

UNITED STATES INTERNATIONAL TRADE COMMISSION

FERROVANADIUM AND NITRIDED VANADIUM FROM RUSSIA

Investigation No. 731-TA-702 (REVIEW)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3420, MAY 2001)

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DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on ferrovanadium and nitrated vanadium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on June 5, 2000 (65 F.R. 35668) and determined on September 1, 2000 that it would conduct a full review (65 F.R. 55047, September 12, 2000). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on November 29, 2000 (65 F.R. 71120). The hearing was held in Washington, DC, on March 15, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 15, 2001. The views of the Commission are contained in USITC publication 3420 (May 2001), entitled *Ferrovanadium and Nitrated Vanadium from Russia (Inv. No. 731-TA-702 (Review))*.

By order of the Commission.

Donna R. Koehnke

Secretary

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

VIEWS OF THE COMMISSION

Based on the record² in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In June 1995, the Commission found that an industry in the United States was materially injured by reason of imports of ferrovanadium and nitrided vanadium sold at less than fair value (“LTFV”) from Russia.³ The Department of Commerce (“Commerce”) published the antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia on July 10, 1995.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would generally include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from both groups of interested parties to be adequate, or if other circumstances warrant, it will determine to conduct a full review.

On June 5, 2000, the Commission instituted a review pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), to determine whether revocation of the antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia likely would lead to continuation or recurrence of material injury.⁶ The Commission received a response to the notice of institution from The Ferroalloys Association Vanadium Committee (the “TFA Committee”) whose members include domestic producers and other firms involved in the sale of ferrovanadium in the United States.⁷ The Commission

² For purposes of this determination, we are disregarding the new factual information submitted by The Ferroalloys Association Vanadium Committee (the “TFA Committee”) in Attachment A of its final comments dated April 24, 2001, that is described in OINV Memorandum INV-Y-088 dated May 1, 2001. This new factual information was not included in the factual record which closed on April 20, 2001. No new information was included in the record after that date. See 19 U.S.C. § 1677m(g); 19 C.F.R. § 207.68(b).

³ Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 (June 1995) (“Original Determination”).

⁴ 60 Fed. Reg. 35550 (July 10, 1995).

⁵ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁶ 65 Fed. Reg. 35668 (June 5, 2000).

⁷ Response to Notice of Institution by the TFA Committee dated July 21, 2000. The TFA Committee filed briefs in this review on behalf of the domestic industry. The TFA Committee consists of the following member companies: Bear Metallurgical Corporation (“Bear”), Shieldalloy Metallurgical Corporation (“Shieldalloy”), Gulf

also received a joint response from the only two producers/exporters of subject merchandise from Russia: Vanadium Tulachermet (“Tulachermet”) and Chusovskoy Metallurgical Works (“Chusovskoy”).⁸

On September 1, 2000, the Commission determined that it should proceed to full reviews of the antidumping duty order on ferrovanadium and nitrated vanadium from Russia. In so doing, the Commission determined that the domestic and respondent interested party group responses were adequate.⁹

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines “the domestic like product” and the “industry.”¹⁰ The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”¹¹ In a section 751(c) review, the Commission also must take into account “its prior injury determinations.”¹²

In its expedited review, Commerce defined the subject merchandise as:

[F]errovanadium and nitrated vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrated vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen.

Excluded from the scope of this review are vanadium additives other than ferrovanadium and nitrated vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials such as slag, boiler residues, fly ash,

Chemical & Metallurgical Corporation (“Gulf”), U.S. Vanadium Corporation, a U.S. subsidiary of Strategic Metals Corporation (“USV”), and CS Metals of Louisiana (“CS Metals”), a joint venture between USV and CRI Metal Products. As discussed below, two members of the TFA Committee, Shieldalloy and Bear, account for one hundred percent of U.S. production of ferrovanadium. Confidential Staff Report (“CR”) at III-5; Public Staff Report (“PR”) at III-2. TFA Committee Prehearing Brief at 1 & n.2, 8.

⁸ Response to Notice of Institution by Tulachermet and Chusovskoy dated July 21, 2000 at 1. CR at IV-1, PR at IV-1.

⁹ Explanation of Commission Determination on Adequacy, reprinted in CR and PR at Appendix A. 65 Fed. Reg. 55047 (Sept. 12, 2000).

¹⁰ 19 U.S.C. § 1677(4)(A).

¹¹ 19 U.S.C. § 1677(10). See NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹² 19 U.S.C. § 1675a(a)(1)(a).

and vanadium oxides.¹³

The subject merchandise is currently classifiable under HTS numbers 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000.¹⁴

Ferrovandium is an alloy of iron and vanadium. It is produced in grades according to its vanadium content. Vanadium additions to steel improve the finished steel product's strength and wear resistance, and impart a fine grain size that increases ductility.¹⁵ Nitrided vanadium is a chemical compound of vanadium, carbon, and nitrogen that shares many of the same uses as ferrovandium.¹⁶

The starting point of the Commission's domestic like product analysis in a five-year review is the like product definition in the Commission's original determination.¹⁷ In the original investigation, the Commission found one like product including both ferrovandium and nitrided vanadium based on a high percentage of vanadium, overlapping end uses, limited interchangeability, similar channels of distribution, similar though not identical production processes, and pricing according to vanadium content.¹⁸ The record reflects that the similarities between ferrovandium and nitrided vanadium that the Commission found in its original determination remain true today.¹⁹ However, nitrided vanadium has not been produced in the United States since 1992.²⁰ Counsel for the domestic industry testified at the hearing that ferrovandium was the product produced in the United States most similar in characteristics and uses to nitrided vanadium.²¹ The record indicates that there have been no other significant changes in the nature,

¹³ 65 Fed. Reg. 60168, 60169 (October 10, 2000).

¹⁴ Id.

¹⁵ CR at I-9-11, PR at I-5-6.

¹⁶ CR at I-10, n.7.

¹⁷ In the domestic like product analysis for an investigation, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g. S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Torrington, 747 F. Supp. at 748-49.

¹⁸ Original Determination at I-5-I-8 & n.14.

¹⁹ CR at I-10, n.6, I-11, I-12 & n.11, I-14, II-1, PR at I-5, n.7, I-6,I-7 & n.12, I-8, II-1. Transcript of Commission Hearing (March 15, 2001) ("Tr.") at 40.

²⁰ Tr. at 16 (Testimony of Kevin Jones, Bear). The TFA Committee argues that the Commission should once again conclude that ferrovandium and nitrided vanadium are a single like product. TFA Committee Prehearing Brief at 5.

²¹ Tr. at 39-40 (Testimony of Cheryl Ellsworth).

uses, and manufacture of ferrovandium and nitrided vanadium since the original investigation.²² Based on the record, therefore, the product most like ferrovandium and most similar in characteristics and uses to nitrided vanadium that is produced in the United States is ferrovandium.²³ Accordingly, we find one domestic like product consisting of ferrovandium.

