

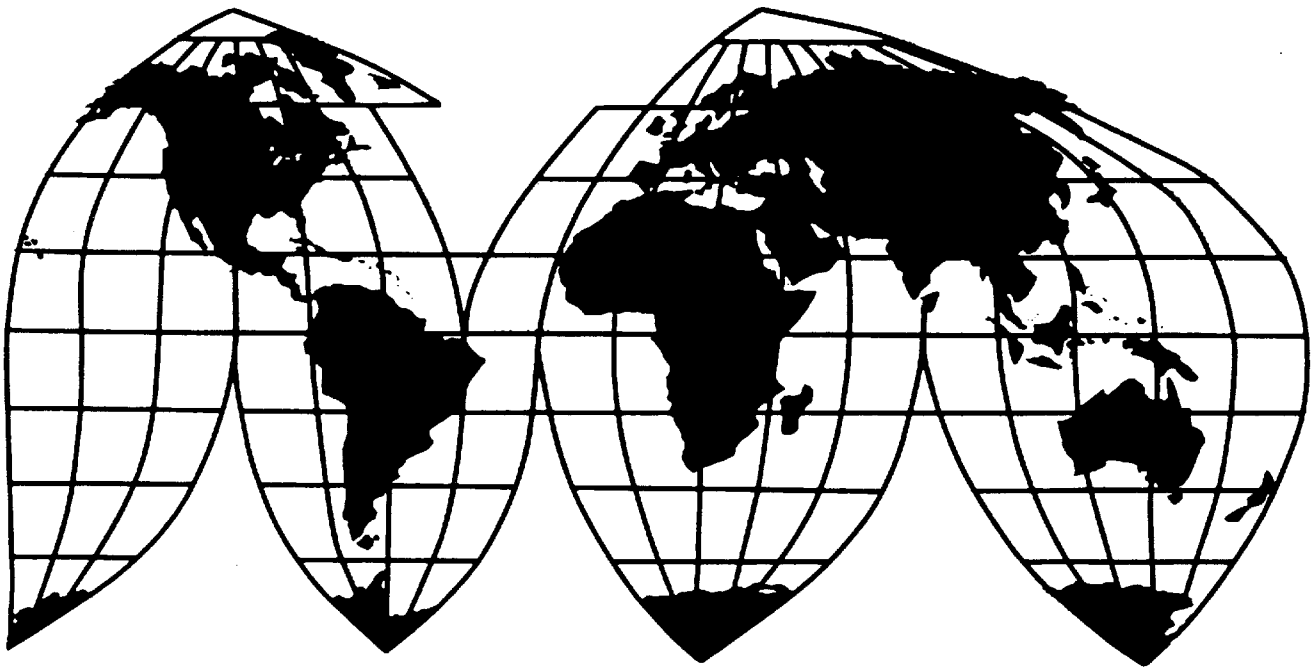
Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

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

Publication 3890

October 2006

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

VIEWS OF THE COMMISSION

I. INTRODUCTION

In August 1999, the Commission determined upon reconsideration that an industry in the United States was neither materially injured nor threatened with material injury by reason of imports of ferrosilicon from Venezuela found to be subsidized, and imports of ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela found to be sold at less than fair value (LTFV).¹ The Commission's determination was then appealed to the U.S. Court of International Trade (CIT), which remanded the matter to the Commission so it could conduct a hearing and follow other procedural requirements.²

In its first remand opinion issued in September 2002, the Commission again made negative determinations.³ Upon review, the CIT affirmed the Commission in part and remanded the matter to the Commission for further explanation concerning certain issues.⁴

In its second remand opinion, the Commission also made negative determinations.⁵ On May 12, 2004, the court remanded the matter again for further explanation.⁶ On December 3, 2004, the court issued an opinion modifying and clarifying the order it issued on May 12, 2004 in certain respects.⁷

In March 2005, the Commission reached negative determinations in the third remand proceeding.⁸ On July 21, 2006, the court issued an opinion again remanding the matter to the Commission.⁹ As explained further below, in its most recent opinion the court directed the Commission to make specific factual findings if it did not reopen the record of the proceeding.

We have not reopened the record of this proceeding. Consequently, to comply with the court's instructions, we have made those factual findings directed by the court. For the reasons stated below, we again determine that an industry in the United States was neither materially injured nor threatened with material injury by reason of subject imports of ferrosilicon.¹⁰

¹ Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Reconsideration), USITC Pub. 3218 (Aug. 1999) ("1999 Reconsideration Opinion"). The Commission had originally made affirmative determinations in these investigations in 1993 and 1994. Ferrosilicon from the People's Republic of China, Inv. No. 731-TA-566 (Final), USITC Pub. 2606 (March 1993) ("China Final"); Ferrosilicon from Kazakhstan and Ukraine, Inv. Nos. 731-TA-567, 569 (Final), USITC Pub. 2616 (March 1993); Ferrosilicon from Russia and Venezuela, Inv. Nos. 731-TA-568, 570 (Final), USITC Pub. 2650 (June 1993); Ferrosilicon from Brazil, Inv. No. 731-TA-641 (Final), USITC Pub. 2722 (Jan. 1994) ("Brazil Final").

² Elkem Metals Co. v. United States, 193 F. Supp. 2d 1314 (Ct. Int'l Trade 2002) ("Elkem IV").

³ Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final)(Reconsideration)(Remand), USITC Pub. 3531 (Sept. 2002) ("2002 Remand Opinion").

⁴ Elkem Metals Co. v. United States, 276 F. Supp. 2d 1296 (Ct. Int'l Trade 2003) ("Elkem V").

⁵ Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final)(Reconsideration)(Second Remand), USITC Pub. 3627 (Sept. 2003) ("2003 Remand Opinion").

⁶ Elkem Metals Co. v. United States, Slip Op. 04-49 (Ct. Int'l Trade May 12, 2004) ("Elkem VI").

⁷ Elkem Metals Co. v. United States, Slip Op. 04-152 (Ct. Int'l Trade Dec. 3, 2004) ("Elkem VII").

⁸ Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303-TA-23, 731-TA-566-570, 731-TA-641 (Final)(Reconsideration)(Third Remand), USITC Pub. 3765 (March 2005) ("2005 Remand Opinion").

⁹ Elkem Metals Co. v. United States, Slip Op. 06-108 (Ct. Int'l Trade July 21, 2006) ("Elkem VIII").

¹⁰ Commissioner Lane has made an affirmative determination in this remand proceeding, and does not join this opinion. See Dissenting Views of Commissioner Charlotte R. Lane.

II. BACKGROUND

The August 1999 Commission opinion provides a comprehensive background explaining the circumstances that led the Commission to institute reconsideration proceedings.¹¹ We incorporate by reference that discussion here.

The Commission and the CIT have each issued multiple prior opinions in this matter. Rather than describe each of them, we summarize below their most pertinent aspects.

The court has sustained the Commission's ability to conduct reconsideration proceedings. In one of its early substantive opinions, the court stated that "[a] finding that the ITC has the authority to reconsider a final determination is particularly appropriate when after-discovered fraud is alleged."¹² The fraud in question pertained to the fact that three domestic producers of ferrosilicon – American Alloys, Inc., CC Metals and Alloys, Inc. (CCMA), and Elkem Metals Co. (Elkem) – engaged in a conspiracy to fix prices during the original period of investigation.¹³ American Alloys, CCMA, and Elkem (collectively "the Conspirators") provided information to the Commission in the original investigations but did not disclose their participation in the price-fixing conspiracy. Instead, they withheld information about the conspiracy and misled the Commission about the nature of price competition in the marketplace.¹⁴

The CIT subsequently upheld the Commission's finding that, in light of their material misstatements and omissions to the Commission in the original investigations, the Conspirators significantly impeded the Commission's original investigations:

No credible argument can be made that the ITC questionnaires were answered truthfully and responsively. It is uncontested that the questionnaires distributed to the domestic producers requested information pertaining to the way in which domestic prices for ferrosilicon were determined. None of the Conspirators revealed the agreement to create a floor price in their questionnaire responses. Rather, "the Commission was told repeatedly that prices in the ferrosilicon market were established solely on the basis of marketplace competition." Remand Determination at 5. In light of the importance of the price effects element of the ITC's material injury analysis in the original investigations and "the price-sensitive nature of competition among ferrosilicon suppliers" the ITC found to exist in the original investigations, see Reconsideration Determination at 28 (internal quotation omitted), the ITC reasonably concluded that the failure of the Conspirators to divulge the existence of the price-fixing conspiracy "significantly impeded" its investigation within the meaning of 19 U.S.C. § 1677e(c). Indeed, it is difficult to think of a situation where the use of the "informal club" of BIA might be more warranted.¹⁵

¹¹ 1999 Reconsideration Opinion, USITC Pub. 3218 at 4-6.

¹² Elkem IV, 193 F. Supp. 2d at 1321.

¹³ Subsequent to the original Commission investigations, Elkem and American Alloys each pleaded guilty to criminal charges of conspiring to fix prices of commodity ferrosilicon from at least as early as late 1989 and continuing at least until mid-1991, a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. CCMA's predecessor firm, SKW Metals & Alloys, Inc. (SKW), and an SKW officer were convicted of violating Section 1 of the Sherman Act by conspiring to fix ferrosilicon prices. See generally 1999 Reconsideration Opinion, USITC Pub. 3218 at 10.

¹⁴ See generally 1999 Reconsideration Opinion, USITC Pub. 3218 at 12-21.

