

UNITED STATES INTERNATIONAL TRADE COMMISSION

FERROVANADIUM FROM CHINA AND SOUTH AFRICA

Investigations Nos. 731-TA-986 and 987 (Preliminary)

DETERMINATION AND VIEWS OF THE COMMISSION

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DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and South Africa of ferrovanadium, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in these investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

These investigations are being instituted in response to a petition filed on November 26, 2001, by the Ferroalloys Association Vanadium Committee and its members Bear Metallurgical Co., Butler, PA, Shieldalloy Metallurgical Corp., Cambridge, OH, Gulf Chemical & Metallurgical Corp., Freeport, TX, U.S. Vanadium Corp., Danbury, CT, and CS Metals of Louisiana LLC, Convent, LA.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 30, 2001 (66 FR 59815). The conference was held in Washington, DC, on December 17, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find a reasonable indication that an industry in the United States is materially injured by reason of imports of ferrovandium from China and South Africa that are allegedly sold in the United States at less than fair value.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.¹ In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”²

II. DOMESTIC LIKE PRODUCT

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as 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.”⁴ In turn, 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”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission

¹ 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354-55 (1996). We note that no party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

² American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

³ 19 U.S.C. § 1677(4)(A).

⁴ Id.

⁵ 19 U.S.C. § 1677(10).

⁶ See, e.g., 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) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number

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may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

B. Product Description

The scope of these investigations as defined by Commerce in its notice of initiation covers the following imported merchandise:

all ferrovandium produced in the PRC and South Africa, regardless of grade, chemistry, form, shape or size. Ferrovandium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovandium. The scope of this investigation specifically excludes vanadium additives other than ferrovandium, such as nitrated vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (“HTSUS”) headings are specifically excluded:

2850.00.2000 Hydrides, nitrides, azides, silicides and borides,
whether or not chemically defined, other than compounds which
are also carbides of heading 2849: ! ! ! Of vanadium
8112.40.3000 Beryllium, ! ! ! vanadium ! ! !, and articles of these
metals, including waste and scrap: ! ! ! Vanadium: Waste and scrap
8112.40.6000 Beryllium, ! ! ! vanadium ! ! !, and articles of these
metals, including waste and scrap: ! ! ! Vanadium: Other

Ferrovandium is classified under HTSUS heading 7202.92.00. Although the HTSUS subheading is provided for convenience and Customs purposes, the Department’s written description of the scope of this investigation remains dispositive.¹⁰

⁶ (...continued)

of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁷ See, e.g., S. Rep. No. 96-249, at 90-91 (1979).

⁸ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹⁰ 66 FR 66398, 66398 (Dec. 26, 2001).

The scope specifically excludes nitrated vanadium, which was included in the scope of the 1995 investigation of imports of ferrovanadium and nitrated vanadium from Russia.¹¹ In the original investigation regarding Russia, the Commission found ferrovanadium and nitrated vanadium to be a single domestic like product and reached an affirmative determination.¹² However, in its five-year review of the antidumping duty order, the Commission determined that, because nitrated vanadium had not been produced in the United States since 1992 and there were no other significant changes in the nature, use and production of ferrovanadium and nitrated vanadium, the domestic like product consisted only of ferrovanadium.^{13 14}

C. Domestic Like Product

Petitioners¹⁵ and respondents Xstrata South Africa Limited (“Xstrata”) and its exclusive importer, Glencore Ltd (“Glencore”), advocated a single domestic like product consisting of all grades of ferrovanadium.¹⁶ South African respondent Highveld Steel & Vanadium Corp., Ltd. (“Highveld”) argued that the domestic like product should include nitrated vanadium, which, as indicated previously, is specifically excluded from Commerce’s scope.¹⁷

Ferrovanadium is an alloying agent that is used principally in the production of steel and iron castings. Steel producers add ferrovanadium to steel to increase strength and wear resistance and to impart a fine grain size that increases ductility.¹⁸ Ferrovanadium is sold in different grades depending on its vanadium content. The most common grades of ferrovanadium are 45 percent, 55 percent, and 80 percent grade vanadium.¹⁹

¹¹ Ferrovanadium and Nitrated Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 (June 1995) (“Original Russian Investigation”).

¹² Original Russian Investigation, USITC Pub. 2904 at I-5 to I-8 & n.14.

¹³ Ferrovanadium and Nitrated Vanadium from Russia, Inv. No. 731-TA-702 (Review), USITC Pub. 3420 at 5 (May 2001) (“Russian Five-Year Review”). The Commission also reached an affirmative determination in the five-year review. Ferrovanadium and nitrated vanadium also were discussed in the context of a Commission report, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, Inv. No. 332-383, USITC Pub. 3079 at 83-88 (Dec. 1997).

¹⁴ Commissioner Bragg defined the domestic like product in the Russian Five-Year Review consistent with the scope of that investigation – one like product encompassing ferrovanadium and nitrated vanadium as the Commission found in the original determination. Commissioner Bragg further noted that had she excluded nitrated vanadium from the definition of the domestic like product, she would nonetheless have reached an affirmative determination. See Russian Five-Year Review, USITC Pub. 3420 at 5 n.22.

¹⁵ Petitioners are the Ferroalloys Association Vanadium Committee and its members: Bear Metallurgical Company (“Bear”), Shieldalloy Metallurgical Corporation (“Shieldalloy”), Gulf Chemical & Metallurgical Corporation (“Gulf”), U.S. Vanadium Corporation (“USV”), and CS Metals of Louisiana (“CS Metals”).

¹⁶ See, e.g., Petition at 16-19; Xstrata/Glencore’s Postconference Brief at 12 n.25. However, Xstrata and Glencore requested that the Commission take into account the volume of nitrated vanadium being imported into the United States when analyzing the impact of subject imports on the domestic industry.

¹⁷ See, e.g., Conference Tr. at 79 (Stras). Thus, Highveld argued that the domestic like product should be broadened beyond the merchandise described in the scope to include nitrated vanadium, a product not produced in the United States.

¹⁸ See, e.g., CR at I-3; PR at I-3.

¹⁹ See, e.g., CR at I-3; PR at I-2.

Steel producers use different grades of ferrovanadium based on their melting and rolling practices and their intended finished product.²⁰ However, steel producers have the technical capability to use different grades of ferrovanadium, and the user needs to know only the grade of ferrovanadium so that the steelmaking process and ingredients can be adjusted accordingly.²¹ The majority of ferrovanadium is sold to steel mills and iron foundries in the United States with a small amount of ferrovanadium being sold to distributors who may repackage the product before reselling.²² About *** percent of ferrovanadium produced domestically is sold to end users.²³ Ferrovanadium is usually bought and sold based on the weight of the contained vanadium and the price is generally the same “regardless of whether ferrovanadium is 80 percent or 40 percent grade.”²⁴

Nitrided vanadium, which shares many of the same uses as ferrovanadium, is a chemical compound of vanadium, carbon, and nitrogen. It contains about 80 percent vanadium but no iron. Although nitrided vanadium may be substituted for ferrovanadium, it has not been produced in the United States since 1992, and different production facilities and employees, but similar production processes, were used to produce ferrovanadium and nitrided vanadium at that time.²⁵

Because nitrided vanadium was not produced in the United States during the period of investigation, we do not include it in the domestic like product.²⁶ Thus, we determine that there is one domestic like product comprised of all grades of ferrovanadium, consistent with Commerce’s scope.²⁷

III. DOMESTIC INDUSTRY AND RELATED PARTIES²⁸

²⁰ See, e.g., CR at I-4; PR at I-3.