B. Domestic Industry²⁴

Section 771(4)(A) of the Act defines the relevant industry as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁵ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²⁶

In its original determination, the Commission included Shieldalloy, Bear, USV, and ***²⁷ in the domestic industry. The TFA Committee argues that Shieldalloy and Bear,²⁸ as well as tollees Gulf and USV,²⁹ should all be included in the domestic industry, ***.

²² Original Confidential Staff Report dated June 15, 1995 (“Original CR”) at I-4-I-15 compared to CR at I-9-I-14, PR at I-5-8.

²³ Since the record in this review continues to reflect the similarities between ferrovandium and nitrided vanadium found by the Commission in the original determination, Commissioner Bragg, as she did in the original investigation, again defines one domestic like product in this review, encompassing both ferrovandium and nitrided vanadium. Her finding of one like product which includes ferrovandium and nitrided vanadium in this review is also consistent with a like product continuum approach employed by the Commission regarding such related products, which often includes particular products for which there is no domestic production. Her determination also corresponds with Commerce’s scope in this review. Commissioner Bragg notes that had she excluded nitrided vanadium from the definition of the domestic like product, she would have nonetheless reached an affirmative determination.

²⁴ Commissioner Miller does not join the majority of the Commission with regard to its definition of the domestic industry and submits separate views. See Separate Views of Commissioner Marcia E. Miller.

²⁵ 19 U.S.C. § 1677(4)(A).

²⁶ See, e.g., United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

²⁷ USV is a U.S. subsidiary of Strategic Metals Corporation or “Stratcor.” In the original determination, the Commission referenced the firm as “Stratcor.” Original Determination at I-9. In these Views we refer to the firm as USV or U.S. Vanadium consistent with the hearing testimony.

²⁸ The TFA Committee argues that Shieldalloy and Bear should be included in the domestic industry because in the aggregate they accounted for 100 percent of U.S. production of ferrovandium during 2000, each individually accounting for *** of U.S. shipments and production. It argues that both companies have significant production operations and have made significant investments in their ferrovandium operations. TFA Committee’s Prehearing Brief at 7-10.

²⁹ The TFA Committee also argues that tollees Gulf and USV engage in sufficient production-related activities in the United States to be included in the domestic industry. *** percent of Bear’s total ferrovandium production was produced on behalf of Gulf and USV. ***. TFA Committee Prehearing Brief at 9-12.

We include Shieldalloy and toll-producer Bear in the domestic industry. Shieldalloy and Bear are clearly manufacturers of the domestic like product. Shieldalloy is an integrated ferrovanadium producer. Toll-producer Bear converts vanadium pentoxide, which is not part of the domestic like product, into ferrovanadium, the domestic like product.³⁰ Bear produces ferrovanadium in a technical process that adds value to the vanadium pentoxide by mixing it with aluminum, iron scrap, and flux, charging the mixture in a thermal electric process and then, after cooling the slab, crushing, sizing, and packaging the ferrovanadium.³¹ Bear has made significant investments in its ferrovanadium production operations,³² in which it employs approximately 40 people.³³ Together, Shieldalloy and Bear account for all of the production of ferrovanadium in the United States.³⁴

We do not include tollees Gulf and USV in the domestic industry.³⁵ Gulf and USV produce vanadium pentoxide, an intermediate product, but they do not produce ferrovanadium, the domestic like product, and such production is required under the Act to be part of the domestic industry.³⁷ ³⁸

³⁰ CR at I-13, PR at I-7.

³¹ CR at I-13, PR at I-7.

³² CR at III-11-12, & Table III-7, PR at III-5 & Table III-7. Bear reported that it incurred capital expenditures of ***, at least some of which is attributable to *** made by Bear in ***. Id.

³³ Tr. at 16 (Testimony of Kevin Jones, Bear).

³⁴ Tr. at 16 (Testimony of Kevin Jones, Bear).

³⁵ In previous cases we have found that merely supplying raw materials and paying a fabrication fee do not constitute sufficient production activities to include tollees in the domestic industry. Furfuryl Alcohol from China and Thailand, Invs. Nos. 731-TA-703 and 705 (Review) (April 2001), USITC Pub. 3412 at 6, n.23.

³⁶ Commissioner Bragg determines that the domestic industry in this review consists of Bear, Shieldalloy, and Gulf. Domestic producers Shieldalloy and Bear directly produce ferrovanadium, and therefore, are included in the domestic industry. Commissioner Bragg also includes Gulf in her definition of the domestic industry for the same reasons as ***. Specifically, Gulf produces the raw material input and likely continues to ***. Commissioner Bragg does not include USV in her domestic industry definition because although USV produced ferrovanadium at the time of the original investigation, it did not produce the domestic like product during the period reviewed. See also, footnote 120 on page 17 (discussing Commissioner Bragg's assessment of the likely impact of the order's revocation based on her definition of the domestic industry).

³⁷ "The term 'industry' means the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." 19 U.S.C. § 1677 (4)(A).

³⁸ Static Random Access Memory Semiconductors ("SRAMs") from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-761-762 (Final), USITC Pub. 3098 at 9-10 (Apr. 1998). "We do not include the fabless producers in the domestic industry because they do not produce the domestic like product. SRAM designs, although necessary to SRAM production, do not come within the definition of the domestic like product (which reflects the fact that Commerce did not define the subject merchandise to include SRAM designs)." SRAMs at 9-10. See also Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Inv. Nos. 731-TA-448-450 (Final), USITC Pub. 2312 at 24-26 and nn. 68, 69 (September 1990). The Commission found that "jobbers" that procured yarn and contracted for the production of sweaters, but did not engage in any production themselves, were not domestic producers.

Consistent with our definition of the like product, we define a single domestic industry consisting of Shiedalloy and Bear, the only two domestic producers of ferrovanadium.

III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING ORDERS ARE REVOKED

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke a countervailing or antidumping duty order unless: (1) it makes a determination that dumping or subsidy is likely to continue or recur, and (2) the Commission makes a determination that revocation of the finding or order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”³⁹ The SAA states that “under the likelihood standard, the Commission will engage in a counterfactual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the finding or order] . . . and the elimination of its restraining effects on volumes and prices of imports.”⁴⁰ Thus, the likelihood standard is prospective in nature.⁴¹ The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”⁴² According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{43 44}

³⁹ 19 U.S.C. § 1675a(a).

⁴⁰ SAA, H.R. Rep. No. 103-316, vol I, at 883-84. The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

⁴¹ While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

⁴² 19 U.S.C. § 1675a(a)(5).

