	23,506	17,437
Unit value (*dollars per short ton*)								
Brazilian exports to.--Africa and Middle East	(2)	(2)	$1,851	$757	(2)	(2)	(2)	(2)
Asia and Pacific	(2)	(2)	1,522	(2)	$1,230	(2)	(2)	(2)
Europe and Central Asia	$519	$1,014	1,721	715	1,113	$1,058	$1,034	$1,022
NAFTA countries[1]	581	691	(2)	(2)	1,215	1,296	1,296	(2)
South and Central America and Caribbean (ex Mexico)	638	1,024	1,790	954	1,239	1,189	1,310	951
Total	615	984	1,768	913	1,210	1,147	1,201	965

Table continued next page. Footnotes at the end of the table.

Table IV-9--*Continued*
Silicomanganese: Exports from Brazil by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Share of quantity (*percent*)								
Brazilian exports to.--Africa and Middle East	0.0	0.0	0.2	4.5	0.0	0.0	0.0	0.0
Asia and Pacific	0.0	0.0	0.1	0.0	0.6	0.0	0.0	0.0
Europe and Central Asia	6.6	26.9	32.1	13.2	23.1	32.6	39.2	18.9
NAFTA countries[1]	25.7	11.1	0.0	0.0	0.4	0.4	1.7	0.0
South and Central America and Caribbean (ex Mexico)	67.7	62.0	67.7	82.3	75.9	67.0	59.1	81.1
Share of value (*percent*)								
Brazilian exports to.--Africa and Middle East	0.0	0.0	0.2	3.8	0.0	0.0	0.0	0.0
Asia and Pacific	0.0	0.0	0.1	0.0	0.6	0.0	0.0	0.0
Europe and Central Asia	5.6	27.7	31.2	10.3	21.3	30.0	33.7	20.1
NAFTA countries[1]	24.2	7.8	0.0	0.0	0.4	0.5	1.8	0.0
South and Central America and Caribbean (ex Mexico)	70.2	64.5	68.5	85.9	77.7	69.4	64.4	79.9

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not applicable.

Source: GTA.

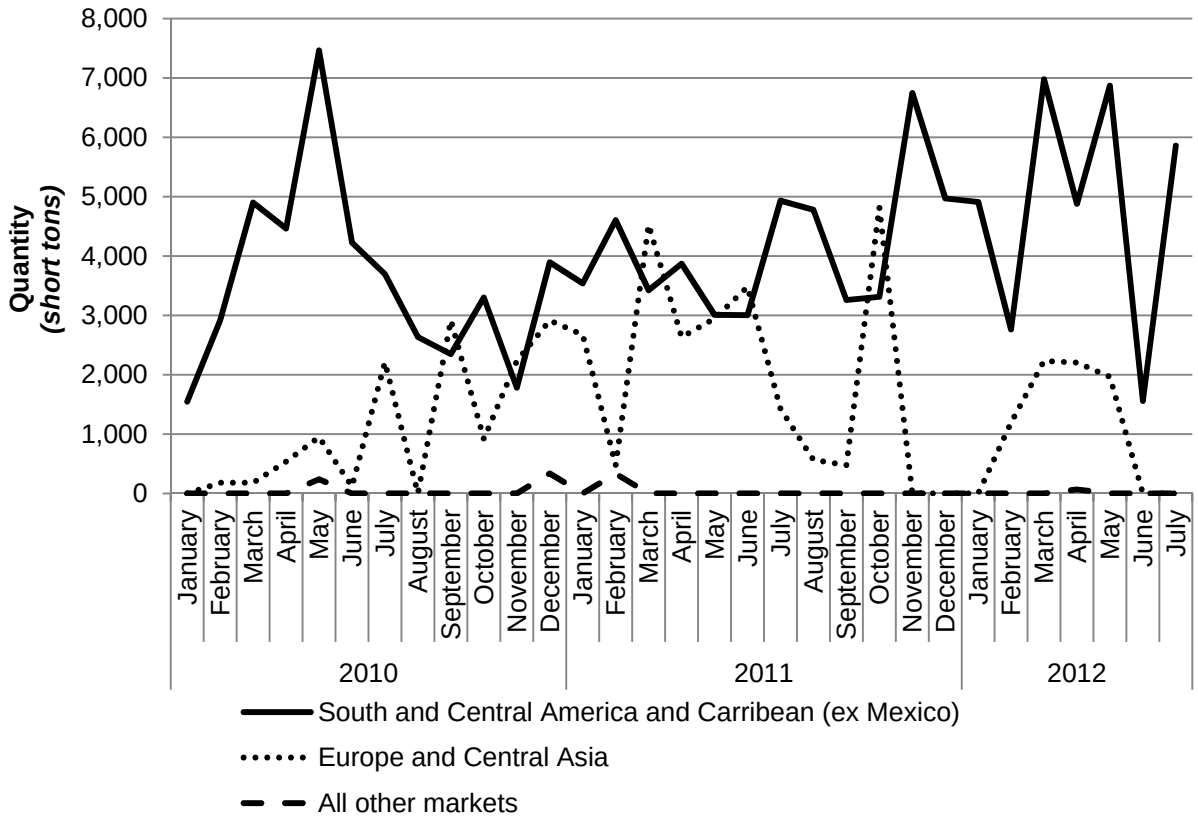
Table IV-10
Silicomanganese: Monthly exports from Brazil by regional destination, January 2010 to July 2012

Regional destination	Month / Year											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
	Quantity (*short tons*)											
2010												
Brazilian exports to.--												
Africa and Middle East	0	0	0	0	0	0	0	0	0	0	0	0
Asia and Pacific	0	0	0	0	0	0	0	0	0	0	0	337
Europe and Central Asia	0	179	179	535	948	119	2,209	0	2,917	919	2,232	2,913
NAFTA countries[1]	0	0	0	0	238	0	0	0	0	0	0	0
South and Central America and Caribbean (ex Mexico)	1,545	2,915	4,899	4,462	7,462	4,225	3,696	2,634	2,347	3,301	1,780	3,894
Total	1,545	3,093	5,077	4,998	8,647	4,344	5,905	2,634	5,264	4,220	4,012	7,145
2011												
Brazilian exports to.--												
Africa and Middle East	0	0	0	0	0	0	0	0	0	0	0	0
Asia and Pacific	0	0	0	0	0	0	0	0	0	0	0	0
Europe and Central Asia	2,673	476	4,524	2,632	2,946	3,480	1,429	565	476	4,822	0	0
NAFTA countries[1]	0	331	0	0	0	0	0	0	0	0	0	0
South and Central America and Caribbean (ex Mexico)	3,538	4,602	3,422	3,869	3,006	3,002	4,933	4,779	3,258	3,312	6,745	4,970
Total	6,211	5,409	7,945	6,501	5,952	6,481	6,361	5,344	3,735	8,134	6,745	4,970
2012												
Brazilian exports to.--												
Africa and Middle East	0	0	0	0	0	0	0	([2])	([2])	([2])	([2])	([2])
Asia and Pacific	0	0	0	66	0	0	0	([2])	([2])	([2])	([2])	([2])
Europe and Central Asia	0	1,190	2,232	2,203	1,963	0	0	([2])	([2])	([2])	([2])	([2])
NAFTA countries[1]	0	0	0	0	0	0	0	([2])	([2])	([2])	([2])	([2])
South and Central America and Caribbean (ex Mexico)	4,911	2,761	6,979	4,879	6,868	1,558	5,858	([2])	([2])	([2])	([2])	([2])
Total	4,911	3,952	9,211	7,148	8,832	1,558	5,858	([2])	([2])	([2])	([2])	([2])

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not available.

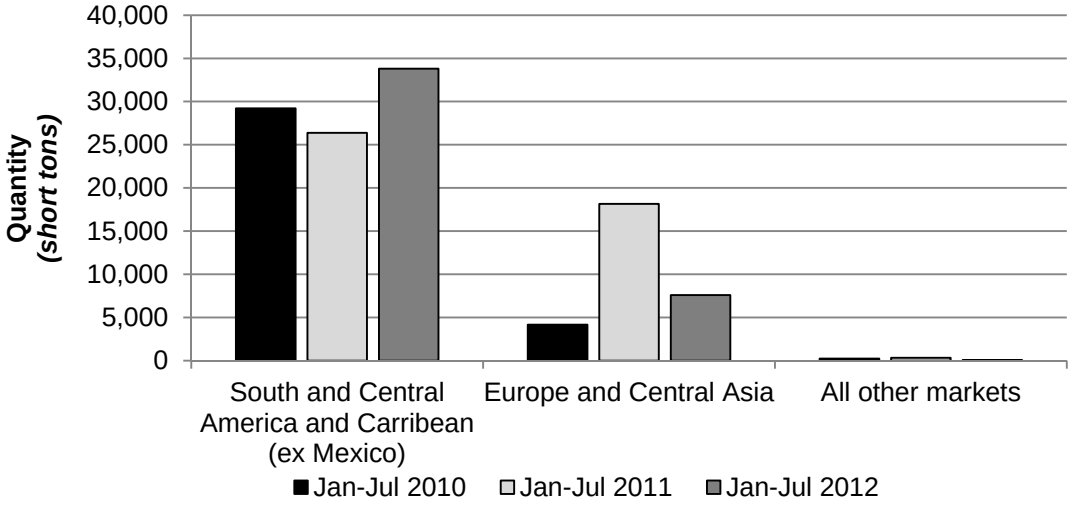
Source: GTA.

Figure IV-5
Silicomanganese: Monthly exports from Brazil by regional destination, January 2010 to July 2012



Source: Table IV-10.

Figure IV-6
Silicomanganese: Exports from Brazil by regional destination, January to July 2010, January to July 2011, and January to July 2012



Source: Table IV-10.

The Industry in China

There were 423 reported silicomanganese plants in China in 2010.[156] Only one Chinese producer, Guilin Comilog Ferroalloy Co., Ltd. ("Comilog"), provided data on its silicomanganese operations to the Commission for the purpose of these five-year reviews.[157] Comilog accounted for less than *** percent of total silicomanganese production in China in 2011. Table IV-11 presents Comilog's silicomanganese operations over the period examined. Comilog was not an exporter of silicomanganese over the period, except for a small amount of product it shipped ***.

Table IV-11
Silicomanganese: Comilog's operations, 2006-2011

* * * * *

Table IV-12 presents data on the silicomanganese industry in China as reported to *** and based on trade data maintained within the GTA.

Table IV-12
Silicomanganese: Industry in China, 2004-2011

Item	Calendar year							
	2004	2005	2006	2007	2008	2009	2010	2011
Quantity (*1,000s of short tons*)								
Capacity	***	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***	***
Exports	765	415	571	931	816	127	80	19
Imports	13	14	27	28	22	89	24	12
Apparent Chinese consumption	***	***	***	***	***	***	***	***
Shares and Ratios (*percent*)								
Capacity Utilization	***	***	***	***	***	***	***	***
Indicators of export-orientation.-- China's exports as a share of production in China	***	***	***	***	***	***	***	***
Ratio of production to apparent Chinese consumption	***	***	***	***	***	***	***	***

Note.--This data table reports quantities in 1,000s of short tons and not short tons. Also note that *** data differ slightly from the public data on silicomanganese production in China reported by the International Manganese Institute.

Source: *** and GTA.

[156] ***.

[157] Comilog is affiliated with U.S. producer Eramet.

Table IV-13 presents data on China's exports of silicomanganese based on GTA data over the period for which questionnaire data were gathered, while table IV-14 presents data on China's monthly exports of silicomanganese based on GTA data for the period of January 2010 through July 2012 (the most recent month for which data are available). Figures IV-7 and IV-8 present data on China's exports of silicomanganese within the January 2010 to July 2012 period.