²¹ See, e.g., Original Russian Investigation, USITC Pub. 2904 at 9 & n.17.

²² See, e.g., CR at I-5; PR at I-5.

²³ See, e.g., CR at II-1; PR at II-1.

²⁴ See, e.g., Conference Tr. at 16 (Jones).

²⁵ See, e.g., CR at I-7; PR at I-3; Original Russian Investigation, USITC Pub. 2904 at I-7 to I-8.

²⁶ See, e.g., Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-422 to 425 (Prelim.) and 731-TA-964 to 983 (Prelim.), USITC Pub. 3471 at 5-6, n.21 (Nov. 2001); Silicomanganese from India, Kazakhstan, and Venezuela, Invs. Nos. 731-TA-929 to 931 (Prelim.), USITC Pub. 3427 at 4-5 & n.15 (May 2001); Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34 (Prelim.), USITC Pub. 3112 at 5 (June 1998) (Since domestic production of food-grade ERT product “d[id] not exist in any practical sense,” the Commission concluded it could not be considered a domestic like product); Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Prelim.), USITC Pub. 2536 at 17 (July 1992) (“The Commission has rejected ‘the notion that a like product could be defined as a product not produced by a U.S. industry.’ Such proposals ignore our obligation under the statute to determine which U.S.-made products are like or most similar to the imports under investigation.”).

²⁷ Commissioner Bragg finds that the domestic like product in these preliminary investigations is distinguishable from her domestic like product finding in the Russian Five-Year Review for two reasons: (1) although nitrided vanadium was included in the scope of the original Russian investigation, it is specifically excluded from the scope of these investigations; and (2) nitrided vanadium has not been produced in the United States since 1992, which is well before the current period of investigation. In addition, Commissioner Bragg notes that consistent with a like product continuum approach employed by the Commission regarding related products, particular products, if included in the scope of the investigation, are often included in the like product even though there is no domestic production. See Extruded Rubber Thread from Malaysia, Inv. No. 753-TA-34 (Prelim.), USITC Pub. 3112 at 4-5 (June 1998) (although there was no domestic production of food-grade ERT, the Commission defined the domestic like product as all ERT).

²⁸ Commissioner Miller does not join in this section of the opinion. See Separate Views of Commissioner

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The domestic industry is defined as “the producers as a [w]hole of a domestic like product”²⁹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.³⁰

Based on our finding that the domestic like product consists of ferrovanadium, we find that the domestic industry consists of all domestic producers of ferrovanadium. None of the parties disputed that Shieldalloy and Bear are domestic producers.³¹ Shieldalloy is an integrated producer of ferrovanadium, and Bear toll produces ferrovanadium for companies such as Glencore, Gulf, CS Metals, and USV.³² The parties disagreed, however, whether tollees Gulf and USV should be included in the domestic industry.³³ Gulf and USV provide Bear with vanadium pentoxide, the primary production input for ferrovanadium, and Bear performs tolling operations for them. USV’s ferrovanadium production facilities have been idle since 1994, and it has no plans to restart these facilities; Gulf does not have any facilities to produce ferrovanadium.³⁴ We therefore do not include Gulf and USV in the domestic industry. 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.³⁵ Accordingly, consistent with our definition of the domestic like product, we define a single domestic industry consisting of Shieldalloy and Bear.³⁶

IV. CUMULATION³⁷

²⁸ (...continued)

Marcia E. Miller on Domestic Industry and Material Injury.

²⁹ 19 U.S.C. § 1677(4)(A).

³⁰ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

³¹ In any final phase investigations, we intend to explore the possibility that there may be other domestic firms that produce ferrovanadium. In particular, there is evidence indicating that International Specialty Alloys produces ferrovanadium in the United States, see, e.g., CR at III-4; PR at III-1; Conference Tr. at 71 (Young); Xstrata/Glencore’s Postconference Brief at 8, but these facts were brought to our attention too late in the preliminary phase of these investigations to obtain probative information.

³² See, e.g., CR at I-4 to I-5; PR at I-4.

³³ Compare, e.g., Petition at 4, 20-23; Conference Tr. at 37-40 (de Laurentiis), 43-44 (Ellsworth and de Laurentiis); Petitioners’ Postconference Brief at 16-21, with Highveld’s Postconference Brief at 2-3; Xstrata/Glencore’s Postconference Brief at 14-15.

³⁴ See, e.g., CR at I-5, V-1; PR at I-4, V-1; Conference Tr. at 59 (Bunting).

³⁵ 19 U.S.C. § 1677(4)(A); see also, e.g., Russian Five-Year Review, USITC Pub. 3420 at 6-7. In previous cases, we found that merely supplying raw materials and paying a fabrication fee do not constitute sufficient production activities to include tollees in the domestic industry. See, e.g., Certain Welded Large Diameter Line Pipe from Japan, Inv. No. 731-TA-919 (Final), USITC Pub. 3464 at 10, n.53 (Nov. 2001) (while toll producers that engage in sufficient production-related activity are included in the domestic industry, tollees “that merely supply raw materials and pay a fabrication fee” are not); Furfuryl Alcohol from China and Thailand, Invs. Nos. 731-TA-703 and 705 (Review), USITC Pub. 3412 at 6 n.23 (Apr. 2001); Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea and Taiwan, Invs. Nos. 731-TA-448 to 450 (Final), USITC Pub. 2312 at 24-26 & nn.68-69 (Sept. 1990).

³⁶ Having defined the domestic industry to include Bear and Shieldalloy, we find that there are no related party issues in these investigations. See 19 U.S.C. § 1677(4)(B).

³⁷ The statutory provision for negligible imports, 19 U.S.C. § 1677(24), does not apply in these investigations

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A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like product in the U.S. market.³⁸ In assessing whether subject imports compete with each other and with the domestic like product,³⁹ the Commission generally considers four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.⁴⁰

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.⁴¹ Only a “reasonable overlap” of competition is required.⁴²

The antidumping duty petitions regarding ferrovanadium imports from China and South Africa were filed on the same day, and none of the four statutory exceptions to the general cumulation rule applies to these investigations.⁴³ For purposes of these preliminary determinations, we find that there is a

³⁷ (...continued)

because subject imports from China and South Africa comprised more than three percent of total ferrovanadium imports in the most recent twelve-month period for which data are available that precedes the filing of the petition. See, e.g., CR/PR at Table IV-2.

³⁸ 19 U.S.C. § 1677(7)(G)(i).

³⁹ The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴⁰ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278 to 280 (Final), USITC Pub. 1845 (May 1986), aff’d, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

⁴¹ See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

⁴² See Goss Graphic System, Inc. v. United States, 33 F. Supp.2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

⁴³ These exceptions concern imports from countries as to which investigations have been terminated, imports from Israel, imports from countries as to which Commerce has made preliminary negative determinations, and

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reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product.