⁴³ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

⁴⁴ In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”⁴⁵ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.⁴⁶

We note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive.”⁴⁷

In evaluating the likely volume of imports of subject merchandise if the orders under review are revoked, the Commission is directed to consider whether the likely volume of subject imports would be significant either in absolute terms or relative to production or consumption in the United States.^{48 49} In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁵⁰

In evaluating the likely price effects of subject imports if the orders are revoked, the Commission

predicting events into the more distant future.

⁴⁵ 19 U.S.C. § 1675a(a)(1).

⁴⁶ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

⁴⁷ SAA at 869.

⁴⁸ 19 U.S.C. § 1675a(a)(2).

⁴⁹ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption determination in the instant review. CR at I-8; PR at I-4.

⁵⁰ 19 U.S.C. § 1675(a)(2)(A)-(D).

is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the price of domestic like products.⁵¹

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁵² All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁵³ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping orders at issue and whether the industry is vulnerable to material injury if the orders are revoked.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if an order is revoked, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵⁴ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market.

Ferrovandium is used primarily in steel-making.⁵⁵ The decision by a steelmaker to use a specific

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

⁵² 19 U.S.C. § 1675a(a)(4).

⁵³ Section 752(a)(6) of the Act states that the Commission may consider the magnitude of the margin of dumping in making its determination in a five-year review investigation. 19 U.S.C. § 1675(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year review investigations as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. Commerce found the following likely margins in its expedited five-year review of the antidumping duty order: Galt Alloys, Inc., 3.75 percent, Gesellschaft für Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation and Metallurg, Inc.), 11.72 percent, Odermet, 10.10 percent, and all others, 108.00 percent. 65 Fed. Reg. 60168, 60169 (October 10, 2000).

We note that the record reflects that ***.

⁵⁴ 19 U.S.C. § 1675a(a)(4).

⁵⁵ Eighty-five percent of the vanadium consumed in the United States is used in the production of steel, virtually all of it in the form of ferrovandium or nitrated vanadium. TFA Committee Prehearing Brief at 2.

grade of ferrovanadium depends on its processes and desired finished product.⁵⁶ Only a small quantity of ferrovanadium is necessary to alloy steel, and it consequently accounts for only a small portion of the cost to produce the steel.⁵⁷ Demand for ferrovanadium is closely tied to steel production.⁵⁸ U.S. demand for ferrovanadium and nitrated vanadium increased over the review period, ***, but decreased *** percent between 1999 and 2000.^{59 60}

Ferrovanadium is traded worldwide and is typically bought and sold on the basis of weight of contained vanadium.⁶¹ The vanadium world market consists of relatively few producers whose individual decisions influence the balance between supply and demand.⁶²

Vanadium pentoxide is an intermediate product in most ferrovanadium production, including the production processes used by the Russian producers and Bear.⁶³ Vanadium pentoxide is produced most commonly through secondary recovery from steel slags and residues, but is also produced through mining ore deposits.⁶⁴ Vanadium pentoxide is traded worldwide, and accounts for most of the cost of the ferrovanadium produced using this process.⁶⁵ Prices for vanadium pentoxide and prices for ferrovanadium move in tandem.⁶⁶ The relationship between vanadium pentoxide and ferrovanadium prices means that

⁵⁶ CR at I-11, PR at I-6.

⁵⁷ TFA Committee Prehearing Brief at 3-4.

⁵⁸ CR at II-2-II-3; PR at II-2.

⁵⁹ The quantity of apparent U.S. consumption increased overall by *** percent over the review period. It increased by *** percent between 1995 and 1996, by *** percent between 1996 and 1997, by *** percent between 1997 and 1998, and by *** percent between 1998 and 1999. Apparent U.S. consumption decreased by *** percent between 1999 and 2000. Table C-1, CR at C-3; PR at C-3.

⁶⁰ Substitution of ferrovanadium with other ferroalloys, such as ferroniobium, in the steel production process is limited because of technical advantages of ferrovanadium and because substitution requires costly changes to the steel production process. CR at I-13 & n.14; PR at I-8 & n.15. CR at II-3; PR at II-2.

⁶¹ CR at I-14, PR at I-8. Tr. at 22 (Testimony of Kevin Jones, Bear). Ryan's Notes, August 7, 2000, Ryan's Notes, October 16, 2000, Platt's Metals Week, September 11, 2000 and August 28, 2000. Attachment H to TFA Committee's Prehearing Brief.

⁶² 2000 Ryan's Notes Ferroalloys Conference, "Supply and Demand of Vanadium: Outlook for the Market" by Rainer Schmidtmayer, Commercial Director, Treibacher Industrie AG at 1, Attachment C to TFA Committee's Prehearing Brief.

⁶³ CR at I-12-I-13; PR at I-7. Tr. at 32 (Testimony of James Carter, Shieldalloy). Domestic producer Shieldalloy produces ferrovanadium from vanadium-bearing materials other than vanadium pentoxide. CR at I-12; PR at I-7. Tr. at 123-24 (Testimony of Olga Molokina, Tulachermet). Tr. at 147-148 (Testimony of Igor Ponamarenko, Chusovskoy).

⁶⁴ CR at III-8-9, n.9; PR at III-3, n.9.

⁶⁵ Russian Producers' Prehearing Brief at 13.

⁶⁶ Russian Producers' Prehearing Brief at 14. Tr. at 43 (Testimony of Robert Bunting, USV).

changes in market conditions can affect price levels for both products.⁶⁷ Both the TFA Committee and at least one of the Russian producers agree that there is currently an oversupply of vanadium pentoxide worldwide, although they differ as to its cause.⁶⁸

As discussed above, Shieldalloy and Bear are the only U.S. producers of ferrovanadium. Bear converts vanadium pentoxide owned by USV and Gulf into ferrovanadium on a toll basis, then USV and Gulf ship and market the resulting ferrovanadium, which they own throughout the production process. *** percent of the vanadium pentoxide that Bear converts into ferrovanadium is owned and marketed by USV and Gulf.⁶⁹ As a toll producer, Bear's financial condition is not directly affected by changes in market conditions, such as changes in vanadium raw material prices, or the impact of imports. However, market conditions directly affect USV and Gulf, and therefore impact Bear indirectly through the toll producer's dependence on USV and Gulf for product to convert, revenue, and ultimately profit. If market conditions cause USV and Gulf's production levels and sales to fall, Bear's production levels and sales would also fall. Furthermore, as ferrovanadium prices fall, there is increased pressure on Bear to reduce its conversion fee, and thus its revenues and profit.^{70 71}

Nonsubject imports in 2000 accounted for *** percent of apparent U.S. consumption by quantity,

