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January 17, 2020

By Electronic Filing

Erland Herfindahl  
Deputy Assistant U.S. Trade Representative for  
the Generalized System of Preferences  
Office of United States Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Docket No: USTR-2019-0020

**Re: South Africa Country Practice Review: Pre-Hearing Comments of Manganese Metal Company**

Dear Mr. Herfindahl:

Manganese Metal Company (Pty) Ltd, hereafter “MMC”, herein responds to the invitation for comments concerning the country practice review of the Republic of South Africa, specifically its meeting of the Generalized System of Preferences (“GSP”) eligibility criterion requiring adequate and effective protection of intellectual property rights. As the sole producer of electrolytic manganese metal (“EMM”) in South Africa, MMC supplies a critical metal to end-users in the United States. Because there is no source of EMM in the United States, one of our largest export markets for EMM is the U.S. market. Customers in the United States prefer our quality and the option to purchase from a supplier that is not located in China.

In this regard, global production of manganese metal is almost exclusively limited to China, which accounts for 97% of global supply. Without preferential treatment under GSP, MMC’s exports of EMM could not compete with the low prices offered by Chinese producers due largely to unsustainable and polluting practices in China. Without GSP, the economics of our business would suffer a serious blow and could be destroyed altogether. Our employees, and the indirect jobs that we support in South Africa, would be lost.

Eliminating GSP preferences for South African EMM would leave U.S. manufacturers and importers dependent on only China as the single source for a critical metal. End-users in the United States would lose a valuable and necessary supplier were South Africa not to receive GSP preferences. EMM is primarily used as an alloying element (or input material) for the production of various types of steel, aluminium and other metal alloys. EMM was classified as a “critical material” in 2017 and has been added to the Defense Logistics Agency’s Strategic Materials planned acquisition budgets for 2018 and 2019.<sup>1</sup> Similar to the President’s Section 232 tariffs on steel products, ensuring South African supply of manganese will advance the strategic national security interests of the United States.<sup>2</sup>

Finally, South Africa is an important trading partner of the United States and a significant economy within sub-Saharan Africa. The International Intellectual Property Alliance (“IIPA”) seeks the withdrawal or suspension of GSP benefits for South Africa based upon the existence of two bills that it concedes have not yet been enacted. This is a disproportionate response, the result of which would negatively affect the

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<sup>1</sup> See <https://www.dla.mil/HQ/Acquisition/StrategicMaterials/Materials.aspx>.

<sup>2</sup> See, e.g., U.S. Department of Commerce, *The Effect of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act Of 1962, As Amended*, January 11, 2018, at 51.



\$19 billion in trade between the United States and South Africa.<sup>3</sup> United States trade policy and national security policy should not be nullified on the basis of intellectual property policies that have not been enacted or implemented. Indeed, enactment of the new legislation may cure the problem without need to upset the trade balance, increase national security concerns, or impact products and markets where the intellectual property concerns do not apply.

GSP provides substantial, mutual benefits to the United States and South Africa. We respectfully request the Subcommittee to maintain South Africa's eligibility for benefits under GSP in the interests of Africa and the United States.

The facts supporting our request for continued GSP eligibility are as follows:

1. The copyright bills opposed by the IIPA have not been enacted. It is unknown if or when these bills will become law, and if so, when their implementation date would be. It is also unknown whether accompanying regulations might be issued that would address the IIPA's concerns and focus on specific products and market sectors such as motion pictures and books that are directly implicated. As such, IIPA's concerns are both speculative and premature.
2. Concerns about South Africa's IP protection measures have not arisen from the U.S. government, but rather from stakeholders with particular interests. Notably, in the 2019 National Trade Estimate Report on Foreign Trade Barriers, USTR indicated that the South African government "has taken some positive steps toward more effective protection and enforcement of IPR."<sup>4</sup> South Africa has not been included on USTR's Special 301 Watch List since 1999.<sup>5</sup>
3. Critical exports from South Africa, such as EMM, are not the types of goods subject to these proposed copyright laws. All EMM requirements by U.S. industries are met via imports from production located in only two countries – China and South Africa. (New production capacity was commissioned in January 2015 in Gabon, but no regular supply from this country has yet taken place.) A number of other countries are recorded as the country of origin for EMM supply into the United States, but in these locations Chinese or South African origin EMM is toll processed into further products and then supplied to the United States.