¹⁵ Elkem V, 276 F. Supp. 2d at 1304-05 (footnote and citations omitted).

The CIT has additionally sustained certain findings that the Commission made using the statutory best information available (BIA) provision.¹⁶ Specifically, the CIT has upheld a Commission finding in the first remand opinion that the conspiracy affected domestic prices for ferrosilicon during the period from October 1, 1989 through June 30, 1991.¹⁷ This is the period for which there were judicial findings that the price-fixing conspiracy was in existence. Using the same terminology as did the court in Elkem V, we call this period “the Conspiracy Period.” The CIT further upheld the finding that the underselling observed during the Conspiracy Period was a result of the domestic industry’s own actions, rather than price competition by the subject imports.¹⁸

The CIT has also sustained a finding on price effects of the subject imports that was not based on BIA or adverse inferences. This was that the subject imports did not have significant price-depressing or -suppressing effects during the original period of investigation.¹⁹

By contrast, the CIT has not sustained the Commission’s underselling findings in the portion of the original period of investigation following July 1, 1991 (“the Subsequent Period”). In the first remand determination, the Commission took a general adverse inference that the conspiracy affected those portions of the original period of investigation outside the Conspiracy Period.²⁰ The CIT rejected this finding as unsupported by substantial evidence.²¹ In the second remand, the Commission limited this inference to the Subsequent Period and provided evidentiary support for the inference.²² The CIT rejected this finding as being unsupported by substantial evidence, and directed the Commission on remand to make several subsidiary findings, including a quantification of the effects of the conspiracy, to support a conclusion that the conspiracy affected prices during the Subsequent Period.²³

In the third remand opinion, the Commission stated that the record before it “cannot be used to ascertain what prices would have been had conditions of competition been different than they were” and that reopening the record was “inappropriate and unnecessary.”²⁴ It consequently declined to engage in the type of quantification exercise that the CIT deemed necessary to sustain a finding that the conspiracy affected prices during the Subsequent Period. Instead, the Commission found “that the record does not establish that the conspirators changed their pricing patterns during the Subsequent Period; consequently, the record cannot support any conclusion on how prices were established during that period, including a conclusion that prices were solely the result of marketplace forces.”²⁵

¹⁶ These proceedings are governed by the statute as it existed before the Uruguay Round Agreements Act (URAA) became effective. See 2002 Remand Opinion, USITC Pub. 3531 at 9; 1999 Reconsideration Opinion, USITC Pub. 3218 at 6 & n.7. The pre-URAA statute stated that:

In making [its] determinations under this title . . . the Commission shall, whenever a party or any other person refuses or is unable to provide information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

¹⁹ U.S.C. § 1677e(c)(1988).

¹⁷ Elkem V, 276 F. Supp. 2d at 1309-13.

¹⁸ Elkem V, 276 F. Supp. 2d at 1309-11.

¹⁹ Elkem V, 276 F. Supp. 2d at 1305-07.

²⁰ 2002 Remand Opinion, USITC Pub. 3531 at 14-15.

²¹ Elkem V, 276 F. Supp. 2d at 1314-15.

²² 2003 Remand Opinion, USITC Pub. 3627 at 6-7.

²³ See Elkem VI, Slip Op. 04-49 at 15-32; Elkem VII, Slip Op. 04-152 at 15-16.

²⁴ 2005 Remand Opinion, USITC Pub. 3765 at 19.

²⁵ 2005 Remand Opinion, USITC Pub. 3765 at 22.

In Elkem VIII, the CIT found that this finding was unsupported by substantial evidence, principally because the Commission did not provide empirical data indicating the extent to which the conspiracy affected the domestic industry's prices during the Conspiracy Period.²⁶ It stated that on remand:

the ITC shall either (1) reopen the record to obtain relevant data of marketplace conditions to support, with substantial evidence, its conclusion that prices in the Subsequent Period were not set by market forces, or (2) find that the price-fixing Conspiracy was not a significant factor in the Subsequent Period and further find that prices in the Subsequent Period were set by market forces and complete its analysis accordingly.²⁷

Following issuance of Elkem VIII, the Commission published a notice in the Federal Register soliciting comments from interested parties who were parties to the investigation.²⁸ Elkem, CCMA, and the ABRAFE group of exporters and foreign producers of subject merchandise from Brazil submitted comments.

III. ANALYSIS

A. Establishment of Prices During the Subsequent Period

The CIT instructed the Commission in Elkem VIII that it could make a finding that the domestic industry's prices during the Subsequent Period were not set pursuant to marketplace forces only if the Commission reopened the record and collected new data to support the type of empirical analysis the CIT had specified.²⁹ Because these instructions preclude the Commission from reaching a conclusion based on its existing record, the effect of the Court's holding is that the Commission cannot use best information available in analyzing how domestic ferrosilicon prices were established during the Subsequent Period.³⁰

We have declined to reopen the record of this remand proceeding for many of the same reasons that we declined to reopen the record of the third remand proceeding. Initially, we emphasize that the Conspirators are the sole parties with full knowledge of how they established prices during the original period of investigation. When asked in the original investigation to provide the Commission with information on how prices were established, their responses were such that "[n]o credible argument can be made that the ITC questionnaires were answered truthfully and responsively."³¹ When provided the opportunity on the first remand of the reconsideration proceeding to submit new factual information,

²⁶ Elkem VIII, Slip Op. 06-108 at 18-22.

²⁷ Elkem VIII, Slip Op. 06-108 at 22.

²⁸ 71 Fed. Reg. 50465 (Aug. 25, 2006).

²⁹ The court did not dispute the Commission's statement in its third remand opinion that the current record did not contain sufficient information to support such an analysis.

³⁰ While we have followed the court's instructions in making our remand determination, we are cognizant of the statement in Elkem VI that: "The court finds that the ITC's use of BIA in the Second Remand Determination is in accordance with law. CCMA has produced nothing to convince the court that the ITC's conclusions with respect to BIA should be limited to the Conspiracy Period." Elkem VI, Slip Op. 04-49 at 13.

³¹ Elkem V, 276 F. Supp. 2d at 1304.

CCMA and Elkem provided information that the Commission found was not probative.³² The CIT affirmed this finding.³³ There is no reasonable expectation that a third attempt to obtain information from CCMA and Elkem about how they established ferrosilicon prices during the original period of investigation would be any more fruitful than the first two.

Second, even if CCMA and Elkem were inclined to cooperate with additional information requests, the requests would concern pricing decisions made from 1989 to 1991. The likelihood of now obtaining complete and accurate information about transactions that took place 15 to 17 years ago is dubious at best. This is why our opinions throughout this reconsideration proceeding have relied principally on data collected during the original investigations.

The CIT has stated that if we do not reopen the record, we must “find that the price-fixing Conspiracy was not a significant factor in the Subsequent Period and further find that the prices in the Subsequent Period were set by market forces.”³⁴ To comply with those instructions, we have made these findings in our causation analysis below.

B. No Material Injury by Reason of Subject Imports

We again determine that, as of the time of the original determinations, the domestic ferrosilicon industry was not materially injured or threatened with material injury by reason of the subject imports.³⁵ We initially address several matters preliminary to our analysis of volume, price, and impact.

First, nothing in either Elkem VIII or the court’s prior opinions in this matter purported to limit the period of investigation that the Commission could use. To the contrary, the proposition that the Conspiracy Period is appropriately part of the period of investigation underlies the ruling in Elkem V that the Commission could use BIA and adverse inferences in evaluating conditions of competition pertaining to prices in the Conspiracy Period. The Conspiracy Period encompassed seven calendar quarters, a significant portion of the original period of investigation. In its comments, Elkem appears to suggest that

³² 2002 Remand Opinion, USITC Pub. 3531 at 11-13 & n.51 (noting that “Elkem and CCMA . . . did not present during the remand proceedings either oral or written testimony from corporate officials who were responsible for making pricing decisions in their firms during the original periods of investigation.”). American Alloys had been liquidated by the time of the first remand proceedings.

³³ Elkem V, 276 F. Supp. 2d at 1311-12.

³⁴ Elkem VIII, Slip Op. 06-108 at 22. We observe that a Federal Circuit opinion issued after Elkem VIII reversed a CIT decision in which that court rejected the Commission’s factfinding in favor of its own. The Federal Circuit emphasized that “when the totality of the evidence does not illuminate a black-and-white answer to a disputed issue, it is the role of the expert factfinder – here the majority of the Presidentially-appointed, Senate-approved Commissioners – to decide which side’s evidence to believe.” Nippon Steel Corp. v. United States, 458 F.3d 1345, 1359 (Fed. Cir. 2006). The Federal Circuit further held that it was improper for the CIT to reject inferences that the Commission drew in favor of those of its own creation. See id. at 1356.

³⁵ Our definitions of like product and domestic industry, and our findings on cumulation, have not been at issue throughout the litigation before the CIT or during any subsequent remand proceedings. We reaffirm the findings we reached on these matters in our 1999 reconsideration opinion. 1999 Reconsideration Opinion, USITC Pub. 3218 at 24-26; see also 2005 Remand Opinion, USITC Pub. 3765 at 21 n.73 (adoption of these findings by Chairman Pearson). Vice Chairman Aranoff, who in these proceedings has reviewed the record for the first time, also adopts all findings from the 1999 reconsideration opinion that the Commission has reaffirmed in this opinion.