⁶⁷ For example, in 1997, Russian steel producer Nizhny Tagil, the sole supplier of steel slag for Tulachermet, one of the two Russian producers of ferrovanadium, changed its steel-making process and produced an inferior slag that was almost impossible for Tulachermet to process into vanadium pentoxide. This reportedly removed ten million pounds of vanadium pentoxide from the market, causing a supply disruption and a sharp increase in vanadium pentoxide and ferrovanadium prices in January 1998. When Nizhny Tagil returned to its former steel making process during the last quarter of 1998, restoring Tulachermet's output to earlier levels, the resulting supply of vanadium pentoxide reportedly contributed to declining prices for vanadium pentoxide and ferrovanadium. CR at III-8-9; PR at III-4. TFA Committee Prehearing Brief at 15-17. Tr. at 23 (Testimony of Kevin Jones, Bear). Tr. at 35, 37, 45, (Testimony of James Carter, Shieldalloy). Tr. at 122-23 (Testimony of Olga Molokina, Tulachermet, regarding how Nizhny Tagil's change in process in 1997 bottlenecked their ferrovanadium production). 2000 Ryan's Notes Ferroalloys Conference, "Supply and Demand of Vanadium: Outlook for the Market" by Rainer Schmidtmayer, Commercial Director, Treibacher Industrie AG. American Metal Market, "Vanadium and Silicon Metal Markets Saturated," by Robert W. Mitchell. Table on Ferrovanadium: Published Prices in Europe and the United States, By Month 1997 to 2000, and Chart on Ferrovanadium U.S. Transaction Prices, January 1995 - February 27, 2001. Platt's Metals Week, September 11, 2000. Attachments C, E, F, G, and H to TFA Committee's Prehearing Brief.

Other factors such as decreased consumption of ferrovanadium due to the Asian crisis, and new vanadium pentoxide production in Australia have also contributed to a worldwide oversupply of vanadium products, and related low prices. CR at III-9, PR at III-4. Attachment C to TFA Committee's Prehearing Brief.

⁶⁸ A Tulachermet representative testified that the current oversupply of vanadium products worldwide was caused by companies making investments to increase capacity particularly in South Africa and Australia, when prices went up in 1998. Tr. at 138, 165-66 (Testimony of Olga Molokina). The domestic producers maintain instead that the fluctuation in supply caused by Nizhny Tagil's actions was a major cause of the current oversupply. Tr. at 23, 45 (Testimony of Kevin Jones, Bear and James Carter, Shieldalloy) and 196 (Testimony of Jennifer de Laurentiis, counsel).

⁶⁹ TFA Committee Prehearing Brief at 9.

⁷⁰ TFA Committee Posthearing Brief, Answers to Commission Questions at 6-7.

⁷¹ Since Commissioner Miller defines the domestic industry as including USV and Gulf, she does not join in this paragraph.

and *** percent by value.⁷² Purchasers reported that nonsubject imports were comparable to the domestic product in terms of price, quality, and availability, and that they were used in the same applications as the domestic product.⁷³ No imports of ferrovanadium or nitrated vanadium from Russia have been in the U.S. market since 1996. However, a Tulachermet representative testified it is currently participating in the U.S. ferrovanadium market to the extent it has some of its vanadium pentoxide toll converted into ferrovanadium in Belgium and the Czech Republic for eventual export to the United States.⁷⁴

Purchasers indicated that quality and price were the dominant purchasing factors, with availability also an important factor.⁷⁵ In the original investigation, the Commission found that subject imports and the domestic like product generally were interchangeable and served as good substitutes.⁷⁶ There is no indication that would change if the Russian product re-entered the U.S. market.⁷⁷ Indeed, the Russian product is likely to be an even closer substitute for the domestic product than in the original investigation, because Tulachermet has begun to produce an 80 percent grade ferrovanadium, the *** produced by Bear.^{78 79} Although the U.S. producers produce ferrovanadium in different grades, primarily ***, there is no price premium for a higher grade.⁸⁰ Ferrovanadium is sold on a contract basis, usually annual contracts, as well as in the spot market.⁸¹

We find that the foregoing conditions of competition are likely to prevail for the reasonably foreseeable future and thus provide an adequate basis by which to assess the likely effects of revocation within the reasonably foreseeable future.

⁷² Table I-1, CR at I-3, PR at I-2.

⁷³ CR at II-2; PR at II-2.

⁷⁴ Tr. at 120-21 (Testimony of Olga Molokina).

⁷⁵ CR at II-4, PR at II-2-3.

⁷⁶ Original Determination at I-18.

⁷⁷ U.S. purchasers reported in this review that prior to the order, Russian ferrovanadium and nitrated vanadium were comparable to the domestic product in terms of availability, delivery times, reliability of supply, quality, price, and consistency. All of the responding producers and two importers reported that the domestic product and the Russian product could be used interchangeably, although one importer reported that because of impurities found in the Russian product, it was not interchangeable with the domestic product. CR at II-2, II-5; PR at II-1, II-3.

⁷⁸ TFA Committee Prehearing Brief at 21 and Attachment D, "Traders Query Effect of New Tula Production," Metal Bulletin, August 14, 2000. In the original investigation, the U.S. product had a vanadium content of either 42-44 percent or 80 percent whereas the Russian product had a vanadium content of 52 percent. Original CR at I-53. Today, Shieldalloy produces ferrovanadium in grades containing *** percent vanadium *** Bear produces *** of its ferrovanadium in a grade containing *** percent vanadium. CR at I-10, n.5, PR at I-5, n.6.

⁷⁹ According to a USV representative, production of the 80 grade ferrovanadium makes the Russian product more attractive to steel producers in the United States that had previously resisted switching to the Russian product because of the difference in grade. Tr. at 28 (Testimony of Robert Bunting, USV). Mr. Bunting stated that the same was true for some European steel producers.

⁸⁰ CR at I-10, n.5; PR at I-5, n.6. Tr. at 69-72 (Testimony of James Carter, Shieldalloy, and Kevin Jones, Bear).

⁸¹ CR at V-2; PR at V-2.

C. Likely Volume of Subject Imports

In the original investigation, the Commission found that the volume and market share of subject imports increased substantially throughout the period of investigation, outpacing the rate of increase in overall domestic consumption of ferrovanadium and nitrated vanadium. Subject imports captured a substantially increasing share of the expanding U.S. market by quantity and by value over the period of investigation, to a significant degree at the expense of the domestic industry.⁸²

Upon issuance of the order, subject imports' share of apparent U.S. consumption fell dramatically.⁸³ No subject imports from Russia have been in the U.S. market since 1996.⁸⁴ There is currently an oversupply of ferrovanadium in the U.S. market, and Shieldalloy shut down its ferrovanadium production operations for a month beginning on February 26, 2001, in an effort to remove ferrovanadium from a market adversely impacted by excess world supply.⁸⁵

As at the time of the original investigation, Russian producers Chusovskoy and Tulachermet comprise one hundred percent of the subject industry producing ferrovanadium and nitrated vanadium in Russia. Several factors support the conclusion that subject import volume from these two producers is likely to be significant if the order were revoked.