The parties agreed that subject imports from China and South Africa generally are fungible with one another and the domestic like product. Although there may be some differences in the grades of ferrovanadium imported from China and South Africa and shipped by domestic producers, and there are some differences in terms of the quality of ferrovanadium imported from China, the record in the preliminary phase of these investigations indicates that it is relatively easy and inexpensive for users to adjust the production process (particularly in the steel sector, where an overwhelming portion of ferrovanadium is sold) to accommodate different grades of ferrovanadium. We find that there is a high degree of substitutability among domestically produced ferrovanadium and subject imports from China and South Africa. Domestic toll producers and domestic tollees unanimously reported that differences other than price among subject imports and the domestic like product are never important, and of those importers with knowledge of the issue, only one reported that differences other than price among subject imports and the domestic like product are important, with the rest either reporting that non-price differences are only sometimes, or never, important. Domestic producers and domestic tollees reported that subject imports and the domestic like product are always interchangeable, and all but one responding importer reported that they are always or frequently interchangeable.⁴⁴

The record indicates that during the period of investigation subject imports from China and South Africa and the domestic like product generally were sold throughout the United States.⁴⁵ Official import statistics and domestic producer questionnaire responses indicate that subject imports from China and South Africa and domestically produced ferrovanadium also were sold in the U.S. market each year of the period of investigation.⁴⁶ The record also indicates that both domestically produced and imported ferrovanadium sold in the United States is typically crushed to a nominal size that will fit through a two-inch mesh screen and is sold to end users (primarily steel companies and iron foundries) packaged in bags or cans that hold product with a contained weight of 10 to 25 pounds.⁴⁷

Consideration of the four factors traditionally addressed in the Commission's cumulation analysis shows that there is a reasonable overlap of competition between the subject imports and between the subject imports and the domestic like product. Accordingly, we cumulate subject ferrovanadium imports from China and South Africa for purposes of our present material injury analysis.

V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LESS THAN FAIR VALUE IMPORTS⁴⁸

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially

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imports from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act. See 19 U.S.C. § 1677(7)(G)(ii).

⁴⁴ See, e.g., Conference Tr. at 9 (Ellsworth), 13 (Jones), 15 (Jones), 20 (Carter), 83 (Young); Petitioners' Postconference Brief at 1-3; CR at II-3 to II-4; PR at II-3; CR/PR at Tables II-1, II-2.

⁴⁵ See, e.g., Petition at 13-14, Exhibit 4; CR at V-1; PR at V-1.

⁴⁶ See, e.g., CR/PR at Tables IV-2, V-1, V-2.

⁴⁷ See, e.g., Conference Tr. at 15 (Jones); CR at II-1, V-3; PR at II-1, V-3.

⁴⁸ Commissioner Miller does not join in this section of the opinion. See Separate Views of Commissioner Marcia E. Miller on Domestic Industry and Material Injury.

injured by reason of the imports under investigation.⁴⁹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁵¹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁵² No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁵³

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry producing ferrovanadium is materially injured by reason of subject ferrovanadium imports from China and South Africa that are allegedly sold in the United States at less than fair value.

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.

1. Commodity Nature of Product

Ferrovanadium is produced and sold in a variety of grades, as indicated earlier, and grades are defined by the percentage of vanadium present in the product, as measured by the contained weight; the decision to use a specific grade of ferrovanadium depends upon the steelmaker’s melting and rolling practices and the intended finished product. Petitioners argued that different grades of ferrovanadium compete against each other for sales on a daily basis. While purchasers may resist frequent shifts in the grade or composition of ferrovanadium which they employ, petitioners argued that purchasers are generally indifferent as to which grade they use, have the technical capability to use any grade of ferrovanadium, and will adapt as necessary when the price gap between grades of ferrovanadium is wide enough and of sufficient duration to justify the short-term costs of switching.⁵⁴

⁴⁹ 19 U.S.C. §§ 1671b(a), 1673b(a).

⁵⁰ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

⁵¹ 19 U.S.C. § 1677(7)(A).

⁵² 19 U.S.C. § 1677(7)(C)(iii).

⁵³ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁴ See, e.g., Petition at 7-8, 17; Conference Tr. at 83-84 (Young); CR at I-6 n.17; PR at I-5 n.17. Bear and Chinese and South African producers produce primarily 80 percent grade ferrovanadium whereas Shieldalloy generally produces 45 percent grade ferrovanadium. See, e.g., Petition at 11-12, Exhibits 1, 6. Respondents argued that due to the lack of competition in the 45 percent grade ferrovanadium market with the departure of Russian 45 percent grade ferrovanadium imports, domestic purchasers were less willing to purchase 45 percent grade ferrovanadium. See, e.g., Xstrata/Glencore’s Postconference Brief at 16; Conference Tr. at 68 (Young); Highveld’s Postconference Brief at 8. We intend to examine this issue further in any final phase investigations.

2. Producers and Tollees

Ferrovandium is produced from vanadium-bearing raw materials, such as vanadiferous slags and vanadium oxides and vanadium pentoxide and trioxide.⁵⁵ Bear and subject producers use vanadium pentoxide as their primary production input, but Shieldalloy's production process relies on vanadium-bearing iron slag and sometimes other vanadiferous materials such as petroleum residues and fly ash.⁵⁶ Whereas petitioners contended that raw material inputs are low-cost and plentiful and will remain so in the future, respondents argued that the United States is dependent on vanadium imports because it lacks primary vanadium ore mines, as evidenced by imports of vanadium slag from South Africa.⁵⁷ Raw material costs accounted for *** percent of the total cost of goods sold for domestic production of ferrovandium in 2000.⁵⁸ The cost of goods sold for commercial sales by domestic producers Bear and Shieldalloy declined throughout the period of investigation, from *** in 1998 to *** in 1999 and *** in 2000, and from *** in interim 2000 to *** in interim 2001.⁵⁹

As indicated earlier, Shieldalloy and Bear are domestic producers of ferrovandium. Bear converts vanadium pentoxide provided by USV, CS Metals, Gulf, Glencore, *** into ferrovandium on a toll basis. Tollees USV and Gulf retain title to the contained vanadium throughout this time, and they ship and market the resulting ferrovandium. Since 1998, ***.⁶⁰ 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. Market conditions, however, directly affect USV and Gulf, and therefore impact Bear indirectly because of its dependence on USV and Gulf for products to convert, and thus revenues and profits. If market conditions cause USV and Gulf's production levels and sales to fall, Bear's production levels and sales also would fall. Furthermore, as ferrovandium prices fall, there is increased pressure on Bear to reduce its conversion fee, and thus its revenues and profits.⁶¹

3. Demand

Approximately 90 percent of the ferrovandium sold in the United States is for steelmaking, and demand for steel, therefore, drives demand for ferrovandium. Information about ferrovandium demand in the United States since January 1, 1998, was mixed. *** reported that demand grew during the period of investigation due in part to the development of thin slab casting, while tollees *** reported that demand peaked during this time frame but has since fallen. Among importers, *** reported that ferrovandium demand has declined due to reduced domestic steel production. Apparent domestic consumption of ferrovandium, by quantity, increased from *** million pounds in 1998 to *** million pounds in 2000, but declined from *** million pounds in interim 2000 to *** million pounds in interim 2001.⁶²

⁵⁵ See, e.g., CR at V-1; PR at V-1.

⁵⁶ See, e.g., CR at I-4 to I-5; PR at I-3 to I-4.

⁵⁷ See, e.g., CR at V-1; PR at V-1; Conference Tr. at 67 (Young), 78 (Stras); Highveld's Postconference Brief at 9.

⁵⁸ Derived from domestic producers' questionnaire responses.

⁵⁹ See, e.g., CR/PR at Table D-3.

⁶⁰ See, e.g., CR at III-2; PR at III-1.

⁶¹ See, e.g., Petition at 23; Petitioner's Postconference Brief at 18-21; Conference Tr. at 17 (Jones), 25-26 (Orr), 30 (Bunting); see also, e.g., Russian Five-Year Review, USITC Pub. 3420 at 11.

⁶² See, e.g., Mem. INV-Z-007 (Jan. 9, 2002); CR/PR at Table IV-2; CR at II-2 to II-3; PR at II-2. These
(continued...)