Threat of material injury was not an issue either in the CIT litigation or in this or our prior remand proceedings. The modified findings we are making in this opinion do not affect the threat analysis provided in the 1999 opinion in any material respect. (For example, it is not material for purposes of the threat analysis that we have modified our explanation of why there was not significant underselling during the original period of investigation.) Consequently, as in our prior opinions, we again adopt the threat analysis used in the 1999 opinion. See 2003 Remand Opinion, USITC Pub. 3627 at 8 n.48; 2002 Remand Opinion, USITC Pub. 3531 at 16 n.72; 1999 Reconsideration Opinion, USITC Pub. 3218 at 33-41.

the Commission should focus on the Prior and Subsequent Period exclusively.³⁶ The Conspiracy Period, which occurred in the central portion of the period of investigation, was too long in duration to be ignored. We can discern no legal or factual basis for disregarding it. Indeed, the Subsequent Period, which encompasses only one complete calendar year (1992), is far shorter than the period of investigation the Commission has historically used in original antidumping and countervailing duty investigations.³⁷

Second, that the CIT has directed us to find that prices were established pursuant to marketplace competition in the Subsequent Period does not negate the basis for instituting reconsideration proceedings, as CCMA contends. CCMA maintains that “the agency’s reason for reconsideration [was] that the conspiracy distorted pricing in the ferrosilicon market for the duration of the Original [period of investigation]”³⁸ CCMA’s characterization of the Commission’s rationale for instituting these reconsideration proceedings is irreconcilable with the original reconsideration decision, in which the Commission emphasized that the material misrepresentations and omissions of CCMA and the other conspirators “strike at the heart of the integrity of the administrative process.”³⁹ Moreover, the Conspirators’ “pervasive misimpression[s], created through misstatements and omissions before the Commission, affected central issues in the original investigations pertaining to the relevant conditions of competition in the domestic industry, pricing of the like product, and factors that affected pricing of the like product.”⁴⁰

These misrepresentations call into question the basis of the original determinations. This is true regardless of whether the misinterpretations pertain to how the domestic industry established prices during the entire original period of investigation, the Conspiracy and Subsequent Periods combined, or the Conspiracy Period alone. A primary basis of the original affirmative determinations was that there was pervasive underselling of the domestic like product during the period of investigation, and that this pervasive underselling led to lost sales and price declines.⁴¹ As previously stated, the CIT has upheld the Commission’s decision not to accord probative value to underselling data from the Conspiracy Period, which constituted a significant portion of the original period of investigation. In light of this, the original finding of pervasive underselling is no longer correct. Consequently, even if the Commission can find that the conspiracy affected domestic ferrosilicon prices only during the Conspiracy Period, this fact is sufficient to undercut a central basis of the Commission’s original determination. Accordingly, reconsideration remains appropriate.

We finally observe that the analysis below is adapted from an alternative analysis that the Commission furnished in the third remand opinion. That analysis assumed arguendo that the domestic industry established prices during the Subsequent Period solely by reference to marketplace forces.⁴² Elkem VIII did not review or comment upon the alternative analysis. Elkem and CCMA’s comments on fourth remand do not address the alternative analysis.

³⁶ Elkem Comments on Fourth Remand at 2-3. While Elkem never expressly requests the Commission to disregard data from the Conspiracy Period, it does not comment on the question of how the Commission should take the Conspiracy Period into account.

³⁷ We additionally note that eliminating the Conspiracy Period from our period of investigation would have the undesired effect of rewarding interested parties for their actions impeding the Commission’s original investigations.

³⁸ CCMA Comments on Fourth Remand at 4.

³⁹ 1999 Reconsideration Opinion, USITC Pub. 3218 at 8.

⁴⁰ 1999 Reconsideration Opinion, USITC Pub. 3218 at 20.

⁴¹ See, e.g., China Final, USITC Pub. 2606 at 27; Brazil Final, USITC Pub. 2722 at I-14-15.

⁴² The Commission stated that it provided the alternative findings to facilitate further judicial review. 2005 Remand Opinion, USITC Pub. 3765 at 25 n.84.

1. Volume of Subject Imports

The record indicates that there were increases in subject import volume and market penetration during 1990 and 1992, but not 1991.⁴³

The 1990 increase in subject import volume and market penetration occurred during the Conspiracy Period. We have previously found that the conspiracy affected the prices that domestic ferrosilicon producers charged during the Conspiracy Period and the CIT has upheld this finding. In light of this finding on the pertinent conditions of competition in the ferrosilicon market, we concluded in our 2002, 2003, and 2005 remand opinions that, because of the effects of the conspiracy, domestic producers were charging higher prices than market conditions warranted, providing opportunities for the subject imports to increase their sales in the U.S. market.⁴⁴ This conclusion is still valid with respect to the Conspiracy Period, and explains why the 1990 increase in subject imports was not significant. Because the subject imports and the domestic like product were good substitutes, the increases in volume and market penetration of subject imports that occurred during the Conspiracy Period were the result of domestic production not being priced at marketplace levels.

We cannot find the 1992 increase, even if taken in isolation, to be significant. We emphasize that, in the circumstances of this proceeding, we do not find a simple year-by-year comparison of subject import volumes to be analytically useful. Because 1992 is the first year during the period of investigation in which the domestic industry established prices based on marketplace competition throughout the entire calendar year, 1992 is not comparable to any preceding year in the period of investigation. We consequently rely principally on our analysis of price effects and impact in evaluating the 1992 increase in subject import volume. As we find below, however, the subject imports, notwithstanding the 1992 increase in subject import volumes, did not have significant price effects.⁴⁵ Moreover, as explained below, we cannot find a causal linkage between the 1992 increase in subject import volume and any difficulties the domestic industry sustained that year.

ABRAFE, which agrees with the proposition that 1992 subject import volumes should not be compared to those of prior years when the conspiracy was ongoing, suggests that the Commission compare subject import volume during January-June (“interim”) 1993 with subject import volume during interim 1992. ABRAFE posits that this is the only possible comparison the record permits between two periods during which the domestic industry established prices on the basis of marketplace conditions.⁴⁶ Because of the limitations of the interim period data in this proceeding, we do not place principal reliance on this data in analyzing the significance of subject import volume.⁴⁷ Nevertheless, we observe that the available data for interim 1993 do not detract from our conclusions. Subject import volume and market penetration were lower in interim 1993 than in interim 1992 for the subject country combinations cumulated for purposes of the determinations on subject imports from China, Kazakhstan, Russia,

⁴³ INV-Z-116, Table II-1 (July 22, 2002). This conclusion is applicable for each set of country combinations we have cumulated. *Id.* We discuss the available 1993 data below.

⁴⁴ 2005 Remand Opinion, USITC Pub. 3765 at 22-23; 2003 Remand Opinion, USITC Pub. 3627 at 9; 2002 Remand Opinion, USITC Pub. 3531 at 16-17.

⁴⁵ The lack of price effects is of particular significance in light of the Commission’s original finding that ferrosilicon is a price-sensitive product. *E.g.*, China Final, USITC Pub. 2606 at 25; Brazil Final, USITC Pub. 2722 at I-13.

⁴⁶ ABRAFE Comments on Fourth Remand at 8.

⁴⁷ We have previously expressed our reluctance to rely on data that do not cover a full calendar year. *See* 2005 Remand Opinion, USITC Pub. 3765 at 22 n.75. Another difficulty with the interim 1993 data is that they do not encompass a period for which we have comparable pricing data, as explained below. Additionally, import volumes from some subject sources during interim 1993 may have been negatively affected by the pendency of the first set of investigations, which were initiated in May 1992.

Ukraine, and Venezuela.⁴⁸ For the determination on subject imports from Brazil, in which we cumulate no other country's subject imports with those of Brazil, subject import volume and market penetration were higher in interim 1993 than in interim 1992. This increase in market penetration, however, came at the expense of imports from sources other than Brazil, not the domestic industry; the domestic industry's market share was higher in interim 1993 than in interim 1992.⁴⁹

Thus, neither the 1990 nor the 1992 increase in subject imports volume was significant. For the foregoing reasons, we find that subject import volume during the original period of investigation was not significant.

2. Price Effects of Subject Imports

Elkem V sustained the Commission's prior finding that underselling data from the Conspiracy Period are not probative.⁵⁰ As the Commission explained, "the domestic producers' own efforts to establish a floor price and thereby raise domestic prices above market levels undermine the significance of the observed underselling. Similarly, the domestic producers' conspiracy to maintain floor prices undermines the Commission's findings regarding the significance of sales and revenues lost by the domestic industry to lower-priced subject imports."⁵¹ This conclusion continues to be valid.

We next consider the overall incidence of underselling during the entire period of investigation for which comparable data are available,⁵² taking into account, pursuant to the direction of the court, that prices during the Prior Period⁵³ and the Subsequent Period – but not the Conspiracy Period – reflected competitive marketplace conditions. Usable underselling observations from the Prior Period and the Subsequent Period account for only about one-third of all price comparisons during the entire period for which we have consistently-generated pricing data.⁵⁴ We cannot find this incidence of underselling, which is not pervasive underselling, over the entire period of investigation to be significant.

⁴⁸ INV-Z-116, Table II-1.

⁴⁹ INV-Z-116, Table II-1.

⁵⁰ Elkem V, 276 F. Supp. 2d at 1310-11.

⁵¹ 2002 Remand Opinion, USITC Pub. 3531 at 17, quoting 1999 Reconsideration Opinion, USITC Pub. 3218 at 29.