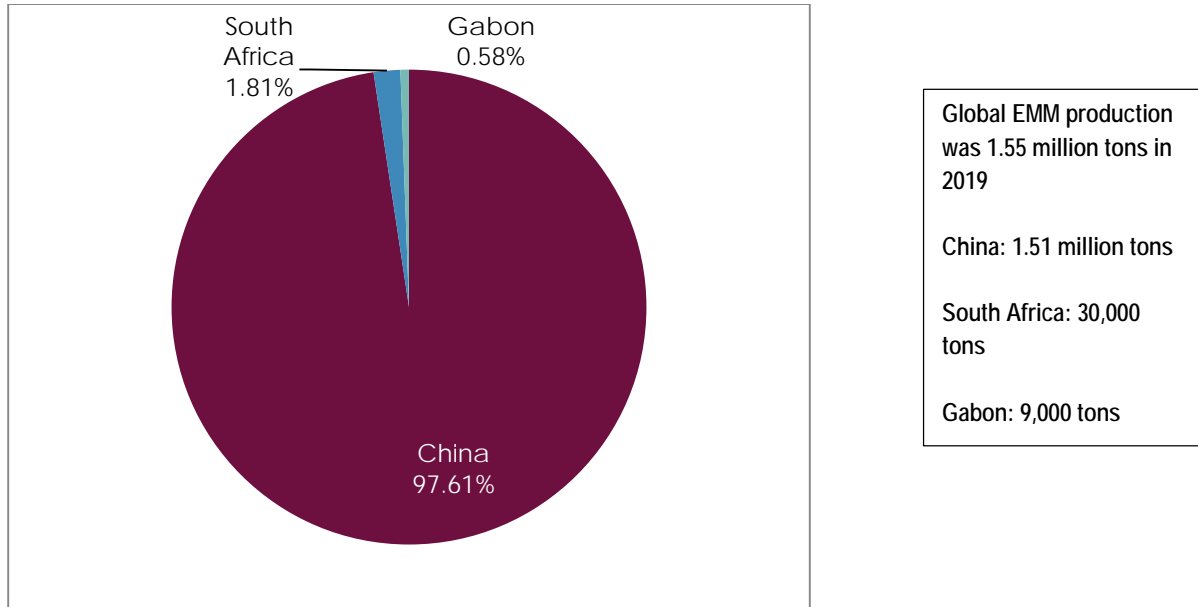
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<sup>3</sup> 2018 trade data from USTR: <https://ustr.gov/countries-regions/africa/southern-africa/south-africa>

<sup>4</sup> USTR, 2019 National Trade Estimate Report on Foreign Trade Barriers (March 2019) at 446.

<sup>5</sup> USTR, 1999 Special 301 Report at 22, available at <https://ustr.gov/sites/default/files/1999%20Special%20301%20Report.pdf>. South Africa was removed from the Watch List on December 1, 1999. Trade Policy Agenda and 1999 Annual Report on the Trade Agreements Program, H.R. Doc. No. 106-205 at 301 (2000).

**Global Production of Electrolytic Manganese Metal (EMM) in 2019**



- Driven by Chinese exports, the market price for EMM remains extremely volatile, displaying the result of unpredictable supply constraints in China following interventions by its government, or unpredictable flooding of the market by temporarily operating old and polluting production facilities.