Notably, overall exports of silicomanganese from China decreased from over a quarter of Chinese production in 2004 to less than a single percentage point of Chinese production in 2011. This dramatic reduction in Chinese exports of silicomanganese occurred at the same time that capacity and production more than doubled, and capacity utilization fell. Over the period of review, Chinese authorities instituted policies to restrict the export of silicomanganese (along with a broad array of other

Table IV-13
Silicomanganese: Exports from China by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
	Quantity (*short tons*)							
Chinese exports to.--Africa and Middle East	17,733	33,254	26,462	3,479	3,078	1,846	1,543	0
Asia and Pacific	448,346	638,386	570,639	116,772	69,955	15,507	7,090	781
Europe and Central Asia	68,780	178,829	166,236	1,449	2,775	1,543	1,323	0
NAFTA countries[1]	27,127	52,418	27,869	2,205	691	0	0	0
South and Central America and Caribbean (ex Mexico)	9,119	27,668	25,207	3,055	3,029	110	0	0
Total	571,106	930,556	816,413	126,959	79,527	19,006	9,956	781
	Value (*1,000 dollars*)							
Chinese exports to.--Africa and Middle East	9,667	28,761	42,236	4,419	3,478	2,016	1,665	0
Asia and Pacific	251,894	540,668	952,561	142,104	88,310	18,030	8,178	995
Europe and Central Asia	39,958	182,608	290,632	1,937	4,225	1,926	1,550	0
NAFTA countries[1]	16,094	49,071	40,647	2,233	811	0	0	0
South and Central America and Caribbean (ex Mexico)	5,121	25,933	41,412	3,244	4,390	207	0	0
Total	322,734	827,041	1,367,488	153,935	101,213	22,179	11,393	995

Table continued next page. Footnotes at the end of the table.

Table IV-13--*Continued*
Silicomanganese: Exports from China by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Unit value (*dollars per short ton*)								
Chinese exports to.--Africa and Middle East	545	865	1,596	1,270	1,130	1,092	1,079	(2)
Asia and Pacific	562	847	1,669	1,217	1,262	1,163	1,153	1,273
Europe and Central Asia	581	1,021	1,748	1,337	1,523	1,248	1,172	(2)
NAFTA countries[1]	593	936	1,459	1,013	1,175	(2)	(2)	(2)
South and Central America and Caribbean (ex Mexico)	562	937	1,643	1,062	1,449	1,882	(2)	(2)
Total	565	889	1,675	1,212	1,273	1,167	1,144	1,273
Share of quantity (*percent*)								
Chinese exports to.--Africa and Middle East	3.1	3.6	3.2	2.7	3.9	9.7	15.5	0.0
Asia and Pacific	78.5	68.6	69.9	92.0	88.0	81.6	71.2	100.0
Europe and Central Asia	12.0	19.2	20.4	1.1	3.5	8.1	13.3	0.0
NAFTA countries[1]	4.7	5.6	3.4	1.7	0.9	0.0	0.0	0.0
South and Central America and Caribbean (ex Mexico)	1.6	3.0	3.1	2.4	3.8	0.6	0.0	0.0
Share of value (*percent*)								
Chinese exports to.--Africa and Middle East	3.0	3.5	3.1	2.9	3.4	9.1	14.6	0.0
Asia and Pacific	78.1	65.4	69.7	92.3	87.3	81.3	71.8	100.0
Europe and Central Asia	12.4	22.1	21.3	1.3	4.2	8.7	13.6	0.0
NAFTA countries[1]	5.0	5.9	3.0	1.5	0.8	0.0	0.0	0.0
South and Central America and Caribbean (ex Mexico)	1.6	3.1	3.0	2.1	4.3	0.9	0.0	0.0

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not applicable.

Source: GTA.

material inputs and/or "low-value added" steel sector products) via a non-automatic export licensing regime,[158] setting minimum export price levels,[159] instituting a 20 percent export duty,[160] and not allowing for any VAT rebate on exports of silicomanganese, while imposing no export restraints and allowing for full or partial VAT export rebates on downstream products in which silicomanganese (and other steel sector inputs) is an input.[161] The economic effect of these policies was to restrict the export of silicomanganese (and other steel sector inputs), thereby increasing their supply and lowering their price in the domestic market in China, thereby promoting their incorporation into downstream, "higher value-added" production activities in steel and other industries in China. While silicomanganese was not one of the products that the United States expressly included in its initial challenge at the World Trade Organization ("WTO") against China's restrictions on raw materials,[162] silicomanganese was indeed one of the steel input products (along with most other ferroalloys) for which China was restricting trade for industrial policy purposes at the time.[163] On March 13, 2012, the United States requested consultations with China with respect to China's restrictions on a number of other products not included in the initial raw materials dispute; however, these consultations did not include silicomanganese.[164]

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[158] As of 2011, there were only 135 ferroalloy firms licensed for export in the HTS 720221 to HTS 720299 range (which includes but is not limited to silicomanganese HTS 720230). *Confirmed List of China's Ferroalloys Enterprises with Export Licenses in 2011*, http://www.ferro-alloys.com/Module/Duties_Policies/Content.aspx?Nid=1007, retrieved September 13, 2012. Of these 135 firms, only a subset of them produce silicomanganese. Only around 13 of the 423 known producers of silicomanganese were licensed with the government of China for exporting ferroalloys, *Eramet's response to the notice of institution*, exh. 30.

[159] Vale's prehearing brief, exh. 3 and exh. 4.

[160] Hearing transcript, p. 100 (Kramer).

[161] *Export Duties and Differential VAT Rebates for Select Chinese Sectors, 2008.*

[162] *U.S. Trade Representative Ron Kirk Announces U.S. Victory in Challenge to China's Raw Materials Export Restraints*, January 2012, http://www.ustr.gov/about-us/press-office/press-releases/2012/january/us-trade-representative-ron-kirk-announces-us-vict, retrieved September 13, 2012.

[163] *Export Duties and Differential VAT Rebates for Select Chinese Sectors, 2008.*

[164] *United States Challenges China's Export Restraints on Rare Earths*, March 2012, http://www.ustr.gov/about-us/press-office/press-releases/2012/march/united-states-challenges-china%E2%80%99s-export-restraints-r, retrieved September 13, 2012. See also *China - Measures Related to the Exportation Of Rare Earths, Tungsten And Molybdenum, Request for Consultations by the United States*, WTO document, WT/DS431/1 G/L/982, March 15, 2012.

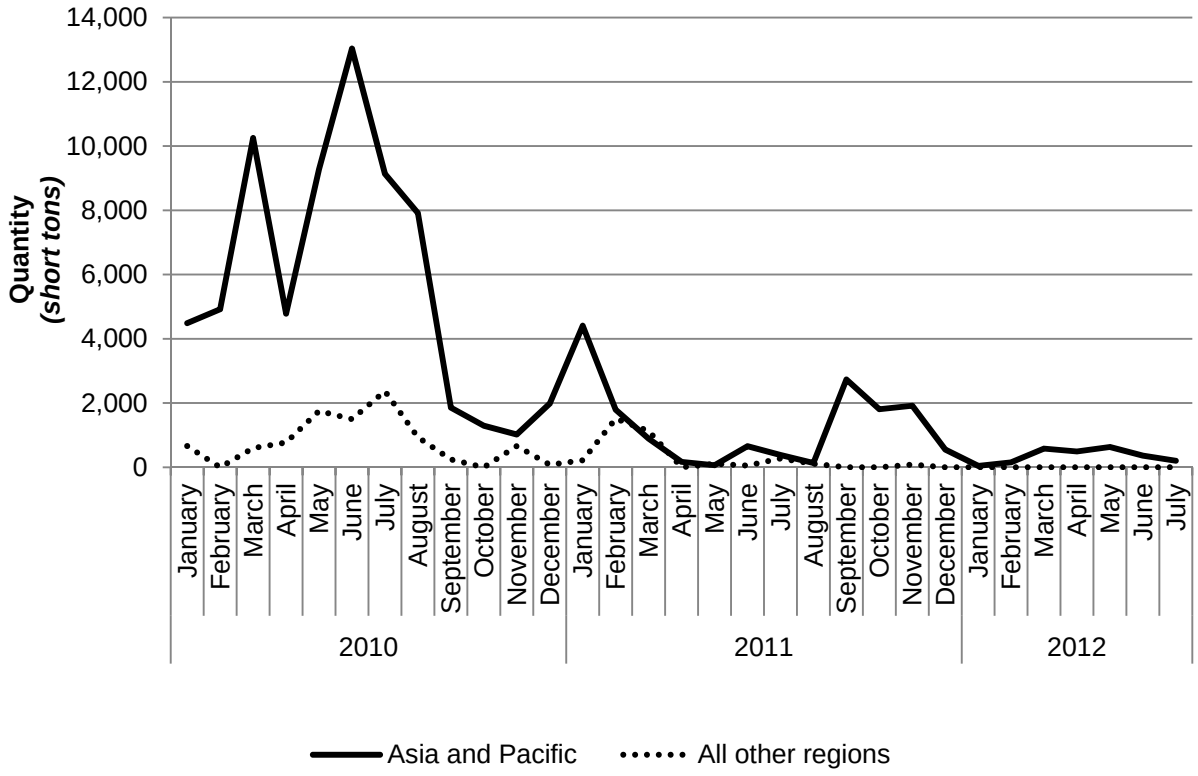
Table IV-14
Silicomanganese: Monthly exports from China by regional destination, January 2010 to July 2012

Regional destination	Month / Year											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
	Quantity (*short tons*)											
2010												
Chinese exports to.--												
Africa and Middle East	331	0	358	441	276	744	165	110	132	0	441	79
Asia and Pacific	4,489	4,921	10,252	4,781	9,281	13,032	9,135	7,913	1,857	1,293	1,020	1,981
Europe and Central Asia	331	0	239	331	1,433	220	0	0	0	0	220	0
NAFTA countries[1]	0	0	0	0	44	536	0	0	111	0	0	0
South and Central America and Caribbean (ex Mexico)	0	0	0	0	0	0	2,205	825	0	0	0	0
Total	5,150	4,921	10,849	5,553	11,033	14,532	11,505	8,848	2,100	1,293	1,681	2,060
2011												
Chinese exports to.--												
Africa and Middle East	0	413	1,130	0	55	55	0	110	0	0	83	0
Asia and Pacific	4,409	1,793	888	171	66	656	381	132	2,734	1,808	1,918	551
Europe and Central Asia	220	1,102	0	0	0	0	220	0	0	0	0	0
NAFTA countries[1]	0	0	0	0	0	0	0	0	0	0	0	0
South and Central America and Caribbean (ex Mexico)	0	0	0	0	55	0	55	0	0	0	0	0
Total	4,629	3,309	2,018	171	176	711	656	242	2,734	1,808	2,001	551
2012												
Chinese exports to.--												
Africa and Middle East	0	0	0	0	0	0	0	(2)	(2)	(2)	(2)	(2)
Asia and Pacific	44	154	583	492	631	362	202	(2)	(2)	(2)	(2)	(2)
Europe and Central Asia	0	0	0	0	0	0	0	(2)	(2)	(2)	(2)	(2)
NAFTA countries[1]	0	0	0	0	0	0	0	(2)	(2)	(2)	(2)	(2)
South and Central America and Caribbean (ex Mexico)	0	0	0	0	0	1	0	(2)	(2)	(2)	(2)	(2)
Total	44	154	583	492	631	362	202	(2)	(2)	(2)	(2)	(2)

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not available.