⁵² The pricing data to which we refer in this opinion were collected on a quarterly basis from January 1989 through September 1992. While some pricing data were collected for the fourth quarter of 1992 and the first two quarters of 1993 in the original investigations, it is not entirely comparable to the earlier data due to differing specifications and response coverage. We consequently have not relied on this latter data in our prior remand determinations, and do not do so here. See INV-Z-116 at III-1 n.1.

⁵³ The Prior Period is the portion of the original period of investigation prior to September 30, 1989.

⁵⁴ With respect to those countries cumulated for purposes of the determinations with respect to subject imports from Russia and Venezuela, there were 64 quarterly pricing comparisons during the period through the third quarter of 1992 for which we have comparable pricing data, and at most 21 usable underselling observations. With respect to those countries cumulated for purposes of the determinations with respect to subject imports from China, Kazakhstan, and Ukraine, there were 75 quarterly pricing comparisons during the period for which we have comparable pricing data, and at most 25 usable underselling observations. With respect to the determination on subject imports from Brazil, there were 15 quarterly pricing comparisons during the period for which we have comparable pricing data, and at most five usable underselling observations. See INV-Z-116, Tables III-7-a, III-7-b, III-7-c, III-8-a, III-8-b, III-8-c, III-9-a, III-9-b; INV-Q-029 at I-86 (Feb. 17, 1993) (reporting absence of pricing data concerning imports from Egypt), Table E-3 (pricing data concerning imports from Argentina).

Underselling data pertaining to the Subsequent Period, even if considered in isolation, do not detract from our conclusion for the entire period of investigation.⁵⁵ During the Subsequent Period, we can find no significant correlation between the observed underselling and domestic shipment trends for the products on which pricing data were collected. This is pertinent to the question of whether underselling during this period caused purchasers to switch from the domestic like product to the subject imports.⁵⁶ There were numerous instances in which domestic shipment volumes of a product increased on a quarterly basis notwithstanding the existence of underselling.⁵⁷ By contrast, during all quarters in 1991 and 1992 for which there are comparable pricing data, the largest declines in total domestic shipments of pricing products on a quarterly basis occurred during the first half of 1991, which was within the Conspiracy Period.⁵⁸

We consequently do not find the underselling observed to be significant. We again emphasize that the use of BIA during the Conspiracy Period, which the court has authorized, required that we materially modify the underselling analysis the Commission used in the original investigations. Because the pricing data from the Conspiracy Period do not show probative evidence of underselling, there is no longer evidence of pervasive underselling during the original period of investigation as a whole. To the contrary, there were usable underselling observations in only a minority of all comparisons.

In the first remand opinion, the Commission found that to the extent prices charged by the domestic industry were a function of market forces, price changes during the original period of investigation reflected changes in demand and the nature of the ferrosilicon production process. The Commission consequently concluded that the subject imports did not have significant price-suppressing or -depressing effects.⁵⁹ The CIT affirmed this finding in *Elkem V.*⁶⁰ The Commission's finding proceeded from the premise that prices were established pursuant to marketplace conditions and

⁵⁵ During the Prior Period, there was predominant overselling by subject imports. 2003 Remand Opinion, USITC Pub. 3627 at 9.

⁵⁶ There were some individual instances of lost sales during the Subsequent Period. The anecdotal information concerning lost sales is insufficient by itself to demonstrate significant price effects. Moreover, the lost sales do not explain the domestic industry's output declines during 1992. The 1992 production declines of three individual producers – *** – exceeded those for the domestic industry overall. INV-Z-116, Table II-1. There is not a single confirmed lost sales allegation for 1992, however, involving any of these three firms. INV-Q-029 at I-119-127, INV-Q-171 at 90-93 (Oct. 7, 1993). By contrast, the three producers that did furnish confirmed lost sales allegations for 1992 – *** – increased their aggregate production from 1991 to 1992. INV-Z-116, Table II-1.

As explained above, lost sales and lost revenue data from the Conspiracy Period are not probative. We have previously found that there were no lost sales or revenues allegations encompassing the Prior Period. 2003 Remand Opinion, USITC Pub. 3627 at 9 n.53.

⁵⁷ For example, subject imports from Argentina, China and Venezuela of product 1 sold to steel producers undersold the domestic like product during the fourth quarter of 1991. INV-Z-116, Tables III-7b, III-7c; INV-Q-029, Table E-3. Imports from China and Venezuela accounted for *** majority of total sales of product 1 from subject sources to steel producers during that quarter. See INV-Z-116, Table III-4, INV-Q-029, Table E-2. Nevertheless, domestic producers' shipments of product 1 to steel producers increased from the third to the fourth quarters of 1991. INV-Z-116, Table III-1.

Similarly, the two subject sources that sold product 2 to steel producers during the fourth quarter of 1991, Kazakhstan and Ukraine, both undersold the domestic like product. Id., Tables III-8a, III-8c. Domestic producers' shipments of product 2 to steel producers also increased from the third to the fourth quarters of 1991. Id., Table III-2.

During the second quarter of 1992, subject imports from Brazil, China, and Venezuela of product 1 to steel producers each undersold the domestic like product. Id., Tables III-7a, III-7b, III-7c. Domestic producers' shipments of product 1 to steel producers increased from the first to the second quarters of 1992. Id., Table III-1.

⁵⁸ INV-Z-116, Tables III-1, III-2, III-3.

⁵⁹ 2002 Remand Opinion, USITC Pub. 3531 at 17-18.

⁶⁰ Elkem V., 276 F. Supp. 2d at 1305-07.

consequently was not based on an adverse inference. The CIT's action upholding the finding, which included the finding for 1992, similarly was not premised on the Commission's ability to take adverse inferences about the Conspiracy Period. Consequently, as legal matter, Elkem VIII does not require that we reconsider or modify this finding.

We nevertheless observe that an analysis of pertinent data for 1992 reinforces our finding that the subject imports did not have significant price-depressing or -suppressing effects. Notwithstanding underselling and increasing subject import volumes during 1992, the domestic industry was able to increase prices during that year. For each of the two pricing products for which there was competition from subject imports, prices were higher in the third quarter of 1992 than in the first quarter of that year.⁶¹ The increased prices were not a reflection of increased costs; on a unit basis, the domestic industry's cost of goods sold declined during 1992.⁶² Moreover, while domestic producers' prices for product 2 to iron foundries declined during 1992, there were no reported imports from subject sources of this pricing product during that year.⁶³ The 1992 data therefore underscore that the subject imports were not driving movements in prices for the domestic like product.

3. Impact of Subject Imports on the Domestic Industry

The record indicates that measures of the domestic ferrosilicon industry's output, employment, and operating performance declined between 1989 and 1992.⁶⁴ The most severe declines in output and employment occurred in 1990 and 1991, and the most severe declines in operating performance occurred in 1990.⁶⁵

Consequently, the overall declines in industry performance that occurred during the original period of investigation were largely a function of declines that occurred during the Conspiracy Period. For the reasons discussed above in our analysis of subject import volume and price effects, these declines cannot be attributed to the subject imports.

We have several additional observations with respect to the declines in industry performance observed during the Subsequent Period. First, we have previously found that, in the context of the entire period of investigation, the subject imports had no significant volume or price effects. In light of this, any declines in domestic performance observed during the Subsequent Period cannot be attributed to the subject imports.

Second, notwithstanding that we have found that the effects of the conspiracy on prices were limited to the Conspiracy Period, the conspiracy still affected the probative value of the data in the Commission record for all annual periods up to, and including, 1991.⁶⁶ Because the 1991 data are not a probative baseline for competitive market conditions, the record permits us to do no more than observe that during 1992 domestic industry performance declined concurrently with increases in subject import volume. Particularly because there is no basis for a finding that the increased volume of subject imports during 1992 had adverse price effects, we cannot identify any causal link between the subject imports and the declines in industry performance.

Third, even if it were appropriate for us to examine the increase in subject import volume in 1992 in isolation, this increase is insufficient by itself to support a conclusion that the subject imports had a

⁶¹ INV-Z-116, Tables III-1, III-2.

⁶² INV-Q-171, Table 11.

⁶³ INV-Z-116, Table III-6.

⁶⁴ INV-Z-116 at II-5-6; see also INV-Q-029, Tables 10, 12; INV-Q-171, Tables 9, 11. As previously discussed, we have relied principally on data from 1989 to 1992. We note, however, that these indicators generally increased or improved in interim 1993 over interim 1992 levels.

⁶⁵ INV-Z-116 at II-5-6; see also INV-Q-029, Tables 10, 12; INV-Q-171, Tables 9, 11.

⁶⁶ In its antidumping and countervailing duty investigations, including the instant proceedings, the Commission typically collects most data relating to the impact of subject imports on an annual basis.

significant adverse impact on the domestic industry. We examined this increase, taking into account that 1992 was characterized by declines in domestic industry performance. A variance analysis that Commission staff performed for the original investigations, however, supports the conclusion that declines in the domestic industry's sales volume did not contribute to its declines in operating performance during 1992. Sales revenues did decline in 1992 because of lower sales quantities and a decrease in unit values. The variance analysis, however, indicates that this decline was more than offset by volume-related reductions in cost of goods sold and sales, general, and administrative expenses. In other words, assuming (as is done for a variance analysis) that prices could be held constant, because there was a greater decline in the costs associated with the lower quantity of sales than there was a decrease in sales revenues, the change in sales quantities in 1992 had an overall positive effect on the domestic industry's operating performance.⁶⁷ The variance analysis indicates that the decline in operating performance during 1992 was entirely related to changes in the industry's prices. As explained above, the price declines cannot be a function of the subject imports, which did not have significant price effects.