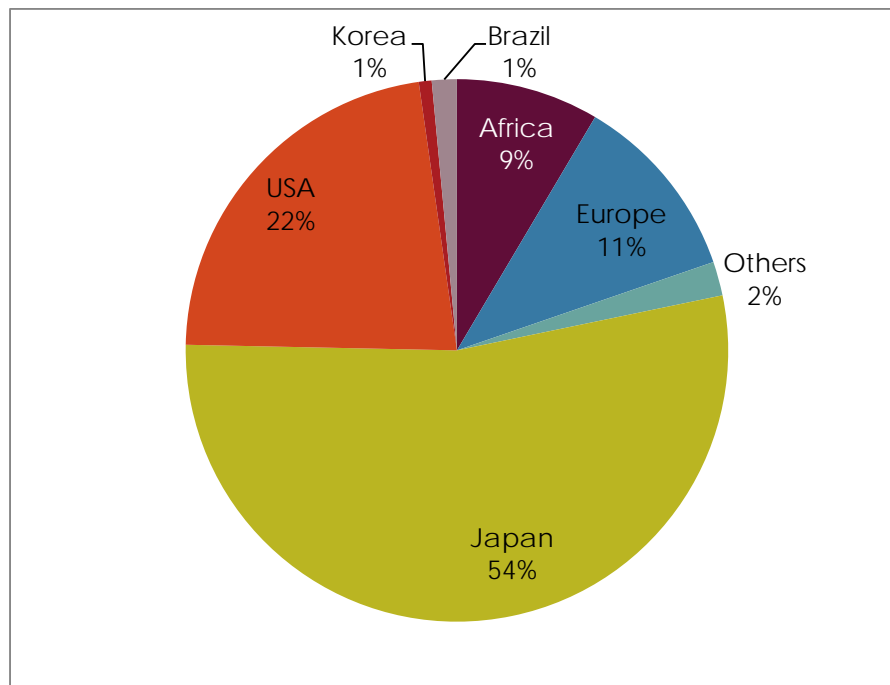
**Chinese EMM Price History on an FOB China Basis**



Source: Argus Direct

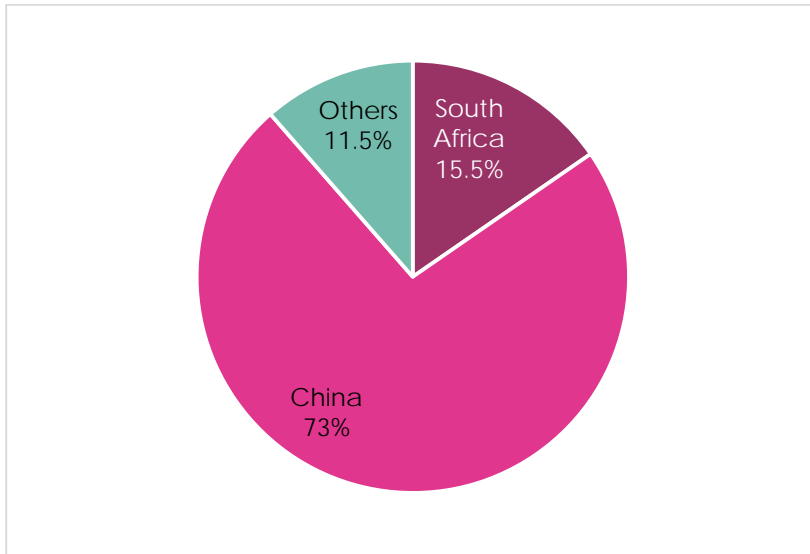
5. MMC supplied one quarter of apparent U.S. consumption of EMM in 2018. One quarter of MMC's customer base is located in the United States. Given duty-free access to the U.S. market, MMC is able to compete with EMM supplied by China. Without preferential duty-free treatment, MMC will not be able to compete with Chinese supply. In recent prior years, MMC was supplying over 30% of U.S. consumption, but because of highly volatile market pricing MMC now has a smaller share of the U.S. market due to an inability to compete. GSP benefits are now all the more important given the pricing pressure from low-cost Chinese supply.