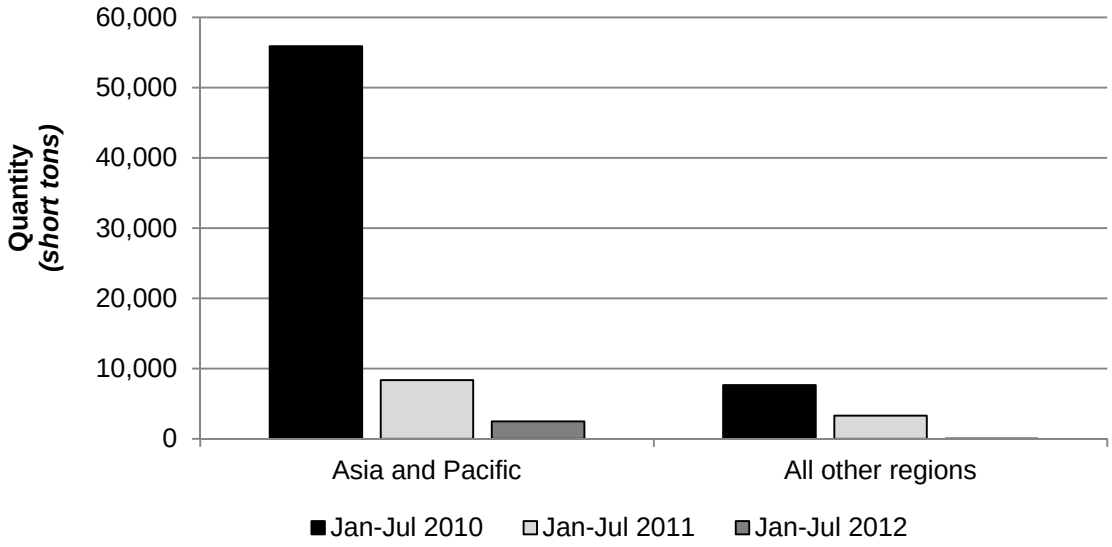
Source: GTA.

Figure IV-7
Silicomanganese: Monthly exports from China by regional destination, January 2010 to July 2012



Source: Table IV-14.

Figure IV-8
Silicomanganese: Monthly exports from China by regional destination, January to July 2010, January to July 2011, and January to July 2012



Source: Table IV-14.

The Industry in Ukraine

There are three primary silicomanganese producers in Ukraine (listed in order of size of their silicomanganese operations): Public Joint-Stock Company ("PJSC") Nikopol Ferroalloy Plant ("Nikopol"); PJSC Zaporozhye Ferroalloy Plant ("Zaporozhye"); and PJSC Stakhanov Ferroalloy Plant ("Stakhanov"). These three producers accounting for 100 percent of the known industry in Ukraine provided usable questionnaire data. Table IV-15 presents data on the silicomanganese operations of all three Ukrainian producers over the period examined.

Over the 2006 to 2011 period, producers in Ukraine reported increased capacity dedicated to silicomanganese. The reported increase in capacity dedicated to silicomanganese was primarily the result of ***.[165] Comparing 2006 to 2011, *** accounted for all of the increase in reported capacity, ***. *** operates sixteen furnaces related to silicomanganese production in the *** region of Ukraine, which were all initially installed between 1968 and 1983. While *** decreased capacity dedicated to silicomanganese between 2006 and 2011, *** increased capacity dedicated to silicomanganese between 2010 and 2011.[166] *** operates sixteen furnaces related to silicomanganese production in the *** region of Ukraine, which were initially installed between 1958 and 1980.[167] *** operates five furnaces related to silicomanganese production in the *** region of Ukraine, which were initially installed in 1962.[168]

Table IV-15
Silicomanganese: Operations of firms in Ukraine, 2006-2011

* * * * *

Between 2006 and 2011, overall production of silicomanganese in Ukraine decreased; data reported by *** accounted for all of the decrease, while *** reported increasing production over the period. *** decreased production in the 2006 to 2008 time period, *i.e.*, during the financial crisis and global economic slowdown. *** increased production in 2008 to 2009 with the recovery after the crisis, but then *** reported decreased production from 2009 to 2010.[169]

*** indicated that its reported shipments of internal consumption related to material used in the production of other ferroalloys (*i.e.*, using silicomanganese produced in the period in the production of other ferroalloys).

Between 2006 and 2011, home market shipments of silicomanganese reported by the producers in Ukraine increased by *** percent. Most of this increase occurred in the 2009 to 2010 period immediately following the decline in shipments caused by the financial crisis and global economic slowdown in the 2008 to 2009 period. *** accounted for most of the increase in home market shipments, with its home market shipments *** from 2006 to 2011. *** reported a more modest increase in home market shipments over the period, while *** reported a decline. Home market shipments reported by the

---

[165] See foreign producers' questionnaire responses, question II-7, and supplemental responses to staff questions. The methodology for reporting capacity to the Commission (*i.e.*, taking into account product shifting with ferromanganese on their furnaces) likely explains differences in capacity numbers reported to industry associations (*i.e.*, ***) and data reported in table IV-15.

[166] *** accounted for three fourths of the reported increase between 2010 and 2011 (***). The increase between 2010 and 2011 for *** again relates to the larger decrease in demand for that firm's other production on the same equipment, *i.e.*, ferromanganese and ferrosilicon. See foreign producers' questionnaire responses, question II-7, and supplemental responses to staff questions.

[167] *** maintains a total of *** in its overall ferroalloy operations. Most of these furnaces ***.

[168] Most of these furnaces ***.

[169] The Ukrainian producers all cited increased costs of production related to electricity rates as a reason for decreased shipments and production.

Ukrainian producers may, however, not reflect the ultimate destination of the silicomanganese being shipped. For example, *** indicated in relation to why its home market sales increased that it "sells silicomanganese to metallurgical companies that are end-users as well as to trading companies that resell the product to others. It is possible that some of sales to traders are subject to following export sales."[170]

*** producers reported decreases in their reported export shipments over the 2006 to 2011 period, but as highlighted above reported exports in the questionnaire responses (and in table IV-15) may not include all exports. Table IV-16 compares exports reported by the producers in Ukraine in Commission questionnaires to data reported by the Ukrainian statistical authority to the GTA database to address the issue of underreported exports.

Table IV-16
Silicomanganese: Exports by firms in Ukraine, 2006-2011

* * * * *

Table IV-17 presents data on the industry in Ukraine based on industry association data (***) and GTA data.

Table IV-17
Silicomanganese: Industry in Ukraine, 2004-2011

Item	Calendar year							
	2004	2005	2006	2007	2008	2009	2010	2011
	Quantity (*1,000s of short tons*)							
Capacity	***	***	***	***	***	***	***	***
Production	***	***	***	***	***	***	***	***
Exports	855	813	923	964	695	617	810	721
Imports	3	28	24	7	15	65	61	150
Apparent Ukraine consumption	***	***	***	***	***	***	***	***

Table continued next page.

[170] *** response to why it reported increased home market sales over the period. Responses to staff questions from 8/17/2012.

Table IV-17--*Continued*
Silicomanganese: Industry in Ukraine, 2004-2011

Item	Calendar year							
	2004	2005	2006	2007	2008	2009	2010	2011
	Shares and Ratios (*percent*)							
Capacity Utilization	***	***	***	***	***	***	***	***
Indicators of export-orientation.--								
Ukraine's exports as a share of production in Ukraine	***	***	***	***	***	***	***	***
Ratio of production to apparent Ukrainian consumption	***	***	***	***	***	***	***	***

Note.--This data table reports quantities in 1,000s of short tons and not short tons. Also note that *** data differ slightly from the public data on silicomanganese production in Ukraine reported by the International Manganese Institute, but are largely in line with data reported by the Ukrainian producers in their questionnaire responses. Also note that *** data differ from confidential questionnaire data in relation to reported capacity. Despite the differences in reported capacity numbers and production numbers, the capacity utilization rates for questionnaire data and *** data follow similar trends (*e.g.*, questionnaire data as revised indicate a slightly lower utilization rate by approximately *** percentage points over most of the period, although the gap between the two rates widens in 2011 to nearly *** percentage points). *** questionnaire submission accounts for most of the divergence of these data series. In ***'s data *** has a constant capacity of *** short tons, while its questionnaire submission is based on an allocation of overall capacity based on product mix. Since ***'s production of ferroalloys produced on the same furnaces as silicomanganese decreased by more than its production of silicomanganese, its allocated capacity to silicomanganese increased over the period (*i.e.*, in questionnaire data in table IV-15). The other two producers also reported slightly different capacity numbers (***), *** increased allocated capacity to silicomanganese.

Source: *** and GTA.

Table IV-18 presents data on Ukraine's exports of silicomanganese based on GTA data over the period for which questionnaire data were gathered, while table IV-19 presents data on Ukraine's monthly exports of silicomanganese based on GTA data for the period of January 2010 through June 2012 (the most recent month for which data are available). Figures IV-9 and IV-10 present data on Ukraine's exports of silicomanganese within the January 2010 to June 2012 period.

Table IV-18
Silicomanganese: Exports from Ukraine by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
Ukrainian exports to.--Africa and Middle East	50,974	72,973	41,944	48,998	64,478	67,348	26,108	12,299
Asia and Pacific	66,222	45,057	75,051	84,259	90,744	82,681	22,514	14,986
Europe and Central Asia	777,043	841,098	565,450	482,519	629,134	537,963	156,695	136,934
NAFTA countries[1]	14,415	4,794	8,946	505	14,953	25,047	4,133	0
South and Central America and Caribbean (ex Mexico)	14,332	111	3,537	1,046	10,524	7,487	5,626	165
Total	922,987	964,034	694,927	617,327	809,833	720,526	215,076	164,385
Value (*1,000 dollars*)								
Ukrainian exports to.--Africa and Middle East	24,749	53,338	57,646	34,451	56,857	53,806	21,287	8,641
Asia and Pacific	33,218	35,515	110,463	58,165	86,161	70,098	19,468	11,526
Europe and Central Asia	403,195	639,261	892,373	334,230	566,981	457,680	134,703	104,422
NAFTA countries[1]	7,473	4,299	14,403	295	14,896	21,076	3,708	0
South and Central America and Caribbean (ex Mexico)	7,309	78	5,134	902	10,274	6,640	4,990	128
Total	475,944	732,492	1,080,020	428,043	735,168	609,299	184,155	124,716
Unit value (*dollars per short ton*)								
Ukrainian exports to.--Africa and Middle East	486	731	1,374	703	882	799	815	703
Asia and Pacific	502	788	1,472	690	949	848	865	769
Europe and Central Asia	519	760	1,578	693	901	851	860	763
NAFTA countries[1]	518	897	1,610	585	996	841	897	([2])
South and Central America and Caribbean (ex Mexico)	510	701	1,452	862	976	887	887	772
Total	516	760	1,554	693	908	846	856	759

Table continued next page. Footnotes at the end of the table.

Table IV-18--*Continued*
Silicomanganese: Exports from Ukraine by regional destination, 2006-2011, January to March 2011, and January to March 2012

Regional destination	Calendar year						January-March	
	2006	2007	2008	2009	2010	2011	2011	2012
Share of quantity (*percent*)								
Ukrainian exports to.--Africa and Middle East	5.5	7.6	6.0	7.9	8.0	9.3	12.1	7.5
Asia and Pacific	7.2	4.7	10.8	13.6	11.2	11.5	10.5	9.1
Europe and Central Asia	84.2	87.2	81.4	78.2	77.7	74.7	72.9	83.3
NAFTA countries[1]	1.6	0.5	1.3	0.1	1.8	3.5	1.9	0.0
South and Central America and Caribbean (ex Mexico)	1.6	0.0	0.5	0.2	1.3	1.0	2.6	0.1
Share of value (*percent*)								
Ukrainian exports to.--Africa and Middle East	5.2	7.3	5.3	8.0	7.7	8.8	11.6	6.9
Asia and Pacific	7.0	4.8	10.2	13.6	11.7	11.5	10.6	9.2
Europe and Central Asia	84.7	87.3	82.6	78.1	77.1	75.1	73.1	83.7
NAFTA countries[1]	1.6	0.6	1.3	0.1	2.0	3.5	2.0	0.0
South and Central America and Caribbean (ex Mexico)	1.5	0.0	0.5	0.2	1.4	1.1	2.7	0.1

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not applicable.

Source: GTA.