We consequently conclude that the subject imports did not have a significant adverse impact on the domestic ferrosilicon industry.

IV. CONCLUSION

For the foregoing reasons, we have reached negative determinations in the fourth remand of these reconsideration proceedings.

⁶⁷ See INV-Q-172 (Oct. 8, 1993). This is not surprising given that in 1992 the domestic industry was losing money on a per-unit basis on everything it produced. See, e.g., INV-Q-029 at I-46.

Dissenting Views of Commissioner Charlotte R. Lane

Based on the record in these investigations, I find that an industry in the United States is materially injured by reason of imports of ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

I. Introduction

In August 1999, the Commission, upon reconsideration of earlier determinations regarding imports of ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, found that the ferrosilicon industry in the United States was neither materially injured nor threatened with material injury by reason of subsidized or less than fair value sales of imported ferrosilicon. That decision was appealed to the U.S. Court of International Trade (“CIT” or “Court”), which remanded the matter to the Commission.

The Commission issued its first remand opinion in September 2002, again making negative determinations. The CIT affirmed, in part, and remanded the matter to the Commission for further explanation of certain issues.

The Commission then issued its second remand opinion in September 2003. That opinion was appealed and the matter was again remanded to the Commission in May 2004.

In March 2005, the Commission issued its most recent remand opinion.¹ This opinion of the Commission was appealed and again remanded pursuant to the CIT’s opinion and order dated July 21, 2006.²

I did not participate in the initial decisions of the Commission or in either the first or second remand opinions. However, I did participate in the third remand and joined in the Commission’s negative determination in the Third Remand Opinion. In the current remand, based on the instructions of the Court as more fully explained herein, I have reevaluated my analysis of the impact of subject imports on the domestic industry and, based on this reevaluation, I now conclude that the record supports a finding that an industry in the United States was materially injured by reason of subject imports of ferrosilicon.

II. Background

The 1999 reconsideration proceedings relate to affirmative determinations the Commission made in antidumping and countervailing duty investigations in 1993 and 1994. The original investigations involved Argentina, Brazil, China, Egypt, Kazakhstan, Russia, Ukraine and Venezuela. However, due to negative determinations with regard to Argentina and Egypt, those countries are no longer subject countries for the purposes of the reconsideration.

The Commission instituted reconsideration proceedings because three domestic producers were involved in criminal violations for price fixing during a portion of the original period of investigation (the “Conspiracy Period”). Although the CIT has concluded that the Commission could properly find that the conspiracy affected domestic industry prices during the Conspiracy Period, the Court remands have focused on what conclusions the Commission could properly reach concerning the evidence which

¹ Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Investigations Nos. 303-TA-23,731-TA-566-570 and 731-TA-641 (Final)(Reconsideration)(Third Remand), USITC Publication 3765, March 2005 (“Third Remand Opinion”).

² Elkem Metals Co. V. United States, Slip Op. 06-108 (Court of International Trade July 21, 2006)(“Slip Op. 06-108”)

falls outside of the Conspiracy Period.³

The Court's prior rulings have required that the Commission show an affirmative evidentiary basis for any conclusion that the prices during the Subsequent Period were established through anything other than marketplace forces.⁴ In its July 21, 2006 Order, the Court observed that it had previously ruled that the Commission could not take an adverse inference that the conspiracy affected prices during the Subsequent Period. The Court held that such an inference would support a conclusion that appears to be at odds with the known facts.⁵

In the Third Remand Opinion, issued March 2005, I joined in the conclusion that subject imports did not have a significant adverse impact on the domestic ferrosilicon industry and reached a negative determination. The Court has determined that the Commission's third remand determination is not supported by substantial evidence and the Court has again remanded the investigations to the Commission and directed the Commission either to reopen the record to obtain evidence to support an affirmative conclusion regarding the establishment of prices during the Subsequent Period or ". . . to make a finding that prices during the Subsequent Period were set by market forces and complete its analysis accordingly." We have not reopened the record to obtain relevant data of marketplace conditions to support a conclusion that prices following the Conspiracy Period were not set by market forces. Therefore, we are required, pursuant to the Court's instructions, to find that prices in the Subsequent Period were set by market forces. Furthermore, the Court has made it clear that we are to complete our analysis based on that fact.

In the March 2005 Third Remand Opinion, I joined in the Commission analysis which discounted increases in the volume of subject imports in 1990 which occurred during the Conspiracy Period. During this period three domestic producers were conspiring to charge higher prices than market conditions warranted, providing opportunities for subject imports to increase their U.S. market penetration. Therefore, the Commission did not consider the increases in subject imports in 1990 to be significant.⁶ The Commission further found that it could not conclude that the increases in the volume of subject imports in 1992, which occurred outside the Conspiracy Period, was, standing alone, significant.⁷ This finding – that the volume of subject imports in the Subsequent Period was not significant – was influenced by the Conspiracy Period. In discussing the increased volume of subject imports in 1992, the Commission found that the record could not support a finding that the prices for the Subsequent Period were determined exclusively pursuant to marketplace conditions.⁸

Addressing the possibility of viewing only the Prior Period and/or the Subsequent Period data alone, the Commission noted its longstanding practice to use a period of investigation of at least three years. Therefore, the Commission declined to truncate, or shorten, the investigation period.⁹

Finally, in considering pricing of subject imports, the Commission found that there was no data probative for an analysis of underselling in the Subsequent Period because it could not conclude that

³ There are three periods of time within the original period of investigation referenced in these investigations. Two of these periods fall outside of the Conspiracy Period. The period preceding the conspiracy includes the first three quarters of 1989 and is referred to as the "Prior Period." The second period of time is the Conspiracy Period which includes the last quarter of 1989, all of 1990, and the first two quarters of 1991. The third period following the conspiracy includes the last two quarters of 1991, 1992, and that portion of 1993 for which information was gathered and is referred to as the "Subsequent Period."

⁴ Slip Op. 06-108 at 16-17

⁵ Slip Op. 06-108 at 15.

⁶ Third Remand Opinion at pages 22 and 23.

⁷ Id. at page 23.

⁸ Id.

⁹ Id. at pages 23 and 24.

pricing data for the Subsequent Period reflected competitive market conditions.¹⁰ The further analysis of pricing data made upon assuming “arguendo” that pricing in the Prior and Subsequent Periods did reflect market conditions indicated that underselling accounted for a minority of all price comparisons. However, calculation of this minority of underselling instances relied on counting quarterly pricing comparisons during the Conspiracy Period as neither underselling or overselling. Effectively, this analysis included Conspiracy Period pricing data that were modified to not count as underselling during the Conspiracy Period but which continued to count as pricing observations.

As the basis for my decision in the Third Remand Opinion, these findings, which tied the Conspiracy Period to the non-conspiracy period data for both volume and price analyses, led me to determine that the volume and price effects of subject imports were not significant. Consequently, I did not find the requisite causal link between increases in subject imports and the decline in the condition of the domestic industry.

I have now determined that my previous analysis, which tied consideration of volumes-and prices during the Conspiracy Period to the Subsequent Period, will not comply with the CIT’s directive that the ITC “. . . make a finding that prices during the Subsequent Period were set by market forces and complete its analysis accordingly.” Therefore, I shall reconsider the volume and price effects of subject imports and their impact on the domestic industry during only the Prior Period and Subsequent Period. I believe that this analysis is consistent with the Court’s instructions. Given the opinion of the Court, and my interpretation of the Court’s directive, I find that domestic industry prices outside of the Conspiracy Period were set by market forces and I shall reevaluate the 1993 and 1994 affirmative injury determinations based on the Prior Period and the Subsequent Period.

III. Domestic Like Product, The Domestic Industry, and Cumulation

In the original determinations the Commission found that all grades of ferrosilicon constituted one like product. In its reconsideration views, the Commission adopted its original like product determinations. Likewise, as to the definition of the domestic industry, the Commission adopted its findings in the original determinations: one domestic industry consisting of producers of all grades of ferrosilicon. In the original determinations, the Commission found that there were related parties but did not exclude any producers from the domestic industry and the Commission did not revisit related parties in its reconsideration. Finally, in its reconsideration, the Commission adopted the determinations of the majority or in some cases the plurality of the Commission in the original determinations with regard to cumulation. With regard to its determinations involving imports from Kazakhstan, Ukraine, and China, the Commission cumulated subject imports from Argentina, Brazil, China, Egypt, Kazakhstan, Russia, Ukraine and Venezuela. For determinations with respect to Russia and Venezuela, the Commission cumulated subject imports from Brazil, China, Egypt, Kazakhstan, Russia, Ukraine and Venezuela. For its original determination regarding subject imports from Brazil, the Commission did not cumulate imports from any country with those from Brazil.

As a point of clarification, I note that my analysis is based on the definitions of domestic like product and the domestic industry as determined by the Commission’s majority opinions in the original investigations and reconsideration. Furthermore, for my analysis of subject imports from China, Kazakhstan, Russia, Ukraine, and Venezuela, I shall cumulate subject imports from those countries as

¹⁰ Id. at page 25.

well as subject imports from Brazil.¹¹ For my analysis of subject imports from Brazil, I shall not cumulate imports from any country with those from Brazil.