There is significant excess production capacity to produce ferrovanadium and nitrated vanadium in Russia. In 2000, the capacity utilization rate for the Russian producers was *** percent.⁸⁶ Excess ferrovanadium production capacity in Russia in 2000 totaled *** pounds contained vanadium.⁸⁷ Excess nitrated vanadium capacity in 2000 totaled *** contained vanadium.⁸⁸ In the aggregate, in 2000, total excess ferrovanadium and nitrated vanadium production capacity in Russia was *** pounds contained vanadium, equivalent to *** percent of apparent U.S. consumption for the same year.⁸⁹

In 2000, Chusovskoy operated at *** percent production capacity in its ferrovanadium

⁸² Original Determination at I-17.

⁸³ Table I-1, CR at I-3; PR at I-2. The U.S. market share of subject imports was *** in 1994, *** in 1995, *** in 1996, and *** from 1997 to 2000. Id.

⁸⁴ Table I-1, CR at I-3; PR at I-2.

⁸⁵ Shieldalloy laid off 62 employees in the shutdown, 17 of whom were laid off for an indefinite period. Shieldalloy estimates that the cost to the company of the four week shutdown is approximately ***. Shieldalloy stated that it would resume operations at 75 percent of its prior level. TFA Prehearing Brief at 33 and Attachment J "Shieldalloy Sets Shutdown to Reduce Vanadium Glut." TFA Committee Posthearing Brief, Answers to Commission Questions at 1.

⁸⁶ Table IV-3, CR at IV-5, PR at IV-3.

⁸⁷ Table IV-3, CR at IV-5, PR at IV-3.

⁸⁸ Only Chusovskoy produced nitrated vanadium over the review period, and it sold the product ***. Table IV-4, CR at IV-6, PR at IV-3.

⁸⁹ Calculated from Table I-1, CR at I-3; PR at I-2.

operations, and *** percent production capacity in its nitrated vanadium operations.⁹⁰ Tulachermet's capacity utilization rate in 2000 was *** percent.⁹¹ Tulachermet asserts that its capacity to produce ferrovanadium is limited by its capacity to produce vanadium pentoxide, and that it is operating at or near full vanadium pentoxide capacity.⁹² Tulachermet has stated, however, that the ***.⁹³ Such a decision would increase Tulachermet's ferrovanadium production without production of additional vanadium pentoxide, and eliminate the need to pay European converters for converting this ferrovanadium. Moreover, Tulachermet's significant idled ferrovanadium capacity represents an important incentive to retain the vanadium pentoxide it currently sells on the merchant market in Europe,⁹⁴ and instead convert it into ferrovanadium in Russia.

The ferrovanadium and nitrated vanadium industry in Russia has become increasingly export-oriented over the review period. Exports accounted for *** percent of total shipments in 2000 compared to *** percent of total shipments in 1995.⁹⁵ Russian exports to all markets increased from *** pounds of contained vanadium in 1997 to *** pounds in 2000, an increase of *** percent, at a time when the Russian producers did not ship to the U.S. market.⁹⁶ Consistent with this export orientation, both companies have acknowledged that they would re-enter the U.S. market if the order were revoked.⁹⁷

***.⁹⁸ Over the review period, Tulachermet's exports increased from *** pounds contained vanadium in 1995 to *** pounds in 2000.⁹⁹ Over the review period, Chusovskoy's exports to *** pounds

⁹⁰ Calculated from Chusovskoy Foreign Producer Questionnaire Response at 8 and 10. Chusovskoy is considering increasing its ferrovanadium production significantly, however. Attachment A to Russian Producers' Prehearing Brief, Chusovskoy Report at 2 (unnumbered).

⁹¹ Calculated from Tulachermet Foreign Producer Questionnaire Response at 8.

⁹² Tr. at 123 (Testimony of Olga Molokina, Tulachermet). Russian Producers' Posthearing Brief at 5-6 and Answers to Commission Questions at 4.

⁹³ CR at D-11, PR at D-6. The Russian producers have argued that the domestic industry would not be affected if Tulachermet directly produced and exported to the United States the ferrovanadium it currently has toll converted in Europe because the same volume of imports would enter the United States, only the origin of the imports would change from Czech Republic and Belgian imports to Russian imports. Russian Producers' Posthearing Brief at 7. In this review investigation, we must consider whether significant volumes of subject imports from Russia would be likely if the order were revoked, not whether significant volumes of nonsubject imports from the Czech Republic or Belgium would be likely to be reduced if the order were revoked.

⁹⁴ Apart from its tolling arrangements, Tulachermet also sells some vanadium pentoxide to unrelated purchasers in Europe. Tr. at 152-153 (Testimony of Olga Molokina, Tulachermet).

⁹⁵ Table IV-3, CR at IV-5, PR at IV-3.

⁹⁶ Table IV-3, CR at IV-5, PR at IV-3 (percentage calculated from Table).

⁹⁷ CR at D-11; PR at D-6.

⁹⁸ CR at IV-6; PR at IV-3. Tulachermet Foreign Producer Questionnaire at 8. Chusovskoy Foreign Producer Questionnaire at 8.

⁹⁹ Tulachermet Foreign Producer Questionnaire at 8.

contained vanadium in 1995 to *** pounds in 2000.¹⁰⁰ Both Tulachermet and Chusovskoy assert that they do not want to lose their customers in the European market.¹⁰¹

We note, however, that the Russian ferrovanadium industry has exhibited substantial flexibility and speed in shifting sales between national markets, indicating that it likely would increase sales to the U.S. market rapidly. Exports increased *** following the *** decline in home market shipments between 1995 and 1998.¹⁰² Both Russian producers assert that they would not export significant quantities of ferrovanadium because of their long-term commitments to their European customers.¹⁰³ We do not find that the record supports the conclusion that significant volumes of Russian production are committed to European customers such that they could not be shifted to other markets.¹⁰⁴ We therefore find that if the order were lifted, the Russian producers would not be constrained from exporting a significant volume of ferrovanadium into the United States.

In the absence of the order, the Russian producers would have strong incentives to export ferrovanadium and nitrided vanadium to the United States in significant volumes based on prices in the United States. U.S. prices for ferrovanadium have been significantly and consistently higher than European prices since February 1998, based on published Metal Bulletin prices.¹⁰⁵ From October to December 2000, the lowest European published ferrovanadium price has ranged between 8.1 percent and 19.8 percent lower than the lowest published U.S. price. During the same months the highest European published ferrovanadium price ranged between 24.1 percent and 11.9 percent lower than the highest published U.S. price.¹⁰⁶ This significant price differential also existed in the first three quarters of 2000.¹⁰⁷

¹⁰⁰ Chusovskoy Foreign Producer Questionnaire at 8. Chusovskoy reported that ***. Russian Producers' Posthearing Brief, Answers to Commission Questions at 3.

