

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: April 10, 2002.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 303-TA-23, 731-TA-566-570, and 731-TA-641 (Final) (Reconsideration) (Remand)]

### Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice and scheduling of remand proceedings.

**SUMMARY:** The United States International Trade Commission (Commission) hereby gives notice of the court-ordered remand of its reconsideration proceedings pertaining to countervailing duty investigation no. 303-TA-23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigation nos. 731-TA-566-570 and 731-TA-641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

**EFFECTIVE DATE:** April 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lynn Featherstone, Office of Investigations, telephone 202-205-3160, or Marc A. Bernstein, Office of General Counsel, telephone 202-205-3087, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

#### SUPPLEMENTARY INFORMATION:

##### Background

In August 1999 the Commission made a negative determination upon reconsideration in its antidumping and countervailing duty investigations concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela. Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final) (Reconsideration), USITC Pub. 3218 (Aug. 1999). The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On February 21, 2002, the CIT issued an opinion finding the Commission's proceedings on reconsideration defective because they did not accord the parties an opportunity to participate in a hearing specifically concerning the reconsideration proceeding. The CIT accordingly remanded the matter to the Commission for further proceedings. *Elkem Metals Co. v. United States*, slip op. 02-18 (Ct. Int'l Trade Feb. 21, 2002). On March 18, 2002, the CIT issued an Order providing the Commission within 180 days of service of the Order to complete the remand proceedings. The Commission received notice of this Order on April 1, 2002.

##### Reopening the Record

The Commission is reopening the record in these reconsideration proceedings to enable it to conduct the remand proceedings required by the CIT's opinion. The scope of the proceedings was not addressed in the CIT's opinion or Order, and consequently will remain unchanged from the 1999 reconsideration proceeding. See Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, 64 Fed. Reg. 28212 (May 25, 1999). Consequently, any new information submitted in this remand proceeding must be limited to

the issues of (a) the price-fixing conspiracy in which certain domestic ferrosilicon producers participated during the periods of the Commission's original investigations, or other anticompetitive conduct relating to the original periods of investigation, and (b) any possible material misrepresentations or material omissions, by any entity that provided information or argument in the original investigations, concerning: (1) The conspiracy or other anticompetitive conduct or (2) any other matter. The record in these proceedings will encompass the material from the record of the original investigations, the 1998-99 changed circumstances investigations involving ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, and the 1999 reconsideration proceedings, as well as any information submitted during the remand proceedings, to include the Staff Reports and Economic Reports prepared during the original investigations and the Staff Report prepared during the changed circumstances investigation.

##### Participation in the Proceedings

Only those persons who were parties to the previous reconsideration proceedings (i.e., persons listed on the Commission Secretary's service list) may participate as parties in these remand proceedings. Nonparties may file written submissions and submit hearing testimony as described below.

##### Nature of the Remand Proceedings

The Commission will conduct the following additional proceedings in this remand: *Prehearing Brief*. Each party to the investigation shall submit to the Commission a prehearing brief no later than May 23, 2002. The brief shall only address those matters within the scope of the reconsideration proceeding. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules. Any person who is not a party to this investigation may submit a brief written statement of information pertinent to the reconsideration proceeding within the time specified for the filing of prehearing briefs.

Hearing. The Commission will hold a hearing in connection with this reconsideration proceeding beginning at 9:30 a.m. on June 6, 2002, 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 May 29, 2002. 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 June 3, 2002, 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), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing. 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. Written witness testimony must be filed no later than three days before the hearing. Hearing testimony and presentations shall address only those matters within the scope of the reconsideration proceeding.

Posthearing Brief. Parties to the investigation may file posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 13, 2002. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 13, 2002. Posthearing submissions shall address only those matters within the scope of the reconsideration proceeding.

Final Comments. On a date after the submission of prehearing briefs to be announced, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may subsequently submit final comments on this information on a date to be announced. Such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. General Information on Written Submissions. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified

by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service. Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

#### **Limited Disclosure of BPI Under an Administrative Protective Order (APO) and BPI Service List**

Information obtained during the remand proceedings will be released to parties under the Administrative Protective Order (APO) in effect during the previous reconsideration proceedings. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the previous reconsideration proceedings and this remand proceeding available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under APO in these remand proceedings.

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

Issued: April 11, 2002.

By order of the Commission.

**Marilyn R. Abbott,**  
Secretary.

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## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 731-TA-925 (Final)]**

### **Greenhouse Tomatoes From Canada Determination**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (Commission) determines,<sup>2</sup> pursuant to

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

<sup>2</sup> Commissioner Lynn M. Bragg dissenting.

section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of greenhouse tomatoes, provided for in subheadings 0702.00.20, 0702.00.40, and 0702.00.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

#### **Background**

The Commission instituted this investigation effective March 28, 2001, following receipt of a petition filed with the Commission and Commerce by Carolina Hydroponic Growers Inc., Leland, NC; Eurofresh, Inc., Willcox, AZ; Hydro Age, Cocoa Beach, FL; Sun Blest Management, Fort Lupton, CO; Sun Blest Farms, Peyton, CO; and Village Farms, LP, Eatontown, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of greenhouse tomatoes from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 14, 2001 (66 FR 57112). The hearing was held in Washington, DC, on February 21, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 11, 2002. The views of the Commission are contained in USITC Publication 3499 (April 2002), entitled *Greenhouse Tomatoes from Canada: Investigation No. 731-TA-925 (Final)*.

Issued: April 10, 2002.

By order of the Commission.

**Marilyn R. Abbott,**  
Secretary.

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