IV. Material Injury by Reason of Subject Imports

In its determination of whether the domestic injury is materially injured by reason of the subject imports, the statute directs the Commission to consider: (1) the volume of imports of the merchandise which is the subject of the investigation; (2) the effect of imports of that merchandise on prices in the United States for like products; and (3) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States.

In making this determination, the Commission may consider “such other economic factors as are relevant to the determination. The Commission is directed to evaluate all relevant factors . . . within the context of the . . . conditions of competition that are distinctive to the affected industry.”

A. Conditions of Competition

The Commission generally described conditions of competition in its Views for the original investigations on ferrosilicon. The period of investigation for these investigations included data in 1989, 1990, 1991, 1992, and 1993. Domestic industry data for the last quarter of 1989, all of 1990, and the first two quarters of 1991 must be discounted due to the potential impacts of the conspiracy. However, the record for the first three quarters of 1989, the last half of 1991, all of 1992, and the interim 1993 data is outside of the conspiracy period and therefore can be used to determine the actual conditions of competition that existed in each year –or partial year– and the changes that took place from 1989 to 1993. Furthermore, I find that certain conditions of competition, such as domestic demand for ferrosilicon, are independent of the conspiracy and therefore can be pertinent to my evaluation of the industry throughout the period of investigation. The following description of the conditions of competition affecting this industry from 1989 to 1993 is based primarily on the Commission’s findings in its original investigations and the additional record developed in our reconsideration proceedings.

The demand for ferrosilicon is directly tied to the steel and foundry industries. Weak demand from the construction, automotive, and appliance sectors contributed to a decline in output in the steel industry during much of the period of investigation. Technological advances in the composition and production processes of cast iron allow for production of thinner and lighter castings which contributed to a decline in cast iron production. Total U.S. consumption of ferrosilicon, measured in quantity, decreased by 10.9 percent from 1989 to 1992.^{12 13} This declining trend appeared to be continuing based on interim 1993 data since U.S. consumption decreased by 4.4 percent between the first half of 1992 and the first half of 1993 (the “interim periods”). In terms of value, total U.S. consumption fell by 36.6 percent from 1989 to 1992, but rose slightly by 1.4 percent from interim 1992 to interim 1993.

The pricing data in the record indicates that from 1989 to 1992 prices charged by domestic producers declined. This price decline is also evident in the average unit value of all ferrosilicon sold in

¹¹ The Commission included subject imports from Argentina and Egypt in its determinations involving some of the countries remaining in these investigations, creating three combinations of cumulated subject imports. Since Argentina and Egypt are no longer involved in these investigations and the volume and prices of subject imports from Argentina and Egypt have little impact on the data that are the basis for my determinations I shall exclude both countries from my analyses in these views.

¹² Confidential Report on Investigations Nos. 303-TA-23, 731-TA-566-570, and 731-TA-641 (Final)(Reconsideration)(Remand), July 22, 2002 (“7/22/02 CR”), at Table II-1.

¹³ Due to a data inconsistency between 1989 and other years, domestic consumption for 1989 is higher than it would be if it had been collected consistently with other years. Thus, any decline in domestic consumption measured from 1989 is likely to be less than indicated in the 7/22/02 Confidential Report. Also, see footnote 16.

the U.S. market. Average unit values of total U.S. consumption dropped by 28.8 percent between 1989 and 1992.¹⁴ Over that period, the unit value of subject imports dropped by 46.5 percent. In comparison to this significant decline, the unit value of non-subject imports dropped by 26.7 percent and the unit value of domestic producers' U.S. shipments dropped by 18.3 percent.

Table II-1 of the 7/22/02 Confidential Report also shows that indicators of the condition of the domestic industry fell from 1989 to 1992. U.S. production quantity of ferrosilicon decreased by 37.9 percent from 1989 to 1992. Similarly, U.S. producers' total U.S. ferrosilicon shipments decreased steadily, by 36.0 percent from 1989 to 1992. In terms of value, domestic producers' U.S. shipments decreased by 47.8 percent from 1989 to 1992.

Average U.S. production capacity also decreased from 325,988 silicon-content-short tons ("tons") in 1989 to 268,210 tons in 1992, a decrease of 17.7 percent, while interim period capacity comparisons showed only a slight increase of 0.6 percent from interim 1992 to interim 1993. Average capacity utilization decreased from 85.1 percent in 1989 to 64.2 percent in 1991, and rebounded only slightly to 64.5 percent in interim 1993. Although the 2002 Confidential Report did not contain data related to production workers, the Commission noted in its original Views that the number of production and related workers producing ferrosilicon decreased by 36.7 percent from 1989 through 1991 and by 16.2 percent between the first three quarters of 1991 and 1992. The number of production and production related workers was 1,034 in 1989. In the first three quarters of 1992, the number of production related workers had dropped to 611. The number of hours worked by production and related workers producing ferrosilicon also declined by 38.5 percent from 1989 to 1991, and continued to fall, by 20.8 percent, through the first three quarters of 1992.

B. Volume of Subject Imports

The volume and market share of cumulated subject imports were significant in 1989 and by 1992 that volume was significantly higher than in 1989. As discussed above under "Conditions of Competition" from 1989 to 1992 there was a general decline in domestic consumption of ferrosilicon. Excluding Argentina and Egypt from the reported subject imports as contained in the 7/22/02 Confidential Report, cumulated subject imports, by volume, were 68,481 tons in 1989. In 1992, the volume of subject imports had increased to 115,190 tons.¹⁵ Thus, the volume of subject imports was 46,709 tons or 68 percent higher in 1992 than it had been in 1989 even though the domestic market had declined by 41,073 tons or 10.9 percent.¹⁶ Based on these volumes, subject imports held a market share of 18.2 percent in 1989 and 34.4 percent in 1992. Subject imports from Brazil alone increased from 30,187 tons in 1989 to 52,994 tons in 1992, an increase of 75.6 percent. Subject imports from Brazil held a significant market share of 8.0 percent in 1989 and 15.8 percent in 1992. All of these import volume

¹⁴ Derived from 7/22/02 CR at Table II-1.

¹⁵ Derived from 7/22/02 CR, Table II-1, excluding Argentina and Egypt from subject imports.

¹⁶ Use of consistent data would show that subject imports increased by more than 68 percent from 1989 to 1992. In developing data from Commerce statistics for the 7/22/02 Report, Staff inadvertently gathered import data for 1989 using six HTS subheadings whereas import data for all other years was based on four HTS subheadings. If the 1989 data had been collected consistently with the 1992 data, the volume of subject imports in 1989 would have been lower than the number in the 7/22/02 Report and the increase and percentage increase from 1989 to 1992 would have been higher than the increases shown in the Report. Furthermore, if data for years other than 1989 had been collected using six HTS subheadings instead of four, the reported volume of subject imports in years other than 1989 would have been higher than the numbers shown in the 7/22/02 Report and the increases and percentage increases from 1989 would still have been higher than those shown in the Report. In addition, the 7/22/02 Report contained a smaller inconsistency in the data base for U.S. producers between 1989 and the subsequent years. Except for these data inconsistencies the increase in subject imports from 1989 to 1992 would be even greater than 68 percent. I also note that the inconsistency in the 7/22/02 Report also affected U.S. consumption data since subject import volumes are included in the calculation of domestic consumption.

and market share increases were in contrast to the declining shipments and market share of domestic ferrosilicon producers. While the total domestic market for ferrosilicon and shipments of domestic production both declined from 1989 to 1992, the relative declines experienced by the domestic industry were out of proportion to the decline in domestic consumption. The total U.S. domestic consumption levels declined by 41,073 tons, or by 10.9 percent, from 1989 to 1992. However, domestic producers' U.S. shipments declined by 90,433 tons, or by 36 percent, over the same period, a far greater absolute or percentage decline than the overall decline in domestic consumption. At the same time, subject imports increased by 46,709 tons in spite of a declining domestic market.

I find that the volume of subject imports is significant both in absolute terms and relative to the domestic consumption of ferrosilicon.¹⁷ Furthermore, as the Commission found in its original determinations in these investigations and as I further discuss below, I find that the high level of subject imports is especially significant due to the price-sensitive nature of ferrosilicon.

C. Price Effects of Subject Imports

Domestic prices also declined from 1989 through 1992 and into 1993. Using the pricing product data net f.o.b. selling prices, the domestic f.o.b. prices for ferrosilicon with 75 percent silicon content ("ferrosilicon 75") dropped steadily each quarter of the Prior Period in 1989, from \$0.5927 per pound of silicon content ("per pound") in the first quarter of 1989 to \$0.4807 per pound in the third quarter of 1989. Moving forward to the Subsequent Period, in the third quarter of 1991 the reported average domestic f.o.b. price for ferrosilicon 75 was \$0.3822 per pound and it declined unevenly throughout the next year to end at \$*** per pound by the third quarter of 1992.¹⁸ The unweighted average U.S. producers' f.o.b. price for ferrosilicon 75 dropped from \$0.5499 per pound to \$*** per pound from the first three quarters of 1989 to the first three quarters of 1992.¹⁹ This comparison of domestic prices outside the Conspiracy Period represents a decrease of *** percent.

Domestic net f.o.b. selling prices for pricing product 2, which is ferrosilicon with 50 percent silicon content ("ferrosilicon 50") sold to U.S. steel producers showed similar declines, dropping from approximately \$0.46 to \$0.49 cents per pound in the first three quarters of 1989 to approximately \$0.34 to \$0.36 cents per pound in the first three quarters of 1992.²⁰ The average decline for this product from 1989 to 1992 was 26.8 percent.