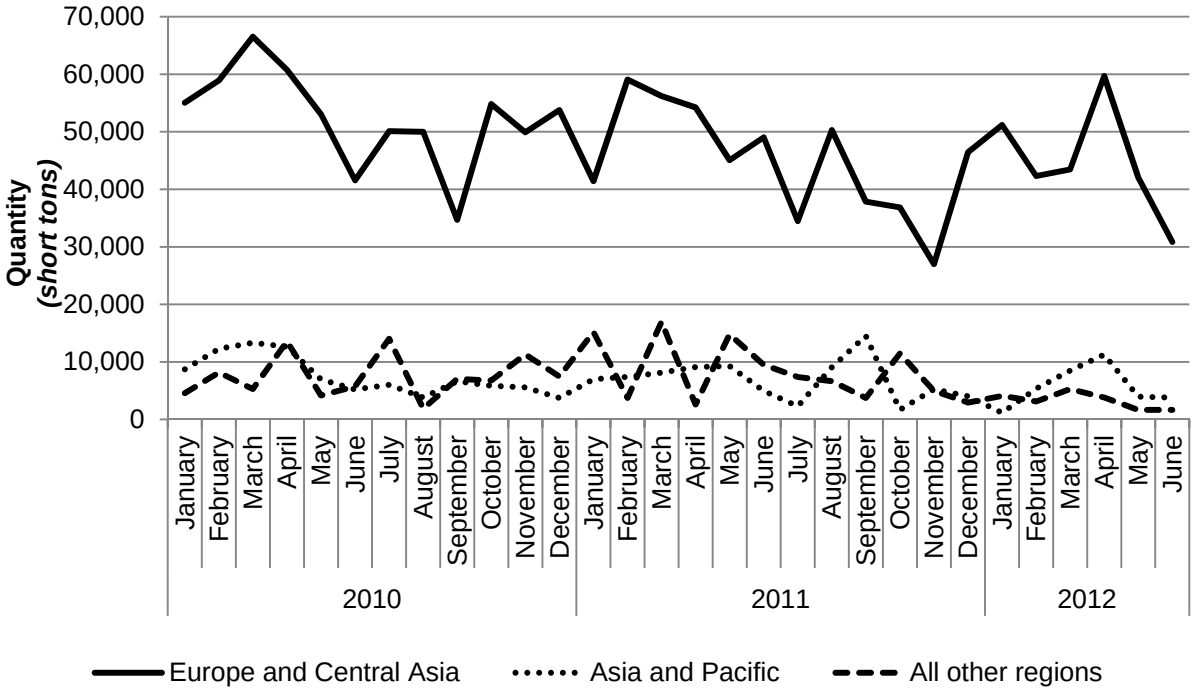
Table IV-19
Silicomanganese: Monthly exports from Ukraine by regional destination, January 2010 to July 2012

Regional destination	Month / Year											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
	Quantity (*short tons*)											
2010												
Ukrainian exports to.--												
Africa and Middle East	3,122	7,077	2,745	9,932	1,645	3,650	10,865	878	6,808	6,396	9,964	1,395
Asia and Pacific	8,723	12,283	13,335	12,630	6,971	5,195	6,007	3,812	6,637	5,837	5,581	3,733
Europe and Central Asia	55,044	58,916	66,538	60,776	53,050	41,548	50,104	49,988	34,699	54,814	49,887	53,769
NAFTA countries[1]	0	0	330	1,323	1,322	1,460	2,336	992	0	0	1,129	6,061
South and Central America and Caribbean (ex Mexico)	1,451	1,070	2,204	2,300	1,207	632	834	0	237	380	208	0
Total	68,341	79,345	85,152	86,961	64,196	52,485	70,146	55,671	48,381	67,427	66,769	64,958
2011												
Ukrainian exports to.--												
Africa and Middle East	9,540	3,262	13,306	1,342	2,701	5,148	5,672	6,655	3,741	11,464	1,651	2,869
Asia and Pacific	6,976	7,403	8,136	9,114	9,273	4,947	2,297	9,076	14,514	1,670	5,234	4,041
Europe and Central Asia	41,413	59,064	56,217	54,250	45,071	49,048	34,467	50,277	37,858	36,849	26,988	46,460
NAFTA countries[1]	4,133	0	0	0	12,087	4,353	1,157	0	0	0	3,316	0
South and Central America and Caribbean (ex Mexico)	1,509	476	3,641	1,257	0	0	545	0	0	0	0	59
Total	63,571	70,204	81,300	65,962	69,132	63,497	44,138	66,008	56,113	49,983	37,189	53,429
2012												
Ukrainian exports to.--												
Africa and Middle East	3,917	3,117	5,265	3,824	1,653	1,653	(2)	(2)	(2)	(2)	(2)	(2)
Asia and Pacific	1,151	5,348	8,487	11,272	3,946	3,775	(2)	(2)	(2)	(2)	(2)	(2)
Europe and Central Asia	51,169	42,310	43,456	59,682	42,053	30,835	(2)	(2)	(2)	(2)	(2)	(2)
NAFTA countries[1]	0	0	0	0	0	0	(2)	(2)	(2)	(2)	(2)	(2)
South and Central America and Caribbean (ex Mexico)	165	0	0	0	0	0	(2)	(2)	(2)	(2)	(2)	(2)
Total	56,402	50,775	57,207	74,778	47,653	36,264	(2)	(2)	(2)	(2)	(2)	(2)

[1] North American Free Trade Agreement ("NAFTA") countries include Canada, Mexico and the United States.
[2] Not available.

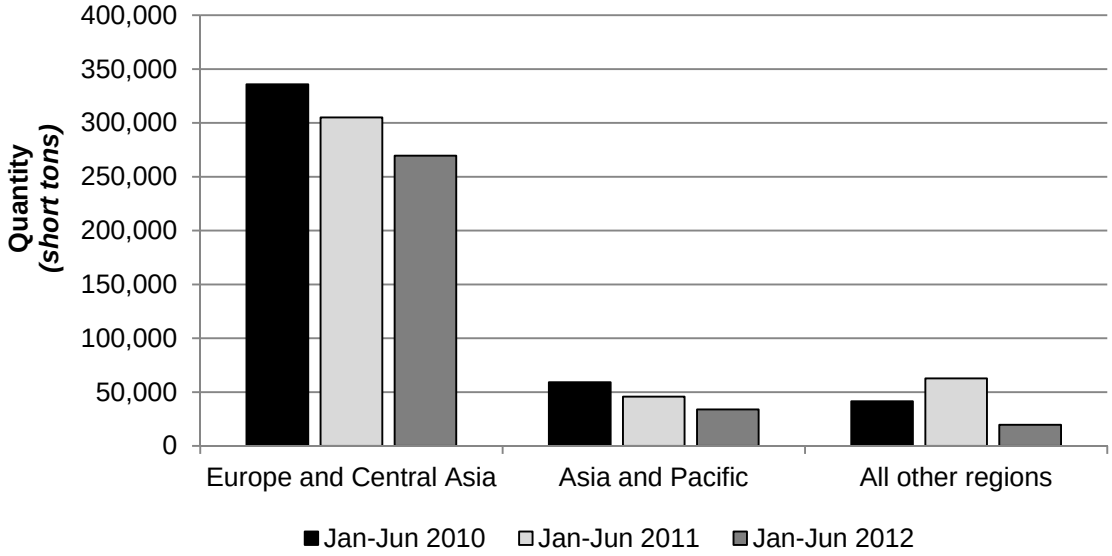
Source: GTA

Figure IV-9
Silicomanganese: Monthly exports from Ukraine by regional destination, January 2010 to July 2012



Source: Table IV-19.

Figure IV-10
Silicomanganese: Monthly exports from Ukraine by regional destination, January to June 2010, January to June 2011, and January to June 2012



Source: Table IV-19.

THIRD-COUNTRY ORDERS

Table IV-20 presents information on current and historical third-country antidumping duty orders concerning exports of silicomaganese (frequently referred to as ferro-silico manganese by the administering authorities) from Brazil, China, or Ukraine. No country has imposed a temporary trade remedy other than an antidumping duty order.[171] Both China and Ukraine are still currently subject to antidumping duty orders in third-country markets in relation to their exports of silicomanganese, while Brazil is no longer subject to an antidumping duty order outside of the United States in relation to its exports of silicomanganese.

Table IV-20
Silicomanganese: Third-country antidumping duty orders on subject countries

Country subject to order	Country or trade union issuing order	Antidumping duty order issuance (Month Year)	Revocation or termination (Month Year)	Final margin of dumping (*percent*)
Brazil	European Union	October 1995	March 1998	40.60
China	European Union	March 1998	March 2003	25.70
	European Union[1]	December 2007	In place	60.10
	Japan	February 1993	January 1998	([2])
	South Korea	August 1998	In place	17.95-24.68
Ukraine	European Union[3]	October 1995	In place	52.80
	Mexico	September 2003	In place	51.28

[1] Anti-dumping duties under this order were suspended from 12/05/2007 until 09/06/2009.
[2] No final duty rate was reported.
[3] The EU initiated an additional antidumping duty case on Ukraine in parallel with the proceeding that resulted in its second order on China, but the EU administrative authority made a negative final injury determination in the proceeding.

Source: Temporary Trade Barriers Database, World Bank, http://econ.worldbank.org/ttbd/, retrieved September 21, 2012.

[171] While Ukraine initiated a general safeguard investigation concerning ferromanganese and ferrosilicomanganese in February 2010, the Ukraine administrative authority made a negative preliminary determination of causation and a general safeguard on these products was never imposed.

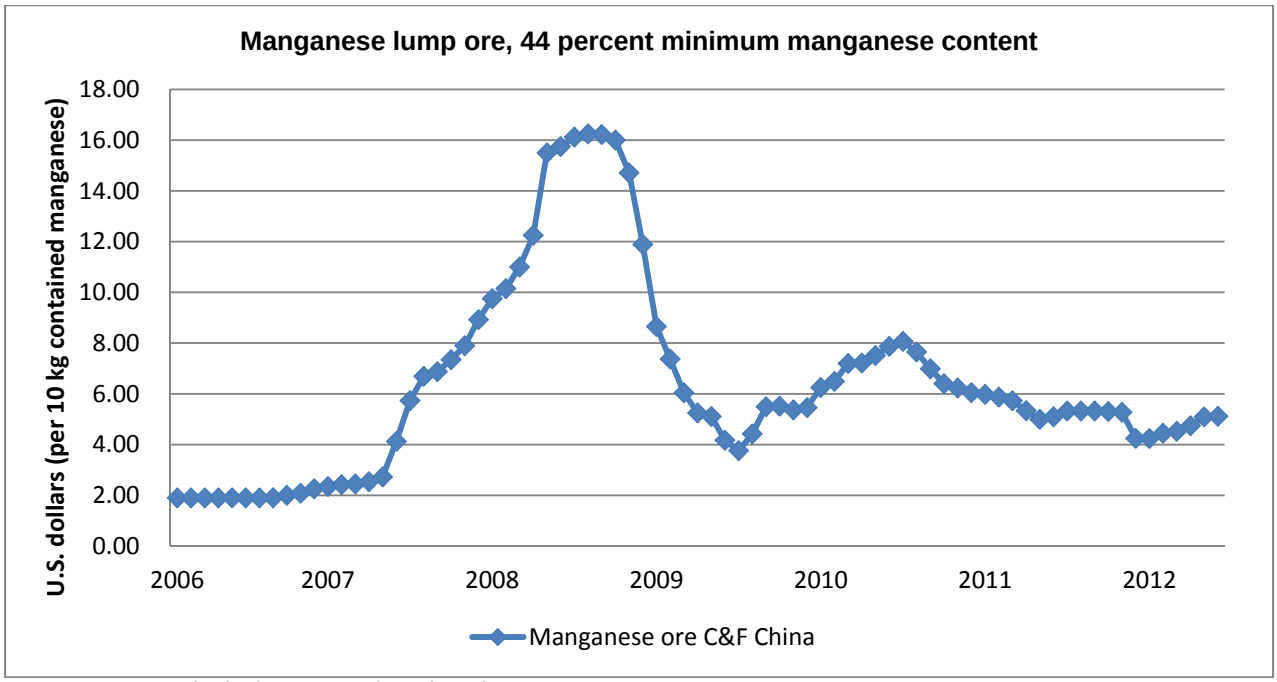
PART V: PRICING DATA

FACTORS AFFECTING PRICE

Raw Material Costs

The principal raw materials used in the production of silicomanganese are manganese ore and/or high-carbon ferromanganese slag. Over the period of review, raw materials accounted for between *** and *** percent of U.S. producers' production costs. Figure V-1 provides price information on manganese ore prices; prices for ferromanganese slag are not available.[172] Manganese ore prices increased dramatically beginning in the second half of 2007, and then started to decline by the end of 2008. Prices have since fluctuated above their 2006 level.