#### **MMC Sales Per Country in 2019**



6. The largest application for EMM is in steelmaking. The same factors that plague the Chinese steel industry (overcapacity, government subsidies and general disregard for environmental protection) are also at play in the Chinese EMM industry. The U.S. government has recognized these issues, having implemented Section 232 measures aimed at protecting the U.S steel industry from China's steel exports.
7. The majority of the EMM buyers in the United States import and/or consume material from both MMC and Chinese producers. Strategically, it is very important to have a second source of supply in order to reduce country risk and to increase competitiveness between suppliers. Due to the duty-free benefits of GSP, South African material has the potential to be competitively priced in a market dominated by Chinese-produced material. Herein lies the most important benefit to U.S. consumers of EMM in terms of the provisions of GSP – having security of supply of a critical raw material from a producer that is not China-based. Therefore, South Africa, and EMM from South Africa, must remain eligible for GSP benefits.

**U.S. Import Statistics for Electrolytic Manganese Metal (EMM) in 2019 (Jan.-Nov.)**  
**Total Volume Imported Under HTS 811100 = 36,000 metric tonnes**



Imports from “Others” are predominantly from countries like Germany, Spain and Mexico, who use Chinese EMM to press briquettes or mill into powders and then export to the USA. The only countries with primary EMM product are China, South Africa and Gabon. Supply from all other countries are “transhipments” or “toll processed”.

Source: USITC Dataweb

8. With respect to EMM, South Africa’s GSP eligibility provides a strategic advantage to the United States. Additionally, the purpose of GSP is to “provide opportunities for many of the world’s poorest countries to use trade to grow their economies and climb out of poverty” by “promot{ing} economic development by eliminating duties on thousands of products when imported from one of 119 designated beneficiary countries and territories.”<sup>6</sup> As described below, MMC’s experiences show that GSP eligibility has had a significant impact on the economic development of South Africa.
9. The local community in which MMC operates, the town of Mbombela (previously called Nelspruit) in the province of Mpumalanga, is highly dependent on MMC for employment opportunities. Without preferential market access to the United States, members of this local community will face the challenges of financial hardship and decreased opportunity for development. MMC is a valued corporate citizen with various employee development programs and wage rates above the national average. However, these factors cannot compete in a global market where Chinese supply is subsidized by provincial governments, where environmental protection only happens occasionally and where unfair labour practices continue to this day. MMC currently employs just under 600 persons in Mbombela, resulting in indirect employment for an estimated 2,300 persons and induced employment for another 1,000 persons. In total, MMC creates an estimated 3,900 jobs in Mbombela, where the unemployment rate is over 25%.<sup>7</sup> The closure of MMC would have a debilitating effect on the local and regional economy
10. With the high unemployment rate, and the child-headed families as a result of HIV and AIDS deaths, more South Africans end up taking care of their extended families, adult children and/or adopted

<sup>6</sup> See <https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp>; see also U.S. Generalized System of Preferences Guidebook, available at [https://ustr.gov/sites/default/files/IssueAreas/gsp/GSP\\_Guidebook-December\\_2019.pdf](https://ustr.gov/sites/default/files/IssueAreas/gsp/GSP_Guidebook-December_2019.pdf).

<sup>7</sup> Figures taken from Urban-Econ Development Economists’ socio-economic impact assessment of MMC (July 2018).



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dependents. Based on our activities in the local community, we estimate that at least 2,400 dependents are being cared for via MMC. The closure of MMC will thus also have severe social impacts on the local and regional community.

In short, GSP eligibility for South Africa is of strategic benefit to U.S. manufacturers that need a critical raw material that is not produced in the United States and is China-dominated. GSP has also, as it was intended to do, brought high-quality jobs and investment to our country. GSP benefits both our countries, and MMC cannot compete with subsidized Chinese EMM production without duty-free access. For these reasons, South Africa's GSP eligibility must not be suspended or withdrawn.

Respectfully submitted,

A handwritten signature in black ink that reads "M Todd." The signature is written in a cursive, flowing style.

Madelein Todd  
*Chief Marketing Officer, MMC*