Finally, for ferrosilicon 50 sold to iron foundries, U.S. producers' f.o.b. prices fell from an average of \$0.5094 cents per pound for the first three quarters of 1989 to \$0.3819 for the first three quarters of 1992, a drop of 25.0 percent.²¹

The same falloff of domestic prices for ferrosilicon can be seen in the average unit value ("AUV") of all domestic shipments.²² The AUV of domestic shipments in 1989 was \$1,008 per ton, or \$0.504 per pound. In 1992 the AUV was \$823 per ton, or \$0.411 per pound.²³ This represents a decrease of 18.5 percent.

¹⁷ This is true viewing Brazil alone on a non-cumulated basis as well as viewing all other countries remaining in these investigations on a cumulated basis with subject imports from Brazil.

¹⁸ 7/22/02 CR at Table III-1.

¹⁹ The record indicates that quarterly domestic sales of each pricing product were fairly stable making the unweighted average a reasonable comparison value.

²⁰ 7/22/02 CR at Table III-2.

²¹ 7/22/02 CR at Table III-3.

²² Although average unit values can be affected by product mix, in this case the variability of prices and product mix is not great. Therefore, the comparison of average unit values appears to be a more meaningful comparison than might be the case with products that have more variability in product prices and mix.

²³ 7/22/02 CR at Table II-1.

As the Commission has emphasized in previous determinations, competition among ferrosilicon suppliers is price sensitive.²⁴ Domestic and imported ferrosilicon products are highly substitutable. In addition, suppliers and purchasers frequently refer to several publications as a general guide to price trends and price levels, leading to clear price signaling in the U.S. market. The information available about prevailing market prices is extensive and contributes to significant price competition among suppliers.²⁵ Price differences of less than a penny per pound can lead purchasers to switch suppliers.²⁶ Due to this price sensitivity, I find the high volume levels of subject imports to be especially significant.

Despite a high level of price sensitivity, total domestic ferrosilicon demand is price inelastic. Changes in ferrosilicon prices have little effect on the quantities demanded by the iron and steel industries or on the total cost of iron and steel production. There are few substitutes for ferrosilicon in iron and steel production, and the cost of ferrosilicon as an input is relatively small compared to the cost of the finished product. Therefore, an increase in the volume of unfairly traded imports, which causes declining U.S. prices, comes at the expense of U.S. producers' domestic sales since price declines do not create increased demand for ferrosilicon.²⁷

In evaluating the effect of the subject imports on prices, the Commission considers whether there has been significant price underselling of imports and whether the imports suppress or depress prices to a significant degree. I find, as did the Commission in the original investigations, that the subject imports significantly depressed domestic prices.

A number of factors indicate the price depressing effect of the subject imports on domestic prices. There was significant underselling by subject imports and low price levels that are disproportionate to the declining demand. I perform this analysis based on pricing data for the Prior Period in 1989 and the Subsequent Period in 1991 and 1992. The July 22, 2002 Confidential Staff Report reflects pricing data outside of the conspiracy period which includes 8 quarters of price comparisons between the U.S. domestic producers' prices and prices for ferrosilicon from Brazil, all applicable to Product 1. Likewise, there are 8 quarters of pricing comparisons for Venezuela for Product 1, 4 quarters for China for Product 1, 8 quarters for Kazakhstan for Product 2, 5 quarters for Ukraine for Product 2, and 1 additional quarter for Kazakhstan for Product 2 sold to iron foundries.²⁸ Thus, for all countries remaining in these investigations the July 22, 2002 Report provides 34 quarters of pricing data during the periods that domestic industry prices were unaffected by the conspiracy and were set by market forces. There was underselling by subject imports in 21 of these quarters, or 62 percent of the quarters which I now examine. This is a significant amount of underselling.²⁹

Furthermore, I note that some of the overselling observations were related to very small volumes of subject imports, particularly in 1989. For example, Brazil's sales of product 1 oversold domestic prices in three quarters when the Brazilian quantities sold ranged from only *** pounds to *** pounds.³⁰ These levels of imports represented only from *** percent to *** percent of reported domestic producer sales in those quarters. In comparison, the underselling took place in quarters when the subject imports from Brazil were from *** million pounds to *** million pounds.³¹ These levels of imports represented from *** percent to *** percent of reported domestic producer sales in those months. Thus, while the

²⁴ Ferrosilicon from the People's Republic of China, USITC Publication 2606, March 1993, at page 25.

²⁵ Id.

²⁶ Id. at page 26.

²⁷ Id.

²⁸ 7/22/02 CR from Tables III-7a, III-7b, III-7c, III-8a, III-8c, and III-9a.

²⁹ Viewed alone, subject imports from Brazil undersold domestic prices in *** of the quarterly pricing comparisons.

³⁰ 7/22/02 CR at Tables III-4 and III-7a.

³¹ Id.

incidences of underselling were a significant 62 to 63 percent of the quarterly pricing comparisons, the impact of that underselling was even more significant considering the relatively higher volumes of subject imports in the underselling quarters.

The Comments filed by ABRAFE³² presented a summary of pricing data that included three additional quarters of data covering the fourth quarter of 1992 and the first two quarters of 1993, all in the Subsequent Period.³³ The ABRAFE pricing data summary presents 11 quarters of pricing data for Product 1 from Brazil, 10 quarters of pricing data for Product 1 from Venezuela, 4 quarters of pricing data for Product 1 from China, 8 quarters of pricing data for Product 2 from Kazakhstan, and 5 quarters of pricing data for Product 2 from Ukraine.³⁴ The ABRAFE pricing data summary provides 38 quarters of pricing comparisons of which ***, or *** percent, show underselling by subject imports.³⁵ Thus, the ABRAFE data support a finding that there was a significant amount of underselling during the non-conspiracy periods. ABRAFE argues that the underselling is not significant because the margins of underselling are small. However, I do not find this argument to be persuasive in light of the high degree of price sensitivity for this product and evidence that indicates that price differences of less than a penny per pound can lead purchasers to switch suppliers.

ABRAFE argues that there is no relationship between U.S. price trends and subject import prices.³⁶ The pricing data for the bulk of subject imports do not support this argument. By far, the bulk of the subject imports reported in the pricing data were in product 1. The quarterly delivered pricing data shown in Exhibit 1 of ABRAFE's Comments show that U.S. producers' prices for that product increased or decreased in the same direction as cumulated subject import prices in every quarter but one.³⁷ Using f.o.b. prices as reflected in the 7/22/02 Confidential Report I see the same strong correlation since domestic industry prices decrease when subject import prices decrease and increase when subject import prices increase. The correlation in price movement between subject imports and domestic prices for the Product 1, where the bulk of subject imports are reported, is nearly perfect, whether using ABRAFE's extended Subsequent Period delivered pricing data, the 7/22/02 Confidential Report Subsequent Period f.o.b. pricing data or the 7/22/02 Confidential Report f.o.b. pricing data in both the Prior and Subsequent Periods.³⁸ Furthermore, I do not agree with ABRAFE's contention that a comparison of prices during the Prior Period with prices in the Subsequent Period is meaningless.³⁹ I have found that both the 1989 and 1992 prices of the domestic industry were set by market forces. While the domestic industry's path to lower prices at the end of the POI may have been affected by the Conspiracy Period, there is no basis to conclude that a comparison of the prices at the beginning of the POI and at the end of the POI is "meaningless." There is no question that prices of subject imports fell at a greater rate than domestic industry prices from 1989 to 1992.

As further evidence of the depressing price effect caused by subject imports, the record shows that the domestic industry was affected by both lost sales and lost revenues due to competition from the subject imports outside of the Conspiracy Period.

³² ABRAFE has been used throughout these proceedings to refer to the industry participants from Brazil.

³³ ABRAFE's Comments Pursuant to The Notice of Remand Proceedings, September 8, 2006.

³⁴ Id. at Exhibit 1.

³⁵ The additional three quarters of pricing data in ABRAFE's Comments all reflected underselling for subject imports from Brazil. Thus, based on ABRAFE's Comments, viewed alone, subject imports from Brazil undersold domestic prices in *** percent, of the quarterly pricing comparisons.

³⁶ ABRAFE's Comments Pursuant to The Notice of Remand Proceedings, September 8, 2006 at page 5.

³⁷ In the first quarter of 1993, the price of cumulated subject imports decreased *** while the price of U.S. producers' product increased ***.

³⁸ The correlation that can be derived from the quarterly pricing data is greater than .95 using either f.o.b. pricing data from the 7/22/02 Confidential Report or delivered pricing data using ABRAFE's Comments, Exhibit 1.

³⁹ Id. at page 6.