4. Pricing and Distribution

As indicated earlier, ferrovanadium is typically bought and sold on the basis of the weight of contained vanadium, and the price is typically the same regardless of the grade. Petitioners estimated that *** percent or more of all ferrovanadium transactions in the U.S. market involve direct sales to steel producers, with spot sales and contracts accounting for approximately *** percent and *** percent, respectively, of domestic shipments. Importers' sales were also a mix of contract and spot sales, although more frequently spot transactions. The parties agreed that the key contract quoting season for ferrovanadium generally is in the fourth quarter of the year, although they acknowledged that spot purchases may be made throughout the year.⁶³ Published prices reported in Ryan's Notes Ferrous and Non-Ferrous News and Prices also may provide guidance for transactions in the marketplace.⁶⁴

As noted earlier, ferrovanadium sold in the U.S. market generally is crushed to a nominal size that fits through two-inch mesh, referred to in the industry as 2" by down or 2" x D. A significant portion of ferrovanadium sold to end users in the U.S. market is packaged in bags or cans that hold product with a contained weight of 10 to 25 pounds of vanadium, and the remainder is sold in bulk drums that typically contain a net weight of 500 to 750 pounds of vanadium or in supersacks that hold up to 4,000 pounds of product. This type of packaging allows purchasers, particularly steelmakers, to add precise amounts of ferrovanadium to their production process without additional measuring. In virtually all cases, the packages are placed onto pallets or into pallet boxes to facilitate handling, storage, and distribution.⁶⁵

5. Other Vanadium Products and Substitutes

Respondents argued that the prices of other vanadium products and substitute products influence the price of ferrovanadium in the U.S. market.⁶⁶ They argued that nitrided vanadium, ferromolybdenum, and ferroniobium directly compete with ferrovanadium, and that although it is somewhat more difficult to switch between nitrided vanadium and ferrovanadium than to switch between grades of ferrovanadium, steel producers can and have switched between ferrovanadium and nitrided vanadium. They also noted petitioners' acknowledgment in the five-year review of the antidumping duty order on Russia that the prices of vanadium pentoxide, ferrovanadium, and nitrided vanadium influence one another, and their concession that the decline in prices was generally attributable to the oversupply of vanadium in the world market.⁶⁷ Two of six responding importers listed nitrided vanadium as a possible substitute for ferrovanadium. Responses from the domestic producers, two tollees, and six importers revealed several possible substitutes

⁶² (...continued)

apparent domestic consumption figures were calculated by adding the volume of non-subject and subject imports reported in Table IV-2 and the volume of Bear and Shieldalloy's commercial shipments reported in Mem. INV-Z-007 (Jan. 9, 2002). Alternatively, including the shipments of tollees Gulf and USV, apparent domestic consumption increased from *** pounds in 1998 to *** pounds in 2000, while interim data show a decline in apparent domestic consumption from *** pounds to *** pounds. CR/PR at Table IV-3.

⁶³ See, e.g., CR at V-3; PR at V-3; Conference Tr. at 16 (Jones), 51-52 (Orr), 83-85 (Young); Petition at 13.

⁶⁴ See, e.g., Conference Tr. at 69 (Young), 75-77 (Stras); Highveld's Postconference Brief at 6; Xstrata/Glencore's Postconference Brief at 4-5.

⁶⁵ See, e.g., Petition at 13; Conference Tr. at 15-16 (Young).

⁶⁶ See, e.g., Conference Tr. at 62 (Weigel), 68 (Young), 78-79 (Stras), 85-86 (Young); Highveld's Postconference Brief at 4-5, 7, Exhibit 3; Xstrata/Glencore's Postconference Brief at 9, 12-13, Exhibit 7.

⁶⁷ See, e.g., Conference Tr. at 62 (Weigel), 68 (Young), 79 (Stras), 85-86 (Young); Highveld's Postconference Brief at 4-5, 7, Exhibit 3; Xstrata/Glencore's Postconference Brief at 9, 12-13, Exhibit 7.

for ferrovanadium, but only in limited applications and only when ferrovanadium prices are relatively high. In general, questionnaire responses indicated that substitution away from ferrovanadium is rare.⁶⁸ We intend to examine further the role of substitute products in the U.S. market in any final phase investigations.

6. Non-subject imports

Non-subject ferrovanadium was imported from Austria, Belgium, Canada, and the Czech Republic during the period of investigation.⁶⁹ There appears to be a moderate to high degree of substitutability among subject imports, non-subject imports, and domestically produced ferrovanadium.⁷⁰ The level of non-subject imports declined from 3.5 million pounds in 1998 to 2.8 million pounds in 1999, and then increased to 4.2 million pounds in 2000; the level of non-subject imports declined from 3.4 million pounds in interim 2000 to 2.2 million pounds in interim 2001.⁷¹

7. End-of-Period Inventories

End-of-period inventories for domestically produced ferrovanadium decreased from *** pounds in 1998 to *** pounds in 1999, but then increased to *** pounds in 2000, and were higher in interim 2001 (*** pounds) than in interim 2000 (*** pounds).⁷²

B. Volume

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁷³

The volume of cumulated subject imports increased steadily during the period of investigation, from 1.1 million pounds in 1998 to 2.9 million pounds in 1999 and 3.3 million pounds in 2000. The quantity of cumulated subject imports then increased to 3.2 million pounds in interim 2001, from 2.7 million pounds in interim 2000.⁷⁴

On a quantity basis, the market share of domestic producers Bear and Shieldalloy declined from *** percent in 1998 to *** percent in 1999, and then to *** percent in 2000, while apparent domestic consumption increased from 1998 to 2000.⁷⁵ U.S. producers’ market share dropped further to *** percent

⁶⁸ See, e.g., CR at II-3 & n.2; PR at II-2 & n.3.

⁶⁹ See, e.g., Petition at Exhibit 23-A; Xstrata/Glencore’s Postconference Brief at Exhibit 5. An antidumping duty order has been in place on ferrovanadium imports from Russia since 1995, and a recent five-year review of this order resulted in the continuation of the order. Current antidumping margins on imports of ferrovanadium and nitrided vanadium from Russia range from 10.10 percent to 108 percent ad valorem. There were no imports of ferrovanadium from Russia during the period of investigation. See, e.g., CR at I-2; PR at I-2.

⁷⁰ See, e.g., CR/PR at Tables II-1, II-2.

⁷¹ See, e.g., CR/PR at Table IV-2.

⁷² See, e.g., Mem. INV-Z-007 (Jan. 9, 2002); CR/PR at Table C-1.

⁷³ 19 U.S.C. § 1677(7)(C)(i).

⁷⁴ See, e.g., CR/PR at Table IV-2.