Figure V-1
Manganese ore: Monthly average prices, January 2006 to June 2012



Source: U.S. Geological Survey, Minerals Industry Reports.

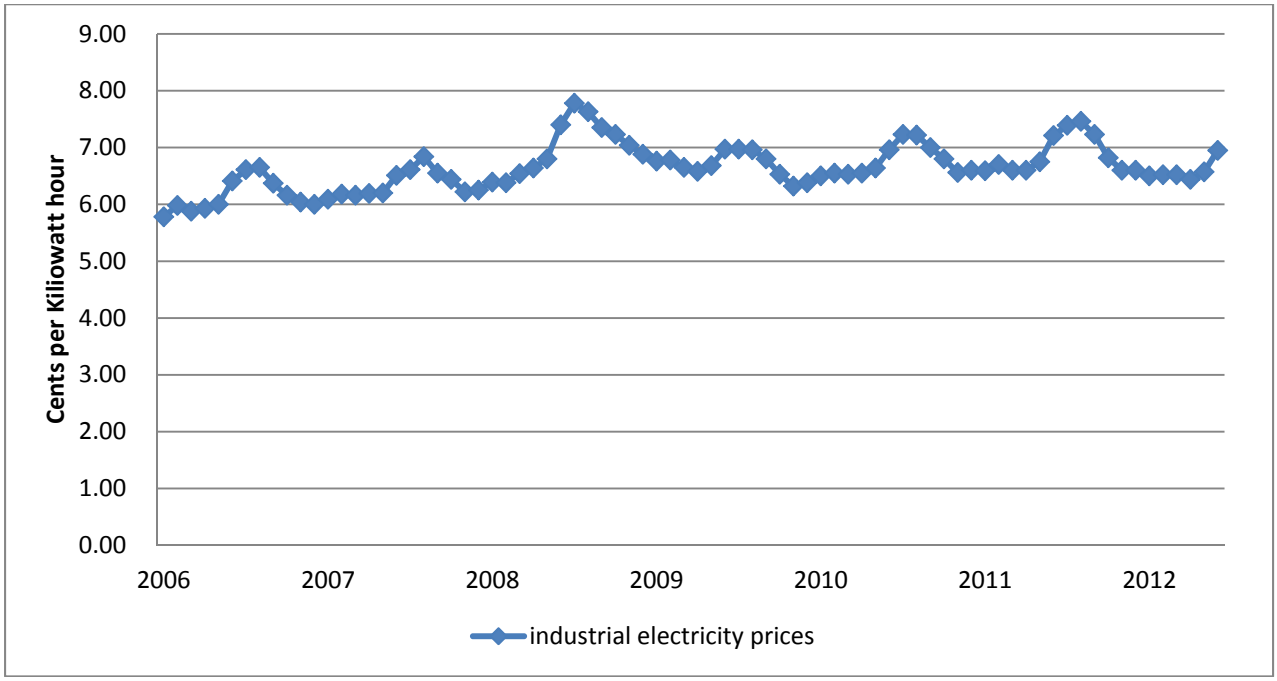
Both U.S. producers reported that raw material costs do not always affect their selling prices because, when selling silicomanganese, they are price takers (i.e., their supply does not influence market prices). Both U.S. producers expect continued raw material price volatility.

[172] Typically ferromanganese slag is a byproduct recovered in other internal company operations (such as the production of ferromanganese) and not sold commercially.

Energy Costs

Domestic interested parties estimated that electricity was their second largest cost, accounting for 25 percent of production costs. Electricity prices follow an annual cycle and have increased since 2006.[173]

Figure V-2
Industrial electricity price: Monthly average prices, January 2006 to June 2012



Source: http://www.eia.gov/electricity/monthly/archive/pdf/02260912.pdf.

U.S. Inland Transportation Costs

U.S. producers reported that U.S. transportation costs ranged from *** percent of the total delivered cost of their U.S. shipments.[174] Both responding producers and all nine responding importers reported that the majority of their sales were on a delivered basis. Both U.S. producers reported selling *** of their product (*** percent) between 101 and 1,000 miles from their facilities, *** percent within 100 miles from their facilities, and *** percent over 1,000 miles from their facilities.[175]

[173] ***. Response to Commission questions, ***.

[174] Although transportation costs, shipping distances, and contract provisions were requested for subject imports, since very little subject product was imported no importers reported these data.

[175] None of the importers reported shipping distances. The steel industry historically has been concentrated relatively near the U.S. producers' locations.

PRICING PRACTICES

Pricing Methods

Both U.S. producers reported that they set prices for silicomanganese on a transaction-by-transaction basis, that they use contracts, and that they use price lists. All nine responding importers reported setting prices on a transaction-by-transaction basis. Four importers also reported using contracts, one reported using set price lists, and one reported using a formula based on published prices.

U.S. producers reported selling most of their silicomanganese ***, which ranged from ***. ***. ***.[176] Producers report that contract prices are "indexed or periodically adjusted to reflect the current markets prices."[177] Producers reported using *Ryan's Notes*, an industry publication, to set prices in many of their contracts. Felman reported that its ***.[178] Eramet reported that ***.[179] According to Eramet, purchasers made spot purchases to cover requirement not covered by contracts, to address supply disruptions or delays and when spot prices fell below contract prices prior to price adjustments in the contracts.[180] As a result of the use of published prices, prices in the spot market quickly affect prices in the contract market.[181]

One purchaser reported spot purchases of silicomanganese, two purchased monthly, two purchased quarterly, one purchased every 6 to 8 months, four purchased annually,[182] and one each reported having two-year and three-year contracts. Three of 12 responding purchasers expected to change purchase patterns. One reported *** for 2012 and 2013, in which the price is determined monthly based on a market index. One expected to shift from an annual contract to spot purchases in 2013, and one expected its material requirements to increase with production. Purchasers reported contacting between 1 and 20 suppliers before making a purchase. Although 7 of the 12 responding purchasers contacted six or fewer suppliers, the largest purchasers, ***.

Pricing in Other Markets

Price data for silicomanganese are available in *Metals Week* and *Ryan's Notes*. Silicomanganese is typically sold and priced per pound in the United States and per metric ton in other countries. ***.

Figure V-3
Silicomanganese: Monthly market prices in dollars per pound reported by * January 2006- May 2012**

* * * * *

Foreign producers were asked to compare prices in their home market with those in the United States, Asia, and the rest of the world. ***, reported that silicomanganese prices are similar worldwide because of the availability of published prices and the concentration in the steel industry. Ukrainian

[176] None of the importers reported contract provisions.
[177] Hearing transcript, p. 6 (Kramer).
[178] Felman's posthearing brief, answers to questions pp. Staff-1-3.
[179] Eramet's posthearing brief, answers to questions pp. 18-20.
[180] Eramet's posthearing brief, answers to questions p. 20.
[181] Eramet's posthearing brief, answers to questions p. 21.
[182] One of these firms reported that it purchased the bulk of its requirements annually and purchased the balance quarterly, and one reported annual contracts with prices determined quarterly.

producers reported that prices ranged from $*** to $*** per ton in Ukraine, $*** to $*** per ton in Asia, and $*** to $*** per ton in other non-U.S. markets.[183]

Sales Terms and Discounts

*** and all eight responding U.S. importers reported selling silicomanganese mainly net 30 days.

Six of seven responding U.S. importers reported no discounts. ***.[184] ***; three importers reported quantity or volume discounts; and one importer reported discounts from publicly available market index on a case-by-case basis.

Price Leadership

Five purchasers reported price leaders. Three reported that *** was a price leader,[185] one reported that *** was the largest producer and influenced price, and one reported that *** are price leaders because they reduced production as prices declined.

PRICE DATA

The Commission requested U.S. producers and U.S. importers of silicomanganese to provide quarterly data for the total quantity and value of silicomanganese that was shipped to unrelated customers in the U.S. market. Quarterly data were requested for the period January 2006–March 2012. The products for which pricing data were requested are as follows:

Product 1.—ASTM grade B bulk silicomanganese sold to steel producers under quarterly requirement contracts.

Product 2.—ASTM grade B bulk silicomanganese sold as spot sales.

Two U.S. producers provided usable price data for sales of both products, although not all firms reported prices for all quarters.[186] Reported pricing data represented *** percent of U.S. shipments of U.S.-produced silicomanganese.[187] Price and quantity data for products 1 and 2 are presented in table V-1 and figures V-4 and V-5.

Table V-1
Silicomanganese: Weighted-average f.o.b. prices and quantities of domestic products 1 and 2,[1] by quarter, January 2006 to March 2012

* * * * *

[183] None of the Ukrainian producers reported prices in the U.S. market since they did not sell in the U.S. market during the period covered. One reason Ukrainian prices may vary is the treatment of the VAT tax. ***.

[184] Eramet's posthearing brief, answers to questions pp. 18-20.

[185] ***.

[186] No price data were provided for silicomanganese from subject countries.

[187] ***.

Figure V-4
Silicomanganese: Weighted-average f.o.b. prices and quantities of domestic product 1, by quarter, January 2006-March 2012

* * * * *

Figure V-5
Silicomanganese: Weighted-average f.o.b. prices and quantities of domestic product 2, by quarter, January 2006-March 2012

* * * * *

Price Trends

Over the period examined the price for product 1 was relatively stable in 2006 to the first quarter of 2007, and then almost tripled and peaked in the second and fourth quarters of 2008. Prices then declined sharply although still above 2006 prices; after the third quarter of 2009 prices increased until the third quarter of 2010, and have since declined slightly. Prices for product 2, when available, were higher than product 1 in 2006 and 2008 but below product 1 in 2009 and 2010. For data after 2010, product 2 prices were above those of product 1 in all but one quarter. TableV-2 summarizes the price trends by product.

Table V-2
Silicomanganese: Summary of weighted-average f.o.b. prices for products 1 and 2 from the United States

Item	Number of Quarters	Low price (*per short ton*)	High price (*per short ton*)	Change in price[1] (*percent*)
U.S. product 1	***	$***	$***	***
U.S. product 2	***	***	***	***

[1] Percentage change is based on unrounded data.

Source: Compiled from data submitted in response to commission questionnaires.

Underselling summary

No subject product price data were reported, therefore, there is no information on underselling for this review.[188]

[188] In the original investigations, subject imports were priced lower than domestic products in 22 of 44 comparisons. Brazil undersold in 10 of 25 instances; China undersold in 10 of 13 instances; and Ukraine undersold in 2 of 6 instances. Underselling margins ranged from 1.0 to 8.9 percent for Brazil, 0.4 to 7.2 percent for China, and 4.1 to 5.7 percent for Ukraine.

In the first reviews, there was only one price comparison between U.S. and subject silicomanganese; in this sale, Ukrainian product undersold U.S. product by *** percent.

APPENDIX A

FEDERAL REGISTER NOTICES

comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a) and 777(i) of the Act.

Dated: September 5, 2006.