D. Impact of Subject Imports on the Domestic Industry

The overall financial experience of domestic ferrosilicon producers deteriorated significantly from 1989 to the end of the period of investigation. The domestic industry reported net operating profits in 1989. Thereafter, all periods examined, including the Subsequent Period in 1992, reflected relatively large operating losses. Positive 1989 operating and net income became losses, and cash flow became negative after 1989 through the Subsequent Period, including the interim periods. In addition to operating income and net income losses, total capital expenditures decreased from \$13.4 million in 1989 to \$4.7 million in 1991 and were only \$3.6 million in interim 1992.⁴⁰

Critically, the record shows a domestic industry facing declining sales volumes that are not accounted for by the more modest declines in demand. The industry was significantly cutting prices to a degree that was inconsistent with the declines in the financial condition of the domestic industry.⁴¹ These price cuts led to lower incomes since the decreases in the industry's sales volumes were not matched by declining costs sufficient to allow the industry to generate a profit. The record reflects that the domestic industry's ratio of cost of goods sold to net sales was 87 percent in 1989. SG&A expenses were 5.5 percent of operating income, leaving the industry with a net operating income ratio to net sales of 7.5 percent.⁴² By interim 1992, the ratio of cost of goods sold to net sales was 97.5 percent and the industry was operating at a loss. Over this period of time, the average value of domestic sales had declined significantly. The Commission noted the decline in profitability in its initial determinations in these investigations. Specifically, the Commission noted in its original views in these investigations that although unit costs had been decreasing, the ratio of cost of goods sold to net sales was increasing.⁴³ I believe that an evaluation of the Prior Period and the Subsequent Period data is valid and produces the same results and conclusions as the Commission's original determinations in these investigations.

I find that these data clearly show that the domestic industry was finding it necessary to reduce prices to a greater extent than it was experiencing reduced costs. Furthermore, even though demand was declining, the data show price reductions in excess of what would be expected in the modestly declining market. I find that these price declines reflect a response to the volumes and prices of subject imports. Considering the significant volumes of subject imports and the price depressing effects of the subject imports, I find that the record supports a finding that subject imports had a significant adverse impact on the domestic ferrosilicon industry.

Conclusion

For the foregoing reasons, I have reached affirmative determinations in the fourth remand of these proceedings and find that an industry in the United States is materially injured by imports of ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine and Venezuela.

⁴⁰ Ferrosilicon from the People's Republic of China, USITC Publication 2606, March 1993, at I-34 and I-35.

⁴¹ Given the price inelasticity of demand for ferrosilicon, the domestic industry should have been able to hold prices at levels that would support more reasonable profits.

⁴² *Id.* at page I-31.

⁴³ *Id.* at pages 27 and 28. The Commission concluded: "This indicates that pricing has not been at sufficient levels to allow the industry to recover costs at the same rate as it had early in the period of investigation."

APPENDIX A
FEDERAL REGISTER NOTICE

Letcher County

Whitesburg Historic District, Portions of Main Sts., Broadway, Bentley, Webb, and Hayes Aves., Church, Pine, Cowan, Madison Sts, River Rd., Hazard Rd., Whitesburg, 06000813

Madison County

Tate Building, 444 Chestnut St., Berea, 06000814

Martin County

Martin County Courthouse, 10 Courthouse St., Inez, 06000811

Oldham County

Wooldridge—Rose House, 315 Wooldridge Ave., Pewee Valley, 06000810

Taylor County

Battle of Tebbs Bend (Boundary Increase), Off KY55, W of Tebbs Bend Rd. and the Green R, Campbellsville, 06000807

Warren County

Modern Automotive District, 538 State, 600 State, 601 State St., Bowling Green, 06000809

MARYLAND**Frederick County**

Eyler, John, Farmstead, 7216 Eylers Valley Flint Rd., Thurmont, 06000817

MASSACHUSETTS**Norfolk County**

Pratt, Paul, Memorial Library, 106 S. Main St., Cohasset, 06000816

NEW YORK**Bronx County**

Grace Episcopal Church, 116 City Island Ave., Bronx, 06000820

New York County

Burden, James A. Jr., House and Kahn, Otto H., House, 70 and 1 E. 91st St., New York, 06000821

Upper East Side Historic District (Boundary Increase), Portion of 17 blks adjacent to and E of the original district bet. E. 60th and E 75th Sts., New York, 06000822

TEXAS**Dallas County**

Dallas Times Herald Pasadena Perfect Home, 6938 Wildgrove Ave., Dallas, 06000819

Harris County

Minella, Angelo and Lillian, House, 6328 Brookside Dr., Houston, 06000818
Palace Hotel, 216 La Branch, Houston, 06000825

Hunt County

Blanton School, (Rosenwald School Building Program in Texas MPS) 610 Witt St., Wolfe City, 06000823

Milam County

International & Great Northern Railroad Passenger Depot, 11 N. Main St., Rockdale, 06000824

A request for Removal has been made for the following resources:

IOWA**Dickinson County**

Dickinson County Courthouse (County Courthouses in Iowa TR) Hill Ave. Spirit Lake, 81000235
Templar Park NE of Orleans on IA 276, Orleans vicinity 77000511

[FR Doc. E6-14102 Filed 8-24-06; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF THE INTERIOR**Bureau of Reclamation****California Bay-Delta Public Advisory Committee Public Meeting**

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee (Committee) will meet on September 13, 2006. The agenda for the Committee meeting will include discussions with State and Federal agency representatives on the end of Stage 1 decisions and the planning for Stage 2 of the CALFED Bay-Delta Program, Program Plans, and the restructuring of the Committee subcommittees. The meeting will also include updates on science, Delta Vision, Delta Risk Management Strategy, and the Bay-Delta Conservation Plan.

DATES: The meeting will be held on Wednesday, September 13, 2006, from 9 a.m. to 4 p.m. If reasonable accommodation is needed due to a disability, please contact Colleen Kirtlan at (916) 445-5511 or TDD (800) 735-2929 at least 1 week prior to the meeting.

ADDRESSES: These meetings will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Diane Buzzard, U.S. Bureau of Reclamation, at 916-978-5022 or Julie Alvis, California Bay-Delta Authority, at 916-445-5551.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice and recommendations to the Secretary of the Interior on implementation of the CALFED Bay-Delta Program. The Committee makes recommendations on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State

and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee agendas and meeting materials will be available prior to all meetings on the California Bay-Delta Authority Web site at <http://calwater.ca.gov> and at the meetings. These meetings are open to the public. Oral comments will be accepted from members of the public at each meeting and will be limited to 3-5 minutes.

Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Water Supply, Reliability, and Environmental Improvement Act, P.L. 108-361; the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.*; the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*; and the Reclamation Act of 1902, 43 U.S.C. 391 *et seq.* and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, 34 U.S.C. 3401.

Dated: August 3, 2006.

Allan Oto,

Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.

[FR Doc. 06-7158 Filed 8-24-06; 8:45 am]

BILLING CODE 4310-MN-M

INTERNATIONAL TRADE COMMISSION

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

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

AGENCY: United States International Trade Commission.

ACTION: Notice 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 Investigations Nos. 731-TA-566-570 and 731-TA-641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

DATES: *Effective Date:* August 22, 2006.

FOR FURTHER INFORMATION CONTACT: George L. Deyman, Office of Investigations, telephone 202-205-

3197, 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 negative determinations 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 remanded the matter to the Commission for further proceedings. *Elkem Metals Co. v. United States*, 193 F. Supp.2d 1314 (Ct. Int'l Trade 2002). On remand, the Commission conducted further proceedings. In September 2002 it reached negative determinations on remand. *Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela*, Inv. Nos. 303-TA-23, 731-TA-566-570, and 731-TA-631 (Final) (Reconsideration) (Remand), USITC Pub. 3531 (Sept. 2002). On June 18, 2003, the CIT issued an opinion concerning the Commission's determinations on remand which affirmed the Commission in part and remanded in part for further proceedings. *Elkem Metals Co. v. United States*, 276 F. Supp.2d 1296 (Ct. Int'l Trade 2003). In September 2003 the Commission reached negative determinations in the second remand proceeding. *Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela*, Inv. Nos. 303-TA-23, 731-TA-566-570, and 731-TA-631 (Final) (Reconsideration) (Second Remand), USITC Pub. 3627 (Sept. 2003). On May 12, 2004, the CIT issued an opinion concerning the Commission's determinations on second remand which remanded the matter for further proceedings. *Elkem Metals Co. v. United States*, Slip Op. 04-49 (Ct. Int'l Trade May 12, 2004), modified in part, Slip Op. 04-152 (Ct. Int'l Trade Dec. 3,

2005). In March 2005 the Commission reached negative determinations in the third remand proceeding. *Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela*, Inv. Nos. 303-TA-23, 731-TA-566-570, and 731-TA-631 (Final) (Reconsideration) (Third Remand), USITC Pub. 3765 (March 2005). On July 21, 2006, the CIT issued an opinion again remanding the matter to the Commission. *Elkem Metals Co. v. United States*, Slip Op. 06-108 (Ct. Int'l Trade July 21, 2006) ("Elkem VIII").

Written Submissions

The Commission is not reopening the record in the fourth remand proceeding for submission of new factual information. In *Elkem VIII*, the CIT stated that if the Commission does not reopen the record on remand, it must "find that the price-fixing Conspiracy was not a significant factor in the Subsequent Period and further find that the prices in the Subsequent Period were set by market forces and complete its analysis accordingly." *Elkem VIII*, Slip Op. at 22. The Commission will permit the parties to file written submissions with regard to the Commission completing its analysis upon making the findings required by the CIT in the passage quoted above.

All submissions must be filed with the Commission no later than 14 days after publication of this notice in the **Federal Register**, shall not contain any new factual information, and shall not exceed 20 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches.

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, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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.

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 the fourth remand proceedings.

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

Issued: August 22, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-14138 Filed 8-24-06; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 15, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/E-mail: king.darrin@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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 agency's estimate of the burden of the proposed collection of information,