⁷⁵ This increase occurred despite the recent economic downturn experienced by steel producers, who are the primary end-users of ferrovanadium. Total apparent domestic consumption was *** pounds in 1998, *** pounds

(continued...)

in interim 2001 from *** percent in interim 2000, when apparent domestic consumption began to decline. Cumulated subject imports' market share rose from *** percent in 1998 to *** percent in 1999. After experiencing a slight decrease to *** percent in 2000, cumulated subject imports captured *** percent of the U.S. market in interim 2001, up from *** percent in interim 2000; this increase between interim periods occurred as apparent domestic consumption fell from *** pounds in interim 2000 to *** pounds in interim 2001. While cumulated subject imports increased market share, non-subject imports' market share fell from a high of *** percent in 1998 to *** percent in 1999, and then increased to *** percent in 2000. Non-subject import market share was *** percent in interim 2000 and *** percent in interim 2001.⁷⁶

Even if we include ferrovanadium shipments by U.S. tollees Gulf and USV in apparent domestic consumption,⁷⁷ cumulated subject imports still continued to outpace domestically produced ferrovanadium and non-subject imports in gaining market share. Cumulated subject imports captured *** percent of the total domestic market in 2000, up from *** percent in 1998 and *** percent in 1999. The market share of cumulated subject imports during interim 2001 increased to *** percent from *** percent in interim 2000. Cumulated subject imports captured market share at the expense of domestic producers and tollees whose combined market share fell from *** percent in 1998 to *** percent in 1999, and then to *** percent in 2000. The market share of U.S. producers and tollees decreased to *** percent in interim 2001 from *** percent in interim 2000. Non-subject imports also lost market share as the volume of cumulated subject imports increased, most notably during the period from interim 2000 to interim 2001.⁷⁸

For purposes of these preliminary determinations, we find the volume of subject imports and the increase in the volume of subject imports to be significant, both in absolute terms and relative to apparent domestic consumption in the United States.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁷⁹

⁷⁵ (...continued)

in 1999, *** pounds in 2000, *** pounds in interim 2000, and *** pounds in interim 2001. See, e.g., Mem. INV-Z-007 (Jan. 9, 2002); CR/PR at Table IV-2. As discussed in the conditions of competition section supra, these apparent domestic consumption figures were calculated by adding the volume of non-subject and subject imports reported in Table IV-2 and the volume of Bear and Shieldalloy's commercial shipments reported in Mem. INV-Z-007 (Jan. 9, 2002).

⁷⁶ See, e.g., Bear's and Shieldalloy's questionnaire responses; CR/PR at Table IV-2.

⁷⁷ The record indicates that apparent domestic consumption calculated in this fashion increased from *** pounds in 1998 to *** pounds in 2000, while interim data show a decline in apparent domestic consumption from *** pounds to *** pounds during the first nine months of 2000 and 2001, respectively. CR/PR at Table IV-3.

⁷⁸ See, e.g., CR/PR at Table IV-3.

⁷⁹ 19 U.S.C. § 1677(7)(C)(ii).

The evidence gathered in the preliminary phase of these investigations indicates that there is a high degree of substitutability between the subject merchandise and the domestic like product, and that price is an important sales factor in this industry. Quality and conditions of sale are also relevant sales factors.⁸⁰

Whether measured by average unit values or the direct pricing data collected in these investigations, ferrovanadium prices declined over the period of investigation.⁸¹ The average unit value for subject imports declined dramatically from \$8.24 in 1998 to \$3.71 in 1999, then fell to \$3.59 in 2000; the average unit value for subject imports continued to decline between interim periods, from \$3.78 in interim 2000 to \$3.09 in interim 2001.⁸² The average unit values for domestic shipments of ferrovanadium were consistently higher than the average unit value for subject imports, whether measured in terms of Bear and Shieldalloy's shipments or in terms of all domestic ferrovanadium shipments by Bear, Shieldalloy, Gulf, and USV. The average unit values for Bear and Shieldalloy's ferrovanadium shipments declined from *** in 1998 to *** in 1999 and *** in 2000, and from *** in interim 2000 to *** in interim 2001;⁸³ the average unit values for Bear, Shieldalloy, USV, and Gulf's ferrovanadium shipments declined from *** in 1998 to *** in 1999 and *** in 2000, and from *** in interim 2000 to *** in interim 2001.⁸⁴ Thus, the average unit values suggest that subject imports caused price depression. Whereas the average unit value data suggest that subject imports consistently undersold the domestic like product, the pricing data collected in these investigations do not indicate such widespread underselling,⁸⁵ and we do not find significant underselling based on this data.⁸⁶

⁸⁰ See, e.g., CR at II-3 to II-4; PR at II-3; CR/PR at Tables II-1, II-2.

⁸¹ We view average unit values with some caution in this industry in light of arguments about the somewhat inferior quality of Chinese subject imports.

⁸² See, e.g., CR/PR at Table IV-2. Average unit values for non-subject imports also declined during the period of investigation, but they were higher than average unit values for subject imports in 1998 and 1999. Non-subject imports' average unit values declined from \$8.81 in 1998 to \$3.75 in 1999, then to \$3.44 in 2000, and from \$3.57 in interim 2000 to \$2.81 in interim 2001. See, e.g., id.

⁸³ See, e.g., Mem. INV-Z-007 (Jan. 9, 2002).

⁸⁴ See, e.g., CR/PR at Table III-1.

⁸⁵ For sales of pricing product one, the Chinese subject imports undersold the domestic like product in two of ten quarters for which there were comparisons, at margins of *** percent and *** percent when compared to the weighted-average delivered prices of Bear and Shieldalloy's shipments, or at margins of *** percent and *** percent when compared to the weighted-average delivered prices of Bear, Shieldalloy, USV, and Gulf's ferrovanadium shipments. See, e.g., questionnaire responses and CR/PR at Table V-1. For sales of pricing product two, the Chinese subject imports undersold the weighted-average delivered domestic like product prices in nine of ten quarters for which there were comparisons to Bear and Shieldalloy's shipments, at margins ranging from *** percent to *** percent, and undersold ferrovanadium shipments by Bear, Shieldalloy, USV, and Gulf in one out of eleven quarters for which there were comparisons at *** percent margins. See, e.g., questionnaire responses; CR/PR at Table V-2. For sales of pricing product two, the South African subject imports undersold the weighted-average delivered domestic like product price in four out of eleven quarters for which there were comparisons to Bear and Shieldalloy's shipments, at margins ranging from *** percent to *** percent, but oversold the ferrovanadium shipments by Bear, Shieldalloy, USV, and Gulf in each of the twelve quarters for which there were comparisons. See, e.g., questionnaire responses; CR/PR at Table V-2. In any final phase investigations we intend to explore this apparent discrepancy between average unit values and data on specific pricing products, and the level of overselling and underselling margins, particularly in light of the apparent commodity nature of this product. We may also consider the use of bid data.

⁸⁶ We note that *** submitted several lost sales allegations ***. A lost sales allegation was confirmed involving a sale to *** of *** pounds of contained vanadium lost to subject imports from ***. See, e.g., CR at V-9 to V-10;

(continued...)

In addition to the price depression suggested by the average unit value data, we also find evidence of price suppression by reason of subject imports. Bear and Shieldalloy's net sales value on their commercial shipments declined over the period of investigation, from *** in 1998 to *** in 1999 and *** in 2000, and from *** in interim 2000 to *** in interim 2001. Their cost of goods sold also declined, but at times exceeded net sales value.⁸⁷ When assessing whether the domestic industry has experienced price suppression, we generally consider the industry's cost of goods sold as a percentage of net sales.⁸⁸ In this instance, Bear and Shieldalloy's ratio of cost of goods sold to net sales was *** percent in 1998, *** percent in 1999, *** percent in 2000, *** percent in interim 2000, and *** percent in interim 2001.⁸⁹ Thus, the record also indicates that notwithstanding increasingly lower production costs, because of declining prices in the U.S. market due at least in part to low-priced subject imports, domestic producers were unable to sell at prices that covered their costs at various times during the period of investigation.

We acknowledge that other factors in the market may be influencing domestic ferrovanadium prices, including prices and supply of other vanadium products, prices and supply of substitute products, ferrovanadium prices in other markets including Europe, non-subject imports, arbitrage, long-term contracts, and demand trends.⁹⁰ We find, however, for purposes of the preliminary phase of these investigations, that the record indicates that subject imports themselves have depressed and suppressed prices to a significant degree. We intend to examine other factors further in any final phase investigations.