David M. Spooner,

Assistant Secretary for Import Administration,

Appendix I Decision Memorandum

I. CHANGES SINCE THE PRELIMINARY RESULTS

II. GENERAL COMMENTS:

Comment 1: Adverse Facts Available (''AFA'') for ''Agent'' Sales
Comment 2: AFA Rate for the Bars/Wedges Order
Comment 3: Separate Rates for TMC and SMC
Comment 4: Rejecting the Respondents' Case Brief
Comment 5: Addition of an HTS Number to the Scope of the Order
Comment 6: Application of Packing Materials and the By–product Offset in the Calculation of Normal Value
Comment 7: Referral to Customs and Border Protection (''CBP'') Regarding Evasion of These Orders by Huarong, TMC and Iron Bull
Comment 8: Clerical Errors from the Preliminary Results
A. Calculation of per unit Importer Assessment Rates
B. SMC Missing Packing Variable
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III. COMPANY–SPECIFIC ISSUES:

Comment 9: Huarong
A. Axes/Adzes Rate
B. Bars/Wedges Rate
Comment 10: SMC
A. Affiliation Determination
B. Partial Adverse Facts Available for Constructed Export Price (''CEP'') Sales

C. Rate to Apply to SMC
D. AFA for SMC's Non–Reported Sales
Comment 11: AFA for Iron Bull's Sales of Bars/Wedges

[FR Doc. E6–15277 Filed 9–13–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–824, A–823–805, A–570–828)

Silicomanganese from Brazil, Ukraine, and the People's Republic of China: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on silicomanganese from Brazil, Ukraine, and the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of these antidumping duty orders.

EFFECTIVE DATE: September 14, 2006.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1392 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2006, the Department initiated and the ITC instituted the second sunset reviews of the antidumping duty orders on silicomanganese from Brazil, Ukraine, and the PRC pursuant to section 751(c) of the Act of 1930, as amended (the Act). See *Initiation of Five-year (Sunset) Reviews*, 71 FR 91 (January 3, 2006).

As a result of our review, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. See *Silicomanganese from Brazil, Ukraine, and the People's Republic of China; Five-year Sunset Reviews of Antidumping Duty Orders; Final Results*, 71 FR 26927 (May 9, 2006). On September 1, 2006, the ITC determined pursuant to section 751(c) of the Act that revocation of the antidumping duty orders on silicomanganese from Brazil, Ukraine, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Silicomanganese from Brazil, China, and Ukraine*, 71 FR 52145 (September 1, 2006), and ITC Publication 3879 (August 2006) entitled *Silicomanganese from Brazil, China, and Ukraine: Investigation Nos. 731–TA–311–314, 317, and 379 (Second Review)*.

Scope of the Orders

The merchandise covered by these orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the orders, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. These orders cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of these orders remains dispositive.

Determination

As a result of the determinations by the Department and ITC that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping

duty orders on silicomanganese from Brazil, Ukraine, and the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than January 2011.

This notice is in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 7, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–15280 Filed 9–13–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091106A]

Atlantic Trawl Gear Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of establishment of an Atlantic Trawl Gear Take Reduction Team and meeting.

SUMMARY: NMFS is establishing a Take Reduction Team (TRT) to address incidental mortality and serious injury of long-finned pilot whales (*Globicephala melas*), short-finned pilot whales (*Globicephala macrorhynchus*), white-sided dolphins (*Lagenorhynchus acutus*), and common dolphins (*Delphinus delphis*) in several trawl gear fisheries in the Atlantic Ocean. The TRT will develop a Take Reduction Plan (TRP) as required by section 118 of the Marine Mammal Protection Act (MMPA). NMFS will seek input from the Atlantic Trawl Gear TRT on all scientific data related to stock structure, abundance, and human-caused mortality and serious injury of pilot whales, white-sided dolphins, and common dolphins. The TRT will focus on developing a plan to reduce incidental catch of these species in Atlantic trawl gear fisheries to a level less than the Potential Biological Removal (PBR) level within 6 months of implementation of the plan and to a level approaching a zero mortality and serious injury rate within 5 years of implementation of the plan.

DATES: The meeting will be held on September 19, 2006, from 10 a.m. to 5 p.m., on September 20–21, 2006, from 8:30 a.m. to 5 p.m., and on September 22, 2006, from 8:30 a.m. to 2 p.m. in Providence, RI.

ADDRESSES: The Atlantic Trawl Gear TRT meeting will be held at the Providence Courtyard Marriott Downtown, 32 Exchange Terrace, Providence, RI 02903. Phone: (401) 272–1191, Fax: (401) 272–1416.

FOR FURTHER INFORMATION CONTACT: Mark Minton, NMFS, Northeast Region, 978–281–9300 Ext. 6534, *Mark.Minton@noaa.gov* or Melissa Andersen, NMFS, Office of Protected Resources, 301–713–2322 Ext. 173, *Melissa.Andersen@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MMPA defines the Potential Biological Removal (PBR) level of a marine mammal stock as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The PBR level is the product of the following factors: the minimum population estimate of the stock; one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size; and a recovery factor of between 0.1 and 1.0.

The Western North Atlantic stocks of long-finned and short-finned pilot whales (*Globicephala* sp.) were designated as non-strategic in the 2005 marine mammal stock assessment report (Waring *et al.*, 2006) because fishery-related serious injuries and mortalities are less than PBR. The 2005 stock assessment report indicates that the PBR for the combined stock of long-finned and short-finned pilot whales (*Globicephala* sp.) is 239, and that total fishery-related mortality and serious injury is 210. The Western North Atlantic (WNA) stock of white-sided dolphin (*Lagenorhynchus acutus*) is designated as non-strategic in the 2005 marine mammal stock assessment report (Waring *et al.*, 2006) because fishery-related serious injuries and mortalities are less than PBR. The 2005 stock assessment report indicates that the PBR for the WNA stock of white-sided dolphins is 364 and that total fishery-related mortality and serious injury is 38.

The Western North Atlantic stock of common dolphin (*Delphinus delphis*) is designated as non-strategic in the 2005 marine mammal stock assessment report (Waring *et al.*, 2006) because fishery-related serious injuries and mortalities are less than PBR. The 2005 stock assessment report indicates that the PBR for the WNA stock of common dolphin is 960 and that total fishery-related mortality and serious injury is 119.

For non-strategic stocks, section 118 of the MMPA calls for a take reduction plan to be completed within 11 months of the establishment of the team, and to focus in this case, on reducing incidental mortalities and serious injuries of pilot whales, white-sided dolphins and common dolphins to a level approaching a zero mortality and serious injury rate within 5 years of implementation of the plan.

All three species of marine mammals are known to interact with the Mid-Atlantic Mid-water Trawl fishery, which is classified on the MMPA List of Fisheries (LOF) as a Category I fishery (i.e., one that has frequent incidental mortalities or serious injuries of marine mammals). All three species of marine mammals are also known to interact with the Mid-Atlantic Bottom Trawl, Northeast Mid-water Trawl, and the Northeast Bottom Trawl fisheries, which are classified as Category II fisheries (i.e., those that have annual mortality and serious injury greater than 1 percent and less than 50 percent of the PBR level) on the MMPA LOF.

Other commercial fisheries known to occasionally cause incidental mortality and serious injury of pilot whales, white-sided dolphins, and common dolphins include the pelagic longline fishery (excluding the Northeast distant water fishery) and the Northeast Multispecies Sink Gillnet fishery.

Section 118 (f)(8) of the MMPA calls on the TRT to develop a draft TRP by consensus, and to submit this draft TRP to NMFS not later than 11 months after the date of the establishment of the TRT. The Secretary is then to consider the TRP, and no later than 60 days after the submission of the draft TRP, NMFS is to publish in the **Federal Register** the TRP and any implementing regulations proposed by the team for a public comment period not to exceed 90 days. Within 60 days of the close of the comment period, NMFS is to issue a final TRP and any implementing regulations.

List of invited participants: MMPA section 118 (f)(6)(c) requires that members of TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality or serious injury of such species. Section 118 requires that TRTs, to the maximum extent practicable, consist of an equitable balance among

Like Product accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce each *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of each *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of each *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of each *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Products and Domestic Industries;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 26, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19318 Filed 7–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–673 (Third Review)]

Silicomanganese From Brazil, China, and Ukraine Institution of a Five-Year Review Concerning the Antidumping Duty Orders on Silicomanganese From Brazil, China, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 31, 2011. Comments on the adequacy of responses may be filed with the Commission by October 14, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* August 1, 2011.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–255, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 31, 1994, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of silicomanganese from Ukraine (59 FR 60951, November 29, 1994). On December 22, 1994, Commerce issued antidumping duty orders on imports of silicomanganese from Brazil and China (59 FR 66003). Following first five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from Brazil and China and the suspended investigation on imports of silicomanganese from Ukraine (66 FR 10669). On July 19, 2001, the Government of Ukraine requested termination of the suspension agreement on silicomanganese from Ukraine and, effective September 17, 2001, Commerce issued an antidumping duty order (66 FR 43838, August 21, 2001). Following second five-year reviews by Commerce and the Commission, effective September 14, 2006, Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from Brazil, China, and Ukraine (71 FR 54272). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, China, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission defined the *Domestic Like Product* as all silicomanganese, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of silicomanganese.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 31, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments

concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 14, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 26, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–19315 Filed 7–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–795]

In the Matter of Certain Video Analytics Software, Systems, Components Thereof, and Products Containing Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 29, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of ObjectVideo, Inc. of Reston, Virginia. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No 6,696,945 (''the '945 patent''); U.S. Patent No. 6,970,083 (''the '083 patent''); U.S. Patent No. 7,613,324 (''the '324 patent''); U.S. Patent No. 7,424,175 (''the '175 patent''); U.S. Patent No. 7,868,912 (''the '912 patent''); and U.S. Patent No. 7,932,923 (''the '923 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 26, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video analytics software, systems, components thereof, and products containing same that infringe one or more of claims 1–8, 11–14, 17, and 24–37 of the '945 patent; claims 1–28 of the '083 patent; claims 1–3, 6, and 7 of the '324; claims 2 and 3 of the '175 patent; claims 1–3 and 6–22 of the '912 patent; and claims 1–7, 9–13, and 15–28 of the '923 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: ObjectVideo, Inc., 11600 Sunrise Valley Drive, Suite 290, Reston, VA 20191.

(b) The respondents are the following entities alleged to be in violation of

grants that remain open or continue to generate program income.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 40. The proposed frequency of the response to the collection of information is annual. Annual recordkeeping is estimated at 160 hours for approximately 40 grant recipients.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired, and a request for OMB renewal for three years. The current OMB approval will expire in October, 2011.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 16, 2011.

Yolanda Chávez,

Deputy Assistant Secretary For Grant Programs.

[FR Doc. 2011–30139 Filed 11–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14920–A; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Arviq Incorporated. The decision approves only the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate of these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Arviq Incorporated. The lands are in the vicinity of Platinum, Alaska, and located in:

Seward Meridian, Alaska

T. 13 S., R. 75 W.,
Secs. 19 and 30.
Containing 27.54 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 22, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Charmain McMillan,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–30097 Filed 11–21–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63200000–HD0000: HAG12–0039]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian, Oregon

T. 17 S., R. 7 W., accepted October 21, 2011
T. 18 S., R. 8 W., accepted October 21, 2011

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief, Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2011–30102 Filed 11–21–11; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–673 (Third Review)]

Silicomanganese From Brazil, China, and Ukraine; Notice of Commission determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of

the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as amended, 76 FR 61937 (October 6, 2011).

DATES: *Effective Date:* November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2011, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (76 FR 45856, August 1, 2011) was adequate and that the respondent interested party group responses with respect to Brazil and Ukraine were adequate, and decided to conduct full reviews of the antidumping duty orders on silicomanganese from Brazil and Ukraine. The Commission found that the respondent interested party group response with respect to China was inadequate. However, the Commission determined to conduct a full review concerning the order on silicomanganese from China to promote administrative efficiency in light of its decision to conduct full reviews with respect to Brazil and Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 16, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–30036 Filed 11–21–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–344 (Third Review)]

Tapered Roller Bearings From China; Notice of Commission determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as amended, 76 FR 61937 (October 6, 2011).