¹⁰¹ Tr. at 114-115 (Testimony of Igor Ponamarenko, Chusovskoy). Tr. at 161 (Testimony of Olga Molokina).

¹⁰² Table IV-3, CR at IV-5, PR at IV-3. While the Russian producers' shipments to their home market decreased from *** pounds contained vanadium in 1995 to *** pounds in 1998, exports to markets other than the United States increased from *** pounds to *** pounds. *Id.*

¹⁰³ Tr. at 123-24, 144, 152-54 (Testimony of Olga Molokina); Tr. at 114-15, 155, 164 (Testimony of Igor Ponamarenko).

¹⁰⁴ The record contains only contracts of ***. The Russian producers provided a ***. Russian Posthearing Brief, Answers to Commission Questions at 2 and Exhibits 1 and 2.

¹⁰⁵ Attachment F to the TFA Committee's Prehearing Brief contains a table showing Metal Bulletin prices, taken from Mineral Industry Surveys, published by the U.S. Geological Survey.

¹⁰⁶ In October of 2000, the lowest published European price was 19.8 percent lower than the lowest published U.S. price and the highest published European price was 24.1 percent lower than the highest published U.S. price. In November of 2000, the lowest European price was 10.9 percent lower, and the highest European price was 17.0 percent lower, than its U.S. counterparts. In December of 2000, the lowest European price was 8.1 percent lower, and the highest European price was 11.9 percent lower than its U.S. counterparts. TFA Committee Prehearing Brief, Attachment F, Table listing Ferrovanadium Published Prices in Europe and the United States.

¹⁰⁷ In January 2000, the lowest European price was 21.4 percent, and the highest European price 10.3 percent lower, than its U.S. counterparts. In April 2000, the lowest European price was 16.2 percent, and the highest published European price 10.0 percent, lower than its U.S. counterparts. In July 2000, the lowest European price was 17.9 percent, and the highest published European price 18.3 percent lower than its U.S. counterparts. TFA Committee Prehearing Brief, Attachment F, Table listing Ferrovanadium Published Prices in Europe and the United

Since January 1998, there have been few instances in which the lowest or highest European published price was not lower than its U.S. counterpart.^{108 109} One of the purchasers in this case, as well as articles in the record, reference this price differential.¹¹⁰ The Russian producers argue that once differences in freight and packing are taken into account, there is little or no sustained price differential between the United States market and Europe.¹¹¹ We do not find this argument persuasive because the differential between the U.S. and European prices is significantly in excess of these transportation costs. The Russian

producers' transportation costs for importing ferrovanadium into the United States are estimated at only four percent of its landed, duty-paid value.¹¹²

In sum, we find that subject producers would have the ability and incentive to increase exports to the United States significantly. Accordingly, we find that the likely volume of subject imports from Russia would be significant within a reasonably foreseeable time if the order were revoked.¹¹³

D. Likely Price Effects of Subject Imports

In the original investigation, the Commission found that price was an "important factor in the purchasing decisions for this commodity," and that subject imports had suppressed and depressed prices in the domestic market to a significant degree. The Commission found that price declines accelerated from 1992 to the first three months of 1994, at the same time that subject imports entered the market in

States.

¹⁰⁸ In regard to the lowest published prices, in 36 comparisons since January 1998, the lowest published European price was lower than the lowest published U.S. price 31 times, or 86.1 percent of the time, and higher 5 times, or 13.9 percent of the time, the last instance being March of 2000. As for the highest published prices, in the same 36 comparisons, the highest published European price was lower than the highest published U.S. price in 34 comparisons, or 94.4 percent of the time, and higher twice, or 5.6 percent of the time, the last instance being February 2000. TFA Committee Prehearing Brief, Attachment F, Table listing Ferrovanadium Published Prices in Europe and the United States.

¹⁰⁹ *** 2000 prices for Product 1 (Grade 40-60 percent ferrovanadium) are *** these published prices for ferrovanadium. ***. *** 2000 prices for Product 2 (Grade 78-82 percent ferrovanadium) are *** the published U.S. prices except for ***. CR at Table V-1, CR at V-4-5; PR at V-3.

¹¹⁰ One of the purchasers stated that the likely effect of revoking the order on the U.S. market would be that the "[p]rice differential between markets, i.e., USA, Asia, Europe will decrease. U.S. market will better reflect the world market." CR at D-9, PR at D-5. Ryan's Notes, August 7, 2000, American Metal Market, "Russian Exports Receive Blame for Destabilizing Vanadium Tags, September 26, 2000, Attachment H, TFA Committee Prehearing Brief.

¹¹¹ Russian Producers' Posthearing Brief at 4-5; Tr. at 145 (Testimony of Olga Molokina, Tulachermet).

¹¹² CR at V-1; PR at V-1. In addition, inland transportation costs are minimal. Id.

¹¹³ The Russian producers have not held significant inventories of the subject merchandise, and there is no indication in the record that is likely to change in the reasonably foreseeable future. Table IV-3, CR at IV-5, PR at IV-3. There are no barriers to the importation of the subject merchandise into countries other than the United States, and the Russian producers cannot shift production from other products to ferrovanadium and nitrided vanadium. CR at IV-7; PR at IV-3. Tr. at 188-89 (Testimony of Jeffrey Neeley, Counsel for the Russian producers).

increasing volumes.¹¹⁴ For the following reasons, we find that adverse price effects are likely to recur absent the restraining effects of the orders.

As noted above, the domestic and subject product are substitutable, and price is an important factor in purchasing decisions. Due to the lack of subject imports from Russia, no importer price data were available for the Russian product for the review period.¹¹⁵

U.S. prices ***. Over the review period, ***.¹¹⁶

As stated earlier, ferrovanadium is typically bought and sold on the basis of weight of contained vanadium.¹¹⁷ U.S. prices for ferrovanadium are driven by the cost of extracting the vanadium from slag or mining deposits, which is reflected in the price of vanadium pentoxide,¹¹⁸ the major input into ferrovanadium under the production process used by Bear and the Russian producers.

While we recognize actions by producers of vanadium pentoxide or ferrovanadium in other markets may affect U.S. prices for ferrovanadium, we find that the price differential between U.S. and European prices for ferrovanadium would provide an incentive for the Russian producers to re-enter the U.S. market if the order were revoked. As discussed above, prices for ferrovanadium in the United States are significantly higher than in Europe. Even taking into consideration transportation costs, the Russian manufacturers likely would be able to re-enter the U.S. market at prices below prevailing U.S. prices, while obtaining comparable or even higher returns than for sales in Europe.