D. Impact

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹¹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive

⁸⁶ (...continued)

PR at V-5; CR/PR at Table V-3. A lost sales allegation by *** involving *** pounds of contained vanadium sold to *** by importers of ferrovanadium from *** also was confirmed. See, e.g., CR/PR at Table V-3.

⁸⁷ Their cost of goods sold for commercial shipments declined from *** in 1998 to *** in 1999 and *** in 2000, and from *** in interim 2000 to *** in interim 2001. CR/PR at Table D-3. Similar trends exist when the cost of goods sold for Bear, Shieldalloy, USV and Gulf for these periods are compared to their net sales values. See, e.g., CR/PR at Tables C-1, VI-1.

⁸⁸ See, e.g., Certain Ammonium Nitrate from Ukraine, Inv. No. 731-TA-894 (Prelim.), USITC Pub. 3374 at n.77 (Dec. 2000).

⁸⁹ See, e.g., CR/PR at Table D-3; see also, e.g., Table C-1 (showing similar trends for the combined data of Bear, Shieldalloy, USV, and Gulf).

⁹⁰ See, e.g., Conference Tr. at 61-65 (Weigel), 66-70 (Young), 72-74 (Becker), 75-78 (Stras); Highveld's Postconference Brief at 1, 5-9, Exhibit 1; Xstrata/Glencore's Postconference Brief at 1, 9-13.

⁹¹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.").

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{92 93 94}

We find that the subject imports had an adverse impact on the domestic industry’s performance.⁹⁵ As prices dropped and the volume of subject imports increased, the industry’s condition worsened, as evidenced by declines in a number of performance indicators. Domestic producers’ commercial shipments fell from *** pounds in 1998 to *** pounds in 1999 and *** pounds in 2000, and from *** pounds in interim 2000 to *** pounds in interim 2001.⁹⁶ Notwithstanding an increase in domestic production capacity from *** pounds in 1998 to *** pounds in 2000, to control inventories⁹⁷ in the face of declining prices in the U.S. market and declining domestic shipments (and correspondingly declining market share), domestic producers decreased production through rolling shutdowns from *** pounds in 1998 to *** pounds in 1999 and *** pounds in 2000, and from *** pounds in interim 2000 to *** pounds in interim 2001. Domestic producers’ capacity utilization levels dropped from *** percent in 1998 to *** percent in 1999 and *** percent in 2000, and from *** percent in interim 2000 to *** percent in interim 2001. The average number of production-related workers declined throughout the period of investigation.⁹⁸

Domestic producers’ financial performance also declined throughout the period of investigation. In 1998, domestic producers’ *** of *** in 1999, *** in 2000, *** in interim 2000, and *** in interim 2001.⁹⁹ Consistent with the statutory requirement to “evaluate all relevant economic factors ... within the context of the business cycle and conditions of competition that are distinctive to the affected industry,” we also considered the consolidated performance indicators of the domestic producers and Bear’s tollees Gulf and USV. As noted above, Bear is dependent on its tollees for raw materials and revenue, and poor performance by the tollees in turn injures Bear. The consolidated performance indicators show similar trends to the indicators for the domestic industry alone. Shipments, production, and capacity utilization fell each year of the period of investigation. While the number of production workers rose from 1998 to 2000,

⁹² 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

⁹³ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping duty proceeding as part of its consideration of the impact of imports. See 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated antidumping margins of 91.96 percent for China and 116 percent for South Africa. 66 Fed. Reg. 66398, 66399-402 (Dec. 26, 2001).

⁹⁴ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁹⁵ In the Russian Five-Year Review, the Commission found the domestic ferrovanadium industry to be vulnerable. Russian Five-Year Review, USITC Pub. 3420 at 18.

⁹⁶ See, e.g., Mem. INV-Z-007 (Jan. 9, 2002).

⁹⁷ End-of-period inventories for domestically produced ferrovanadium decreased from *** pounds in 1998 to *** pounds in 1999, but then increased to *** pounds in 2000, and were higher in interim 2001 (*** pounds) than in interim 2000 (*** pounds). See, e.g., Mem. INV-Z-007 (Jan. 9, 2002); CR/PR at Table C-1.

⁹⁸ See, e.g., Mem. INV-Z-007 (Jan. 9, 2002).

⁹⁹ CR/PR at Table D-3. We note that capital expenditures increased from *** in 1998 to *** in 1999, then decreased to *** in 2000 before increasing from *** in interim 2000 to *** in interim 2001. CR/PR at Table VI-7.

it fell from 1999 to 2000 and between interim periods. The combined companies had an operating income loss in 1999, 2000, and both interim periods.¹⁰⁰

We therefore find that the increased volume of subject imports from South Africa and China, both absolute and relative to apparent domestic consumption, had significant price depressing and suppressing effects and adversely impacted the domestic industry, as reflected in a number of declining performance indicators during the period of investigation.

CONCLUSION

For the reasons stated above, we determine that there is a reasonable indication that the domestic industry producing ferrovanadium is materially injured by reason of subject ferrovanadium imports from South Africa and China that are allegedly sold in the United States at less than fair value.

¹⁰⁰ CR/PR at Table C-1.

SEPARATE VIEWS OF COMMISSIONER MARCIA E. MILLER ON DOMESTIC INDUSTRY AND MATERIAL INJURY

I join in the majority's views with respect to the legal standard for preliminary determinations, the domestic like product, and cumulation. Although I concur with the majority's affirmative determination and with the majority's views that Shieldalloy and Bear are part of the domestic industry, I also determine, consistent with my views in the recent sunset review of ferrovanadium from Russia,¹ that tollees Gulf and USV² engage in sufficient production-related activity to be included in the domestic industry. I therefore write separately to express my views on the definition of the domestic industry and on reasonable indication of material injury by reason of the allegedly less than fair value ("LTFV") subject imports.

I. DOMESTIC INDUSTRY AND RELATED PARTIES

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."³ 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.⁴

The petitioners argue that Shieldalloy and Bear, as well as tollees Gulf and USV, should all be included in the domestic industry and that this position would be consistent with the Commission's finding in the original determination on ferrovanadium from Russia.⁵ The respondents urge the Commission not to include the tollees in the domestic industry.⁶

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;

¹ *Ferrovanadium and Nitrided Vanadium From Russia*, Inv. No. 731-TA-702 (Review), USITC Pub. 3420 at 21-22 (May 2001) ("Separate Views of Commissioner Marcia E. Miller on the Definition of the Domestic Industry").

² USV, or U.S. Vanadium, is a U.S. subsidiary of Strategic Metals Corporation, or "Stratcor."

³ 19 U.S.C. § 1677(4)(A).

⁴ 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).

⁵ The petitioners argue that there is no question that Shieldalloy and Bear are part of the domestic industry and that tollees Gulf and USV engage in sufficient production-related activities in the United States to be included in the domestic industry as well. They note that Gulf has a significant ownership interest in toll producer Bear; Gulf and USV produce a substantial proportion of the vanadium pentoxide made into ferrovanadium by Bear on their behalf; approximately *** percent of Bear's total ferrovanadium production is produced on behalf of Gulf and USV; they retain title to the contained vanadium throughout the conversion process, and sell and assume the risk of selling the finished product, ferrovanadium; and both employ a significant number of production-related workers and have made substantial investments to produce vanadium pentoxide. Petitioners' Postconference Brief at 16-21.