DATES: *Effective Date:* November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2011, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act.[1] The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 45853, August 1, 2011) were adequate.[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 16, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–30040 Filed 11–21–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Review)]

Certain Lined Paper School Supplies From China, India, and Indonesia; Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on certain lined paper school supplies from India and Indonesia and the antidumping duty orders on certain lined paper school supplies from China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further

[1] Chairman Deanna Tanner Okun did not participate.

[2] Commissioner Charlotte R. Lane dissented from the majority, instead finding that the respondent interested party group response was inadequate and determining to proceed to an expedited review.

Dated: November 22, 2011

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–30573 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Economic Development Administration

The National Advisory Council on Innovation and Entrepreneurship: Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, December 13, 2011. The open meeting will be conducted from 10 a.m. to 12 p.m., and will be open to the public via a listen-only conference number (888) 989–4718, passcode NACIE. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATES: December 13, 2011.

Time: 10 a.m.–12 p.m. (EST).

ADDRESSES: The meeting will be held in the Herbert C. Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230–0002. For audio participation, please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Secretary Bryson to discuss NACIE's earlier work, review its priorities, and offer his charge to the members. Specific topics for discussion include NACIE's current focus on issues related to implementing the America Invents Act and supporting development of regional economic frameworks. The agenda may change to accommodate NACIE business. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/nacie.* Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to O. Felix Obi at the contact information indicated below. Copies of meeting minutes will be available within 90 days of the meeting at *http://www.eda.gov/NACIE*

FOR FURTHER INFORMATION CONTACT: O. Felix Obi, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone: (202) 482–3688, email: *fobi@eda.doc.gov.* Please reference, ''NACIE December 13, 2011'' in the subject line of your email.

Dated: November 23, 2011.

Paul J. Corson,

Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2011–30750 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 183—Austin, Tx; Site Renumbering Notice

Foreign-Trade Zone 183 was approved by the Foreign-Trade Zones Board on December 23, 1991 (Board Order 550), and expanded on March 16, 1998 (Board Order 964), on July 10, 1998 (Board Order 994), on April 7, 1999 (Board Order 1035), on March 15, 2001 (Board Order 1143), and on January 27, 2005 (Board Order 1366).

FTZ 183 currently consists of 8 ''sites'' totaling some 2,818 acres in the Austin area. The current updates does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering of the existing sites (with the exception of Sites 2, 4, 6, 7 and 8) to separate unrelated, non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 183 will be as follows: *Site 1* (33 acres)—Interchange w/n the Austin Enterprise Zone, located at Bolm Road and Gardner Road, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (449.9 acres)—Corridor Park II (Dell), Dell Way/IH 35, Round Rock; *Site 4* (47 acres)—Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (100 acres)—Borroughs, Chandler Road/Cypress Boulevard, Round Rock; *Site 6* (246 acres)—Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres)—San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; *Site 8* (200 acres)—MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the Austin Bergstrom International Airport; *Site 9* (56.4 acres)—Data Products/Nature Conservancy, Montopolis Drive/East Riverside Drive, Austin; *Site 10* (22.6 acres)—Ben White Business Park, South Industrial Drive/Business Center Drive, Austin; *Site 11* (64.5 acres)—Walnut Business Park, US 290/US 183, Austin; *Site 12* (100 acres)—Harris Branch, Harris Branch Parkway/Parmer Lane, Austin; *Site 13* (15 acres)—Hill Partners w/n Global Business Park, Rutherford Lane/Cameron Road, Austin; *Site 14* (91 acres)—Corridor Park I (Wayne Dresser), Jarrett Way, Round Rock; *Site 15* (108.5 acres)—Vista Business Park/Bratton, Wells Port Drive/Grand Avenue Parkway, Round Rock; *Site 16* (72.6 acres)—North Park, Grand Avenue Parkway/IH 35, Round Rock; *Site 17* (40 acres)—Harvard, Glenn Drive, Round Rock; *Site 18* (574 acres)—Parmer Lane, E. Parmer Lane/McCallen Pass, Round Rock; *Site 19* (217.9 acres)—Tech Ridge, McCallen Pass/Howard Lane, Round Rock; *Site 20* (58.5 acres)—Wells Branch Industrial Park, Howard Lane/McNiel-Meriltown Road, Round Rock; *Site 21* (45.5 acres)—Metric Center, Metric Boulevard, Round Rock; *Site 22* (38.5 acres)—Crystal Park, E. Old Settlers Boulevard, Round Rock; *Site 23* (116.3 acres)—Westinghouse, Westinghouse Drive/IH 35, Round Rock; and, *Site 24* (30 acres)—Coop Smith & Park Central, County Road 116/111, Round Rock.

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 22, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–30758 Filed 11–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824, A–570–828, A–823–805]

Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On August 1, 2011, the Department of Commerce (''Department'') initiated the third sunset reviews of the antidumping duty orders on silicomanganese from Brazil,

the People's Republic of China (''PRC''), and Ukraine [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). The Department received a notice of intent to participate in all three reviews from the domestic interested party, Eramet Marietta, Inc. (''Eramet''), within the time specified in 19 CFR 351.218(d)(1)(i).[2] On August 31, 2011, the Department received substantive responses from Eramet. Based on the receipt of the substantive responses filed by the domestic interested party within the 30-day deadline as specified by 19 CFR 351.218(d)(3)(i) and the lack of response from any respondent interested party, the Department conducted expedited sunset reviews of the antidumping duty orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* November 29, 2011.

FOR FURTHER INFORMATION CONTACT: Erin Begnal; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; *telephone:* (202) 482–1442.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated sunset reviews of the orders on silicomanganese from Brazil, the PRC, and Ukraine pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011). On August 31, 2011, the Department received substantive responses from Eramet, pursuant to 19 CFR 351.218(d)(3)(i). In accordance with 19 CFR 351.218(d)(1)(ii)(A), Eramet claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. In its substantive responses, Eramet indicated that Elkem Metals Company (''Elkem'') was the petitioner in the original investigation but that since Eramet purchased Elkem's silicomanganese operations in 1999, it has participated actively in all administrative reviews and sunset reviews. The Department did not receive a substantive response from any respondent interested party in these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of the antidumping duty orders.

Scope of the Orders

The merchandise covered by the orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of the order, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. The orders cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the orders remain dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is addressed in the accompanying Issues and Decision Memorandum (''I&D Memo''), which is hereby adopted by this notice. *See* the Department's memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Silicomanganese from Brazil, the People's Republic of China, and Ukraine'' concurrently dated with this notice. The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the antidumping orders were revoked. Parties can find a complete discussion of all issues raised in this full sunset review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

The Department determines that revocation of the antidumping duty orders on silicomanganese from Brazil, the PRC, and Ukraine would likely lead to continuation or recurrence of dumping. The Department also determines that the dumping margins likely to prevail if the orders were revoked are as follows:

MANUFACTURERS/EXPORTERS/PRODUCERS WEIGHTED-AVERAGE MARGIN

[Percent]

Brazil	
RDM/CPFL	64.93
All Others	17.60
The PRC	
All Manufacturers/Producers/Exporters	150.00
Ukraine	
All Manufacturers/Producers/Exporters	163.00

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or

[1] *See Notice of Antidumping Duty Order: Silicomanganese From Brazil,* 59 FR 66003 (December 22, 1994), *Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC),* 59 FR 66003 (December 22, 1994), and *Suspension Agreement on Silicomanganese From Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 66 FR 43838 (August 21, 2001).

[2] On August 19, 2011, the Department received a notice of intent to participate from Felman Production Inc. (''Felman''), a producer of the domestic like product. On August 22, 2011, Felman requested an extension of the deadline to submit its notice of intent to participate, as the deadline for domestic interested parties to submit notices of intent to participate in the sunset reviews was August 16, 2011, pursuant to 19 CFR 351.218(d)(l)(i) (''the deadline for filing a 'Notice of Intent' to participate by domestic interested parties in a sunset review is 'no later than 15 days after the date of publication of the initiation notice.' ''). In light of the compressed timelines for conducting the sunset review under section 751(c) of the Act, and 19 CFR 351.218(d), the Department denied Felman's request for an extension.

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 22, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–30767 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–975]

Galvanized Steel Wire From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* November 29, 2011.

SUMMARY: On November 4, 2011, the Department of Commerce (''Department'') published the preliminary determination of sales at less than fair value in the antidumping investigation of galvanized steel wire from the People's Republic of China (''PRC'').[1] We are amending our *Preliminary Determination* to correct certain ministerial errors with respect to the antidumping duty margin calculation for the Baozhang entity.[2] The corrections to the Baozhang entity's margin also affect the margin assigned to companies receiving a separate rate.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–7906.

SUPPLEMENTARY INFORMATION: On November 4, 2011, Petitioners[3] filed a timely allegation of a ministerial error contained in the Department's *Preliminary Determination*.[4]

After reviewing the allegation, we have determined that the *Preliminary Determination* included a significant ministerial error. Therefore, in accordance with 19 CFR 351.224(e), we have made a change, as described below, to the *Preliminary Determination*.

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 31, 2011).[5]

Scope of Investigation

The scope of this investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

—1.80 percent of manganese, or
—1.50 percent of silicon, or
—1.00 percent of copper, or
—0.50 percent of aluminum, or
—1.25 percent of chromium, or
—0.30 percent of cobalt, or
—0.40 percent of lead, or
—1.25 percent of nickel, or
—0.30 percent of tungsten, or
—0.02 percent of boron, or
—0.10 percent of molybdenum, or
—0.10 percent of niobium, or
—0.41 percent of titanium, or
—0.15 percent of vanadium, or
—0.15 percent of zirconium.

Specifically excluded from the scope of this investigation is galvanized steel wire in coils of 15 feet or less which is pre-packed in individual retail packages. The products subject to this investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.20.0090, 7229.90.5008, 7229.90.5016, 7229.90.5031, and 7229.90.5051. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Significant Ministerial Error

Ministerial errors are defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[6]

Ministerial Error Allegation

Truck Freight for Baozhang

Petitioners argue that the Department incorrectly applied the surrogate value for truck freight on a per-kilogram basis, rather than on a per-metric ton basis, because the Baozhang entity reported its factors of production (''FOPs'') on a per-metric ton basis and the Department calculated the Baozhang entity's margin on a per-metric ton basis. Petitioners request that the Department correct this error by converting the surrogate value for truck freight to a per-metric ton basis. Further, Petitioners contend that correcting this error would result in a significantly higher weight-averaged

[1] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Galvanized Steel Wire from the People's Republic of China,* 76 FR 68407 (November 4, 2011) (''*Preliminary Determination*'').

[2] The Baozhang entity consists of Shanghai Bao Zhang Industry Co., Ltd. and Anhui Bao Zhang Metal Products Co., Ltd. (''Anhui Baozhang''), *See Preliminary Determination* at 68413.

[3] Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC and Oklahoma Steel & Wire Company, Inc. (collectively, ''Petitioners'').

[4] *See* Letter to the Department from Petitioners Re: Antidumping Investigation of Galvanized Steel Wire from the People's Republic of China—Petitioners' Ministerial Error Comment Regarding Preliminary Determination for Bao Zhang Companies, dated November 4, 2011.

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* 19 CFR 351.224(g).

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–012]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 19, 2012 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1185 (Final) (Certain Steel Nails from the United Arab Emirates). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 2, 2012.
5. Vote in Inv. Nos. 731–TA–1186 and 1187 (Final) (Certain Stilbenic Optical Brightening Agents from China and Taiwan). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before May 2, 2012.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By Order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9020 Filed 4–11–12; 11:15 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–011]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 17, 2012 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–477 and 731–TA–1180–1181 (Final) (Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.
5. Vote in Inv. Nos. 701–TA–478 and 731–TA–1182 (Final) (Certain Steel Wheels from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 30, 2012.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9021 Filed 4–11–12; 11:15 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–671–673 (Third Review)]

Silicomanganese From Brazil, China, and Ukraine; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727, *russell.duncan@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (76 FR 72212, November 22, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following

publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on August 15, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on September 5, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 30, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 4, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 24, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 14, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before September 14, 2012. On October 2, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 4, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8897 Filed 4–12–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121—NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Body Armor in Correctional Institutions Survey

ACTION: 60-day notice of information collection under review.