Moreover, the ***.¹¹⁹ This provides further evidence that the Russian producers would aggressively price their product in the U.S. market.

Four out of the seven purchasers who gave usable responses as to the likely effects of revocation of the order on the U.S. market as a whole, either stated that revoking the order would cause prices to fall, or that the price differential between the U.S. market and the world market would decrease.¹²⁰

As noted above, we find that the volume of subject imports from Russia likely would be significant if the order were revoked. We further find that if the order were revoked, the subject imports would be priced aggressively in the U.S. market in order to gain market share. Due to the substitutability of subject imports with the domestic product as well as the importance of price, such aggressive pricing

¹¹⁴ Original Determination at I-18. The Commission further found that unit values for subject imports were consistently lower than the unit values for the domestic product over the period of investigation. *Id.* at I-20.

¹¹⁵ No imports of ferrovanadium or nitrated vanadium from Russia were in the U.S. market during 1997-2000. No import price data were reported for 1995 and 1996. Table V-1, n.1, CR at V-5, PR at V-3.

¹¹⁶ ***.

We note that ***. Table V-1, CR at V-4-5, PR at V-3.

¹¹⁷ Tr. at 22 (Testimony of Kevin Jones, Bear).

¹¹⁸ 2000 Ryan's Notes Ferroalloys Conference, "Supply and Demand of Vanadium: Outlook for the Market" by Rainer Schmidtmayer, Commercial Director, Treibacher Industrie AG at 1, Attachment C to TFA Committee's Prehearing Brief.

¹¹⁹ The Russian producers' representatives testified at the hearing that their European sales are "Metal Bulletin oriented sales," and contracts "based on a formula that reflects publications, market publications of price." Tr. at 154 (Testimony of Olga Molokina); Tr. at 144, 155 (Testimony of Igor Ponamarenko).

The Tulachermet ***. The Chusovskoy ***. ***. Russian Posthearing Brief, Answers to Commission Questions at 2 and Exhibits 1 and 2.

¹²⁰ CR at D-9-10; PR at D-4-6.

likely would have significant depressing and suppressing effects on the already low prices of the domestic like product.

Accordingly, we conclude that if the order were revoked, the subject imports would be priced at levels that likely would have significant price depressing or suppressing effects on prices for the domestic like product.

E. Likely Impact^{121 122}

In the original investigation, the Commission found that the large and increasing volume and market share of the subject imports captured U.S. market share at the expense of the domestic industry, while subject imports depressed or suppressed domestic prices to a significant degree. The subject imports negatively impacted key domestic industry indicators, including shipments, employment, sales revenue, and market share, and prevented the domestic industry from taking full advantage of declining costs and an expanding U.S. market.¹²³

Following the imposition of the order, the condition of the domestic industry improved, at the same time as the Russian product left the U.S. market. U.S. production of ferrovanadium increased from *** pounds contained vanadium in 1994 to *** pounds in 1995, and increased to *** pounds in 1996.¹²⁴ The domestic industry's improved condition continued through 1998, but then its volume and prices declined. U.S. production of ferrovanadium increased from *** pounds contained vanadium in 1996 to *** pounds in 1998, but fell to *** pounds in 2000. U.S. capacity utilization fell slightly from *** percent in 1995 to *** percent in 1996, increased to *** percent in 1998, but fell to *** percent in 2000.¹²⁵

Domestic producers Bear and Shieldalloy's combined data reflect operating income of *** million in 1995, rising to *** million in 1998, but operating *** million in 1999 and *** million in

¹²¹ Based on Commissioner Bragg's definition of the domestic industry as Bear, Shieldalloy, and Gulf, the data she relied upon in assessing the likely impact of the order's revocation include individual U.S. Producers' questionnaires and where appropriate, aggregate data for these producers in the Commission Report. Because Commissioner Bragg does not include USV in the domestic industry, she does not rely on the USV data specifically or in the aggregate. However, Commissioner Bragg does note that the domestic industry determination, and therefore the inclusion or exclusion of either Gulf or USV, does not significantly alter the trends of the economic indicia and would result in the same determination, i.e., an affirmative determination.

¹²² Based on Commissioner Miller's definition of the domestic industry including Bear, Gulf, Shieldalloy and USV, the data she relied upon in assessing the likely impact of the order's revocation include individual U.S. producer's questionnaires and aggregate data for these producers in the Commission Report. See, e.g., Table III-5, CR at III-8, PR at III-3.

¹²³ Original Determination at I-20-21.

¹²⁴ USV ceased production of ferrovanadium in January 1994 in favor of ***. Original Determination at I-9. The 1994 production data from the original investigation ***. Table 2, Original CR at I-23. Table III-1, CR at III-2; PR at III-1. Therefore, the production data for the domestic industry in the original investigation are comparable to the data in this review ***.

¹²⁵ Table III-1, CR at III-2; PR at III-1. Capacity increased over the review period, from *** pounds contained vanadium to *** pounds contained vanadium, apparently primarily due to investments made by *** in capacity. CR at III-1-2; PR at III-1. CR at III-11-12; PR at III-5.

2000.¹²⁶ Combined total sales and toll processing for Bear and Shieldalloy increased by both quantity and value to a high in 1998, and then fell ***.¹²⁷ Employment indicators generally followed the same trends over the review period as production, capacity utilization, operating income and sales – increasing to a peak in 1998, and then *** falling-- except for unit labor costs and hourly wages, which generally increased over the review.^{128 129 130} We find that the domestic industry is currently vulnerable based on the foregoing economic indicators.

We found above that revocation of the antidumping duty order likely would lead to significant increases in the volume of subject imports at prices that likely would significantly depress or suppress U.S. prices. Given the generally substitutable nature of the subject and domestic products, we find that the likely significant volume of low-priced subject imports, when combined with the expected negative price effects of those imports, likely would have a significant adverse impact on the production, shipments, sales, and revenues of the domestic industry. This reduction in the industry's production, sales, and revenues would have a direct adverse impact on the industry's profitability and employment levels,¹³¹ as well as its ability to raise capital and make and maintain necessary capital investments.

Consistent with the statutory requirement that "[i]n evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked . . . , the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States,"¹³² we have also considered the condition of Bear's ***. We observe that *** are currently ***,¹³³

¹²⁶ Calculated from Table III-6, CR at III-10, PR at III-5 and Table E-1, CR at E-3, PR at E-3.

¹²⁷ Combined total sales and toll processing for Bear and Shieldalloy by quantity increased from *** pounds contained vanadium in 1995 to a high of *** pounds in 1998, but fell to *** pounds in 2000. Combined total sales and toll processing for Bear and Shieldalloy by value increased from \$*** million in 1995 to a high of \$*** million in 1998, but fell to \$*** million in 2000. Calculated from Table III-6, CR at III-10, PR at III-5 and Table E-1, CR at E-3, PR at E-3.