⁶ Highveld's Postconference Brief at 2-3; Xstrata/Glencore's Postconference Brief at 14.

- (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.⁷

Gulf produces the raw material input and has a *** ferrovanadium production facilities.⁸ Gulf has invested *** in fixed assets and recently has made other investments related to the production of vanadium pentoxide, the raw material.⁹ Gulf continues to engage in *** with Bear.¹⁰ Gulf's operations contribute approximately *** percent of the value-added of the cost of goods sold.¹¹ Gulf employs approximately *** production-related workers.¹² Gulf remains owner of the vanadium it supplies to toller Bear and assumes the financial risk of sale of the domestic like product.¹³

USV converted vanadium pentoxide into ferrovanadium until 1994 and is still capable of making ferrovanadium at its Niagara Falls facility, although it would take "a few months" to resume production.¹⁴ It continues to produce vanadium pentoxide. The original cost of USV's ***, a significant investment in capital assets.¹⁵ Additionally, USV invested ***.¹⁶ USV supplies Bear with vanadium pentoxide it converts into ferrovanadium based on ***.¹⁷ ***¹⁸ USV's ratio of value-added relative to the cost of goods sold was approximately ***.¹⁹ Approximately 200 people are employed in the production of vanadium pentoxide for USV.²⁰ USV, like Gulf, maintains title to the contained vanadium it supplies Bear and assumes the risk of sale of the ferrovanadium produced.²¹

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

⁷ *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.

⁸ CR/PR at II-1, n.1, VI-1.

⁹ CR at III-3, PR at III-2, CR/PR at Table VI-7.

¹⁰ CR/PR at VI-1, n.1.

¹¹ CR/PR at Table D-2.

¹² Gulf Domestic Producer Questionnaire Response at 5.

¹³ CR/PR at VI-1; Petitioners' Postconference Brief at 18.

¹⁴ CR at I-5, n.12, PR at I-4, n.12.

¹⁵ CR/PR at Table VI-7.

¹⁶ CR at II-1, n.1, III-3-4, VI-2, n.5, PR at II-1, n.1, III-2, VI-1, n.5.

¹⁷ CR at VI-2, PR at VI-1; Petitioners' Postconference Brief at 19.

¹⁸ CR/PR at Table VI-5.

¹⁹ CR/PR at Table D-2.

²⁰ Tr. at 36.

²¹ CR/PR at VI-1; Petitioners' Postconference Brief at 21.

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. While Bear, the toller for Gulf and USV, accounts for *** percent of the reported production of ferrovanadium in the United States and virtually *** of the production of ferrovanadium from vanadium pentoxide, Bear's commercial sales of ferrovanadium are less than *** percent of its production.²² Because over *** percent of Bear's ferrovanadium production is on behalf of and sold commercially by Gulf and USV, not including them in the domestic industry would omit nearly *** of the commercial sales of ferrovanadium produced in the United States. I view the inclusion of Gulf and USV in the domestic industry in this investigation as consistent with the reasoning employed by the Commission in the original determination on ferrovanadium from Russia and with my domestic industry finding in the sunset review of that case.²³

I also find that appropriate circumstances do not exist to exclude any of the four domestic producers as related parties under the statute.²⁴ The only domestic producer to fall within the related parties provision is USV, based on both the fact that its parent, Stratcor, also directly controls Vametco, a South African producer of ferrovanadium, and the fact that it imported subject merchandise during the period of investigation. Its imports were: in 1998, ***; in 1999, ***; in 2000, ***; and in January-September 2001, ***.²⁵ Despite the imports, it does not appear appropriate to exclude USV as a related party. USV maintains that it ***²⁶ Its investments in vanadium pentoxide production and its allocation of approximately *** percent of its vanadium pentoxide for toll conversion into ferrovanadium indicate its primary interest lies in domestic production of ferrovanadium and its financial performance is *** to that of the other producers.²⁷ I take into consideration as a condition of competition, however, that USV imports

²² CR at III-1, III-4, n.17, PR at III-1, III-2, n.17.

²³ *Ferrovanadium and Nitrided Vanadium From Russia*, Inv. No. 731-TA-712 (Final), USITC Pub. 2904 at 12 (June 1995); USITC Pub. 3420 at 21-22.

²⁴ Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 780 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd mem.*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997). Exclusion of a producer under the related parties provision is within the Commission's discretion based upon the facts presented in each case. *Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), *aff'd mem.*, 904 F.2d 46 (Fed. Cir. 1990).

²⁵ CR/PR at IV-1, n.2.

²⁶ Petitioners' Postconference Brief at 23.

²⁷ Tr. at 56-57 (Bunting); CR/PR at Tables VI-2-5.

subject merchandise, that these imports *** in the most recent interim period examined, and, in addition, that ***.²⁸

For all the foregoing reasons, I find that the domestic industry consists of Shieldalloy, Bear, Gulf, and USV.

II. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.²⁹ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.³⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³¹ In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, I consider all relevant economic factors that bear on the state of the industry in the United States.³² No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³³

A. Conditions of Competition

I find the following conditions of competition relevant to my analysis.

Approximately 90 percent of ferrovanadium sold in the United States is for steel-making, and demand for steel therefore drives demand for ferrovanadium.³⁴ *** reported that demand grew during the period examined due in part to the development of thin slab casting, while *** reported that demand peaked during the period and then declined.³⁵ Certain importers reported that demand has declined due to reduced domestic steel production.³⁶ Apparent U.S. consumption increased by *** percent from 1998 to 2000, and then declined by *** percent between January-September 2000 and January-September 2001.³⁷

Ferrovanadium is a commodity product, and different grades compete against each other for sales. Petitioners argue that purchasers are generally indifferent as to which grade they use, have the technical

²⁸ Petition at 4, n.4, Exhibit 1.

²⁹ 19 U.S.C. § 1671b(a) and 1673b(a).

³⁰ 19 U.S.C. § 1677(7)(B)(I). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

³¹ 19 U.S.C. § 1677(7)(A).

³² 19 U.S.C. § 1677(7)(C)(iii).

³³ 19 U.S.C. § 1677(7)(C)(iii).

³⁴ CR/PR at I-3, n.9.

³⁵ CR at II-2-3, PR at II-2.

³⁶ CR at II-2-3, PR at II-2.

³⁷ CR/PR at Table C-1.

capability to use any grade of ferrovanadium, and will switch grades when the price gap between grades is wide enough and of sufficient duration to justify switching.³⁸ There is a high degree of substitutability between the subject imports and the domestic like product, and price is an important factor in purchasing decisions.³⁹ *** percent of sales of U.S. product are by contract, and the remainder are spot sales. Sales by importers are also a mix of contract and spot sales, although more heavily weighted toward spot sales.⁴⁰ Most U.S. sales of both domestically produced and imported ferrovanadium are directly to end-users.⁴¹

Raw material costs accounted for *** percent of the total cost of goods sold (“COGS”) of U.S. ferrovanadium production in 2000. Ferrovanadium is produced from vanadium-bearing raw materials, such as vanadium pentoxide. Raw material costs declined significantly from 1998 to 2000, and according to petitioners, raw material inputs are plentiful and inexpensive, and are expected to remain so in the near future.⁴²

***, as noted previously, imports subject merchandise. *** imports nitrided vanadium, a substitute for ferrovanadium. The record indicates that, while there are several possible substitutes for ferrovanadium, including nitrided vanadium, substitution occurs only in limited applications and only when ferrovanadium prices are relatively high. Substitution away from ferrovanadium generally appears to be rare.⁴³