The Department of Justice (DOJ), National Institute of Justice (NIJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 12, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Mark E. Greene at 202–307–3384.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Establishment survey and initial approval of collection.

(2) *Title of Form/Collection:* Body Armor in Correctional Institutions Survey. The collections include the forms Body Armor Administrative Agency-Level Survey and Body Armor Individual-level Correctional Officer Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. National Institute of Justice, Office of Justice Programs, Department of Justice.

APPENDIX B

HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject: Silicomanganese from Brazil, China, and Ukraine

Inv. Nos.: 731-TA-671-673 (Third Review)

Date and Time: September 5, 2012 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room, 500 E Street (room 101), SW, Washington, D.C.

OPENING REMARKS:

In Support of Continuation of Orders (**William D. Kramer**,
DLA Piper LLP (US))
In Support of Revocation of Orders (**Craig A. Lewis**,
Hogan Lovells US LLP)

In Support of the Continuation of the Antidumping Duty Orders:

Stewart and Stewart
Washington, D.C.
on behalf of

Felman Production, LLC

Vladislav Mikhyeyev, Chief Executive Officer,
Felman Trading, Inc.

Barry C. Nuss, Chief Financial Officer, Felman
Production, LLC

John S. Konrady, Plant Manager, Felman
Production, LLC

Roy F. Martin, Jr., Treasurer-USW Local 5171,
Felman Production, LLC

In Support of the Continuation of
the Antidumping Duty Orders (continued):

Robert L. Powell, Jr., Vice President, Secretary, and General Counsel

Eric P. Salonen)
) – OF COUNSEL
Stephanie R. Manaker)

DLA Piper LLP (US)
Washington, D.C.
on behalf of

Eramet Marietta, Inc. ("Eramet")

John A. Willoughby, Chief Executive Officer, Eramet

Robert Burdette, President and Chief Executive Officer, Eramet North America, Inc.

Steve Brown, President, United Steelworkers Local 1-00639

Dr. Kenneth R. Button, Senior Vice President, Economic Consulting Services, LLC

Jennifer Lutz, Senior Economist, Economic Consulting Services, LLC

William D. Kramer)
) – OF COUNSEL
Martin Schaefermeier)

In Opposition to the Continuation of
the Antidumping Duty Orders:

Hogan Lovells US LLP
Washington, D.C.
on behalf of

Vale Manganẻs S/A ("Vale")

Thomas J. Prusa, Professor of Economics,
Rutgers University

Craig A. Lewis)
) – OF COUNSEL
Jonathan T. Stoel)

REBUTTAL/CLOSING REMARKS:

In Support of Continuation of Orders (**Eric P. Salonen**, Stewart and Stewart;
and **Dr. Kenneth R. Button**, Economic Consulting Services LLC)
In Support of Revocation of Order (**Craig T. Lewis**, Hogan Lovells US LLP)

APPENDIX C

SUMMARY DATA

Table C-1
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

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Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year						January to March	
	2006	2007	2008	2009	2010	2011	2011	2012
Quantity (*short tons*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	0	0	0	0	0	0	0	0
China	0	38	2	591	38	1	0	0
Ukraine	0	0	0	0	22	0	0	0
Subject sources	0	38	2	591	60	1	0	0
Nonsubject sources	442,300	457,204	368,123	204,323	316,524	347,497	87,064	105,363
All sources	442,300	457,242	368,125	204,915	316,584	347,498	87,064	105,363
Value (*1,000 dollars*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	0	0	0	0	0	0	0	0
China	0	120	7	999	56	3	0	0
Ukraine	0	0	0	0	24	0	0	0
Subject sources	0	120	7	999	80	3	0	0
Nonsubject sources	345,131	587,059	730,524	217,327	406,542	426,712	107,090	123,716
All sources	345,131	587,179	730,531	218,326	406,622	426,715	107,090	123,716
Unit value (*dollars per short ton*)								
U.S. importers' U.S. shipments of U.S. imports from.--								
Brazil	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
China	(3)	3,170	3,134	1,690	1,467	2,196	(3)	(3)
Ukraine	(3)	(3)	(3)	(3)	1,082	(3)	(3)	(3)
Subject sources	(3)	3,170	3,134	1,690	1,326	2,196	(3)	(3)
Nonsubject sources	780	1,284	1,984	1,064	1,284	1,228	1,230	1,174
All sources	780	1,284	1,984	1,065	1,284	1,228	1,230	1,174

Table continued next page. Footnotes at the end of the table.

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

Item	Calendar year comparisons						January to March comparison
	2006-11	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Quantity (*short tons*)							
U.S. importers' U.S. shipments of U.S. imports from.--							
Brazil	(3)	(3)	(3)	(3)	(3)	(3)	(3)
China	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Ukraine	(3)	(3)	(3)	(3)	(4)	(4)	(3)
Subject sources	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Nonsubject sources	(21.4)	3.4	(19.5)	(44.5)	54.9	9.8	21.0
All sources	(21.4)	3.4	(19.5)	(44.3)	54.5	9.8	21.0
Value (*1,000 dollars*)							
U.S. importers' U.S. shipments of U.S. imports from.--							
Brazil	(3)	(3)	(3)	(3)	(3)	(3)	(3)
China	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Ukraine	(3)	(3)	(3)	(3)	(4)	(4)	(3)
Subject sources	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Nonsubject sources	23.6	70.1	24.4	(70.3)	87.1	5.0	15.5
All sources	23.6	70.1	24.4	(70.1)	86.2	4.9	15.5
Unit value (*dollars per short ton*)							
U.S. importers' U.S. shipments of U.S. imports from.--							
Brazil	(3)	(3)	(3)	(3)	(3)	(3)	(3)
China	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Ukraine	(3)	(3)	(3)	(3)	(4)	(4)	(3)
Subject sources	(4)	(4)	(4)	(4)	(4)	(4)	(3)
Nonsubject sources	57.4	64.6	54.6	(46.4)	20.8	(4.4)	(4.5)
All sources	57.4	64.6	54.5	(46.3)	20.6	(4.4)	(4.5)

Table continued next page. Footnotes at the end of the table.

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

Table C-1--*Continued*
Silicomanganese: Summary data, 2006-2011, January to March 2011, and January to March 2012

* * * * *

APPENDIX D

COMMENTS ON EFFECTS OF ORDERS AND REVOCATION OF ORDERS

U.S. PRODUCERS' COMMENTS

The Commission requested U.S. producers to describe any anticipate changes in the character of their operations or organization relating to the production of silicomanganese in the future if the antidumping orders were to be revoked. (Question II-4). Their responses are as follows:

Firm	Response
Eramet	***
Felman	***

U.S. PRODUCERS' COMMENTS--*Continued*

The Commission requested U.S. producers to describe the significance of the antidumping duty order on their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, and asset values. (Question II-17). Their responses are as follows:

Firm	Response
Eramet	***
Felman	***

U.S. PRODUCERS' COMMENTS--*Continued*

The Commission asked U.S. producers whether they anticipated changes in their production capacity, production, U.S. shipments, inventories, purchases, employment, revenues, costs, profits, cash flow, capital expenditures, research and development expenditures, or asset values relating to the production of silicomanganese in the future if the antidumping duty order were to be revoked. (Question II-18). Their responses are as follows:

Firm	Response
Eramet	***
Felman	***

U.S. IMPORTERS' COMMENTS

The Commission asked U.S. importers if they anticipated any changes in the character of their operations or organization relating to the importation of silicomanganese in the future if the antidumping duty orders were revoked. (Question II-4). Their responses are as follows:

Firm	Response
Allegheny Alloys, LLC	***
Alloy Sales Company	***
Minerais US LLC	***
CCMA, LLC.	***
Asia Minerals Limited	***
Glencore Ltd	***
Eramet Marietta	***
Nizi International S.A.	***
Felman Trading	***
BHP Billiton Marketing Inc.	***

U.S. IMPORTERS' COMMENTS--*Continued*

The Commission requested U.S. importers to describe the significance of the existing antidumping duty order on their firms' imports, U.S. shipments of imports, and the inventories of silicomanganese. (Question II-9). Their responses are as follows:

Firm	Response
Allegheny Alloys, LLC	***
Alloy Sales Company	***
Minerais US LLC	***
CCMA, LLC.	***
Asia Minerals Limited	***
Glencore Ltd	***
Eramet Marietta	***
Nizi International S.A.	***
Felman Trading	***
BHP Billiton Marketing Inc.	***

U.S. IMPORTERS' COMMENTS--*Continued*

The Commission requested U.S. importers if they would anticipate any changes in their imports, U.S. shipments of imports, or inventories of silicomanganese in the future if the antidumping duty orders were to be revoked. (Question II-10). Their responses are as follows:

Firm	Response
Allegheny Alloys, LLC	***
Alloy Sales Company	***
Minerais US LLC	***
CCMA, LLC.	***
Asia Minerals Limited	***
Glencore Ltd	***
Eramet Marietta	***
Nizi International S.A.	***
Felman Trading	***
BHP Billiton Marketing Inc.	***

U.S. PURCHASERS' COMMENTS

The Commission asked U.S. purchasers to comment on the likely effect of any revocation of the antidumping duty orders covering silicomanganese from Brazil, China, and Ukraine. They were asked to discuss the potential effects of revocation of the antidumping duty order in terms of (1) the future activities of their firms and (2) the U.S. market as a whole. (Question III-28)

These were the responses for "(1) the future activities of their firm"

Firm	Response
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

U.S. PURCHASERS' COMMENTS--*Continued*

These were the responses for "(2) the U.S. market as a whole"

Firm	Response
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

U.S. PURCHASERS' COMMENTS--*Continued*

The Commission requested the purchasers identify and discuss any improvements/changes in the U.S. silicomanganese industry since 2006. (Question III-29(a).) Their responses are as follows:

Firm	Response
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

U.S. PURCHASERS' COMMENTS--*Continued*

The Commission requested the purchasers identify and discuss any improvements/changes they anticipate in the future U.S. silicomanganese industry. (Question III-29(b).) Their responses are as follows:

Firm	Response
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***

FOREIGN PRODUCERS' COMMENTS

The Commission asked foreign producers whether they anticipated any changes in the character of their operations or organization relating to the production of silicomanganese in the future if the antidumping duty orders were revoked. (Question II-4). Their responses are as follows:

Firm	Response
Brazil: Vale	***
Ukraine: Nikopol	***
Ukraine: Zaporozhye	***
Ukraine: Stakhanov	***
China: Guilin Comilog	***

FOREIGN PRODUCERS' COMMENTS--*Continued*

The Commission asked foreign producers to describe the significance of the existing antidumping duty orders on the firms' production capacity, home market shipments, exports to the United States and other markets. (Question II-12). Their responses are as follows:

Firm	Response
Brazil: Vale	***
Ukraine: Nikopol	***
Ukraine: Zaporozhye	***

Compilation continued on next page.

Firm	Response
Ukraine: Stakhanov	***
China: Guilin Comilog	***

FOREIGN PRODUCERS' COMMENTS--*Continued*

The Commission asked foreign producers whether they anticipated any changes in the character of Brazilian, Chinese, or Ukrainian operations or organization related to the production of silicomanganese in the future if the antidumping duty orders were to be revoked. (Question II-13). Their responses are as follows:

Firm	Response
Brazil: Vale	***
Ukraine: Nikopol	***

Compilation continued on next page.

Firm	Response
Ukraine: Zaporozhye	***
Ukraine: Stakhanov	***
China: Guilin Comilog	***