¹²⁸ Table III-4, CR at III-4, PR at III-2. ***.

¹²⁹ We cannot fully consolidate Bear and Shieldalloy's data consistent with our regular practices because Bear is a toll producer, and *** is shipped and sold by ***. Therefore, we have not included combined ratios to net sales (such as the ratio of operating income to net sales) or per unit value calculations in our analysis. We note that Shieldalloy and Bear *** in terms of their individual operating income margins. Bear's operating income margin (ratio of operating income to net sales) for its commercial sales and its tolling operations was *** percent in 1999 and *** percent in 2000, whereas Shieldalloy's operating income margin was *** percent in 1999, and *** in 2000. However, as discussed, Bear would also be impacted by the effects of the subject imports on *** and *** if the order were revoked. Table III-6, CR at III-10, PR at III-5. Table E-1, CR at E-3, PR at E-3.

¹³⁰ Commissioner Miller observes that the industry, as she defines it, experienced operating income margins of *** percent in 1998, *** percent in 1999, and *** percent in 2000. Table III-5, CR at III-8, PR at III-3.

¹³¹ In this regard, we note that even with the order in place, ***. TFA Committee Posthearing Brief, Answers to Commission Questions at 1.

¹³² 19 U.S.C. § 1675a (4).

¹³³ *** combined operating income margin was *** percent in 1998 but fell to *** percent in 1999 and *** percent in 2000. Their combined net sales in quantity dropped from *** pounds contained vanadium in 1998 to *** pounds in 1999 and *** pounds in 2000. Net sales by value dropped even more ***, from \$*** million in 1998, to \$*** million in 1999, to \$*** million in 2000. Calculated from Table III-6, CR at III-10, PR at III-5.

such that under the conditions of competition relevant to this market, the volume and price effects of subject imports upon revocation likely would worsen their condition to the point where they would cut back or even curtail altogether conversion orders for Bear. Such a chain of events upon revocation of the order would leave Bear ***.

Accordingly, we conclude that, if the antidumping duty order is revoked, the subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on imports of ferrovanadium and nitrated vanadium from Russia would be likely to lead to continuation or recurrence of material injury to the domestic industry producing ferrovanadium within a reasonably foreseeable time.

SEPARATE VIEWS OF COMMISSIONER MARCIA E. MILLER ON THE DEFINITION OF THE DOMESTIC INDUSTRY

I join in all sections of the majority's views as noted except the section on domestic industry. Although I concur with the majority's views that Shieldalloy and Bear are part of the domestic industry, I also determine that tollees Gulf and USV engage in sufficient production-related activity to be included in the domestic industry and write separately to express my views.

Section 771(4)(A) of the Act defines the relevant industry as the domestic "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."¹³⁴ In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.¹³⁵

In its original determination, the Commission included Shieldalloy, Bear, USV, and ***¹³⁶ in the domestic industry. The TFA Committee argues that Shieldalloy and Bear,¹³⁷ as well as tollees Gulf and

¹³⁴ 19 U.S.C. § 1677(4)(A).

¹³⁵ See, e.g., *United States Steel Group v. United States*, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

¹³⁶ USV is a U.S. subsidiary of Strategic Metals Corporation or "Stratcor." In the original determination, the Commission referenced the firm as "Stratcor." Original Determination at I-9. In these Views, I refer to the firm as USV or U.S. Vanadium consistent with the hearing testimony.

¹³⁷ The TFA Committee argues that Shieldalloy and Bear should be included in the domestic industry because in the aggregate they accounted for 100 percent of U.S. production of ferrovanadium during 2000, each individually accounting for *** of U.S. shipments and production. It argues that both companies have significant production operations and have made significant investments in their ferrovanadium operations. TFA Committee's Prehearing Brief at 7-10.

USV,¹³⁸ should all be included in the domestic industry, ***.

In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm's production-related activities in the United States related to the production of the domestic like product. It generally considers six factors:

- (1) source and extent of the firm's capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

No single factor is determinative and the Commission may consider any other factors it deems relevant.¹³⁹

Gulf produces the raw material input and has a *** ferrovanadium production facilities.¹⁴⁰ Gulf has invested nearly \$*** in capital and recently has made other production-related investments.¹⁴¹ Gulf continues to engage in *** with Bear.¹⁴² Gulf's operations contribute approximately *** percent of the value-added of the cost of goods sold.¹⁴³ Gulf employs approximately *** production-related workers.¹⁴⁴ Gulf remains the owner of the ferrovanadium and assumes the financial risk of sale of the domestic like product.¹⁴⁵

Likewise, the original cost of USV's ***, a significant investment in capital assets.¹⁴⁶ Additionally, USV invested ***. USV supplies Bear with vanadium pentoxide it converts into ferrovanadium based on ***.¹⁴⁷ ***. USV's ratio of value-added relative to the cost of goods sold was

¹³⁸ The TFA Committee also argues that tollees Gulf and USV engage in sufficient production-related activities in the United States to be included in the domestic industry. *** percent of Bear's total ferrovanadium production was produced on behalf of Gulf and USV. *** TFA Committee Prehearing Brief at 9-12.

¹³⁹ *Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Inv. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 (July 2000) at 16, n.77.

¹⁴⁰ CR at I-15 n.16, III-1, PR at I-9 n.17, III-1.

¹⁴¹ Table III-7, CR at III-12, PR at III-5.

¹⁴² TFA Committee Prehearing Brief at 11.

¹⁴³ Calculated from Table 1 in OINV Memorandum INV-Y-075, April 17, 2001.

¹⁴⁴ Gulf Domestic Producer Questionnaire at 6.

¹⁴⁵ Memorandum INV-Y-075 at 1.

¹⁴⁶ Table 1, n.3, Memorandum INV-Y-075.

¹⁴⁷ TFA Committee Prehearing Brief at 11-12.

approximately ***.¹⁴⁸

Because both Gulf and USV have made *** investment in assets related to the production of vanadium pentoxide, the raw material input, maintain ownership of the processed subject product and consequently assume the risk of the commercial sale of the subject product, contribute technical expertise and labor to the ultimate production of the like product, and contribute *** to the value added to the product, it is appropriate to include them in the domestic industry. I view their inclusion in the domestic industry in this review as consistent with the reasoning employed by the Commission in the original determination in which *** was found to qualify as a domestic producer on the ground that it produced the intermediate product, ***.¹⁴⁹

¹⁴⁸ Calculated from Table 1 in Memorandum INV-Y-075, April 17, 2001.

¹⁴⁹ Confidential Original Determination at 12.