U.S. producers’ inventories increased toward the end of the period, from 1999 to 2000, and between the interim periods. ***⁴⁴

Non-subject imports are from Austria, Belgium, Canada, and the Czech Republic, and increased their U.S. market share by quantity only slightly, from *** percent in 1998 to *** percent in 2000, before losing market share in interim 2001, to *** percent.⁴⁵ Imports from Russia virtually ceased after an antidumping duty order was imposed in July 1995, and there were no imports of ferrovanadium from Russia during the period of investigation.⁴⁶

B. Volume

Section 771(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁴⁷

The volume of cumulated subject imports increased dramatically, by 201.1 percent from 1998 to 2000, and showed an increase between the interim periods as well, even as apparent U.S. consumption began to decline. The volume of cumulated subject imports increased from 1.1 million pounds in 1998, to 2.9 million pounds in 1999, to 3.3 million pounds in 2000, and was 3.2 million pounds in interim 2001 (January-September), as compared to 2.7 million pounds in interim 2000. The volume of imports from

³⁸ See, e.g., Petition at 7-8, 17; Conference Tr. at 83-84; CR at I-6, PR at I-4-5.

³⁹ CR at II-3-4, PR at II-3, CR/PR at Tables II-1, II-2.

⁴⁰ CR/PR at V-3.

⁴¹ CR/PR at II-1.

⁴² CR/PR at V-1, Table C-1..

⁴³ CR at II-3, PR at II-2.

⁴⁴ CR at III-3, n.8, PR at III-2, n.8, CR/PR at Table C-1.

⁴⁵ CR/PR at Table C-1.

⁴⁶ CR/PR at I-2.

⁴⁷ 19 U.S.C. § 1677(7)(C)(I).

non-subject countries increased by 19.0 percent from 1998 to 2000, and then showed a decline between the interim periods.⁴⁸

Cumulated subject imports steadily gained U.S. market share over the period, from *** percent, by quantity, in 1998 to *** percent in 2000, and to *** percent in interim 2001, as U.S. producers' U.S. market share declined from *** percent in 1998 to *** percent in 2000, and to *** percent in interim 2001. Cumulated subject imports thus captured market share at the expense of domestic producers. Non-subject imports' U.S. market share, as noted, increased only slightly from 1998 to 2000, and then began to decline.⁴⁹

For purposes of these preliminary determinations, I find that the volume of cumulated subject imports and the increase in that volume, both in absolute terms and relative to domestic consumption in the United States, are significant.

B. Price

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁵⁰

The pricing data generally show dramatic declines in both U.S. prices and those of the subject imports from 1998 to 1999, and steady declines thereafter.⁵¹ The average unit values (“AUVs”) of the subject imports and of U.S. producers' U.S. sales showed similar trends, and the AUVs of the subject imports were lower than those of the U.S. product throughout the period.⁵² While the use of AUVs in general may present product mix issues, that possibility is diminished in this case by the apparent substitutability and competition among different grades of ferrovanadium.

The pricing data show very few instances of underselling by subject imports,⁵³ and I do not find underselling to be significant in this preliminary phase.⁵⁴ However, given the commodity nature of the product and the importance of price in purchasing decisions, I do find an indication that imports depressed and suppressed U.S. prices during the period. As noted, U.S. prices and subject import prices declined throughout the period, and U.S. prices never returned to their levels at the beginning of the period. In addition, although U.S. producers' COGS declined significantly over the period as raw material costs dropped, U.S. producers' net sales values declined more steeply. From 1998 to 2000, unit COGS declined

⁴⁸ CR/PR at Table C-1.

⁴⁹ CR/PR at Table C-1.

⁵⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁵¹ CR/PR at Tables V-1, V-2.

⁵² CR/PR at Table C-1.

⁵³ CR/PR at Tables V-1, V-2.

⁵⁴ I will explore in any final investigations the apparent discrepancy between AUVs and specific pricing data, particularly given the commodity nature of the product.

by 45.8 percentage points, while unit sales values declined by 58.4 percentage points.⁵⁵ U.S. producers were thus not able to sell at prices sufficient to recover their costs, and I attribute this cost-price squeeze in large part to the significant and growing presence in the U.S. market of low-priced subject imports.

Confirmed instances of sales lost by domestic producers to subject imports further indicate the adverse price effects of subject imports. Staff confirmed lost sales in the amount of \$*** and *** pounds (out of \$*** and *** pounds lost sales alleged by domestic producers).⁵⁶

I intend to explore further in any final investigations the relationship between the increased volume of subject imports and any deterioration in U.S. prices over the period, as well as any other factors that may be contributing to adverse price effects in the U.S. market. Petitioners attribute the falling U.S. prices to unfairly traded subject imports, while respondents argue that an oversupply of vanadium and a downturn in demand from the steel industry are the cause of the current weakness in world ferrovanadium prices.⁵⁷

For purposes of these preliminary determinations, I find that the increased volume of subject imports has depressed and suppressed U.S. prices to a significant degree.

D. Impact

In examining the impact of the subject imports on the domestic industry, I consider all relevant economic factors that bear on the state of the industry in the United States.⁵⁸ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{59 60}

Most financial and other performance indicators of the domestic industry declined over the period as subject import volumes surged and the unit values of subject imports declined. U.S. producers lost market share, and their production quantity, U.S. shipments, net sales, and capacity utilization all declined, as the quantity of inventories began to rise. U.S. producers’ U.S. market share, by quantity, declined by 17 percent from 1998 to 2000; their U.S. production quantity declined by 22.9 percent, from *** pounds in 1998 to *** pounds in 2000; and their U.S. shipments, by quantity, fell by 20.2 percent, and, by value, by 66.9 percent from 1998 to 2000. U.S. producers’ net sales also declined from 1998 to 2000, by 21.1

⁵⁵ CR/PR at Table C-1.

⁵⁶ CR/PR at Table V-3.

⁵⁷ CR at V-5, PR at V-4.

⁵⁸ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

⁵⁹ 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 and *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 (Feb. 1999), n.148.

⁶⁰ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce estimated antidumping duty margins of 91.96 percent for China and 116 percent for South Africa. 66 Fed. Reg. 66398, 66399-402 (Dec. 26, 2001).

percent in terms of quantity and 67.1 percent in terms of value. U.S. producers' capacity utilization dropped from 68.7 percent in 1998 to 46.9 percent in 2000, and was 39.4 percent in interim 2001.⁶¹

By 2000, the U.S. producers' operating margin had fallen to (17.6) percent, from 13.0 percent in 1998, and was (39.6) percent in interim 2001.⁶² The evidence shows that the decline in profitability largely resulted from the decline in unit sales values. Although COGS also declined over the period, particularly as a result of a drop in raw material costs, domestic prices fell more sharply, and producers were not able to make a profit. Given the commodity nature of the product and the price competition that exists between subject imports and the domestic product, the evidence indicates that declining subject import prices, although not always below U.S. prices, resulted in U.S. producers lowering and keeping their prices low to retain or regain market share.

I therefore find, for purposes of these preliminary determinations, that the increased volume of cumulated subject imports from China and South Africa, with their depressing and suppressing effects on U.S. prices, are having a significant adverse impact on the domestic industry.

CONCLUSION

For the reasons stated above, I determine that there is a reasonable indication that the domestic industry producing ferrovanadium is materially injured by reason of subject imports of ferrovanadium from China and South Africa that are allegedly sold in the United States at less than fair value.

⁶¹ CR/PR at Table C-1.

⁶² CR/PR at Table C-1.