

Dated: May 22, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95-13012 Filed 5-25-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-821-807]

Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department of Commerce (the Department) regulations are in reference to the provisions as they existed on December 31, 1994.

Final Determination: We determine that imports of ferrovanadium and nitrided vanadium from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the Department announced its preliminary determination on December 27, 1994, (60 FR 438, January 4, 1995) the following events have occurred:

In response to our request, on February 27, 1995, we received additional surrogate valuation data from Odermet Limited (Odermet), Galt Alloys, Inc. (Galt), SC Vanadium-Tulachermet (Tulachermet), and Chusavoy Metallurgical Works (Chusavoy).

On February 17, 1995, we amended our preliminary determination to correct a significant ministerial error (60 FR 10563, February 27, 1995).

From January through March, 1995, we conducted verifications at Galt,

Tulachermet, Chusavoy, Odermet, Shieldalloy Metallurgical Corporation (Shieldalloy), and Gesellschaft fur Elektrometallurgie m.b.H. (GfE).¹ Verification reports were issued in February, March, and April, 1995.

On April 17, 1995, the petitioner, Shieldalloy, and respondents Odermet, Chusavoy, Galt, and Tulachermet filed case briefs. Rebuttal briefs were submitted by these parties on April 24, 1995. A public hearing was held on April 26, 1995.

Scope of Investigation

The products covered by this investigation are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this investigation. 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. Nitrided 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 investigation are the vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this investigation are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1993, through May 31, 1994.

Non-Market Economy Country Status

Russia has been treated as a non-market economy (NME) for the purpose of determining foreign market value (FMV) in all past antidumping investigations (see, e.g., Final Determinations of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from Russia, 60 FR 16432

¹ Shieldalloy is the petitioner in this investigation and is related to GfE as both a wholly-owned subsidiary of Metallurg, Inc.

(March 30, 1995)) (Magnesium from Russia). No information has been provided in this proceeding that would lead us to consider changing this designation. Therefore, in accordance with section 771(18)(c) of the Act, we continue to treat Russia as a NME for purposes of this investigation.

Best Information Available (BIA)

In this investigation, three companies failed to respond to the Department's questionnaire, and we were unable to verify the sales response of a fourth company, Tulachermet (discussed below under Comment 1). Consistent with the Department's two-tiered methodology for assigning BIA, we have based the BIA margin on the highest margin in the petition (see, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 1892, 19033 (1989)) and (*Allied Signal v. United States*, 996 F.2d 1185 (Fed. Cir. 1993) (June 22, 1993)).

Fair Value Comparisons

In cases involving imports from NMEs, we calculate a single antidumping duty margin for companies that do not demonstrate that they are entitled to separate rates. The Russia-wide margin in this case, which applies to all exporters other than Galt, GfE, and Odermet, is the BIA rate. Galt, GfE, and Odermet have received separate rates.

To determine whether sales to the United States of ferrovanadium and nitrided vanadium by Galt, GfE, and Odermet, were made at less than fair value, we compared the United States price (USP) to FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price (USP)

Pursuant to section 772 of the Act, USP was calculated on the basis of purchase price for Odermet, and exporter's sales price (ESP) for Galt and GfE, as described in the preliminary determination notice. Pursuant to findings at verification, we made the following adjustments to our margin calculations:

- For GfE, we deducted handling and repacking expenses incurred in Germany on certain sales. We revised the inland freight to customer expense incurred on certain sales to reflect verification findings. Finally, we revised the general and administrative expenses allocated to further manufacturing expenses to include environmental cleanup expenses omitted by GfE's U.S.

affiliate, Shieldalloy, as derived from verification information.

- For Odermet, we revised ocean freight, brokerage, and containerization per-unit expenses on a contained vanadium weight basis, rather than gross weight basis (see Comment 12). We also revised inland insurance and marine insurance expenses, which Odermet had allocated on the basis of weight, to a value basis, reflecting the manner in which these expenses were incurred. Finally, we recalculated foreign inland freight using surrogate values, based on our verification finding that the actual freight services were provided by NME subcontractors (see Comment 10).

Foreign Market Value

In accordance with section 773(c) of the Act, we based FMV on ferrovanadium and nitrided vanadium on the factors of production reported by the two factories in Russia, (*i.e.*, Chusovoy and Tulachermet), which produced the subject merchandise for export to the United States. We calculated FMV based on factors of production as cited in the preliminary determination, making the following adjustments:

- We applied this methodology to Odermet's sales as well as to Galt's and GfE's sales as we have rejected Odermet's intermediate reseller claim (see Comment 5).
- We recalculated inland freight distances between each factory and various input suppliers, based on verified distances.
- We made minor revisions to many of Chusovoy's material and energy consumption factors, based on corrected verified data.
- We applied Chusovoy's public version reported vanadium pentoxide and ferrovanadium production labor factors for the corresponding labor inputs for Tulachermet, as discussed below in Comment 9. In addition, Odermet sold the subject merchandise produced by Tulachermet. Even though significant portions of Tulachermet's responses failed verification, Tulachermet's factors of production, with exception of labor, fully verified. Therefore, we continued to use Tulachermet's factors to calculate FMV for sales by Odermet.

To calculate FMV, the verified factor amounts for each company were multiplied by the appropriate surrogate values for the different inputs. In accordance with section 773(c)(4) of the Act, the Department must, to the extent possible, determine FMV by valuing the factors of production in one or more market economy countries that: (1) Are

at a level of economic development comparable to that of the NME economy country, and (2) are significant producers of comparable merchandise. As discussed in the preliminary determination, the Department has determined that South Africa is the country that best meets the statutory criteria for purposes of this investigation. Accordingly, we have based FMV on the appropriate factors of production as valued in South Africa, except for those factors for which we were unable to obtain a suitable value from South Africa. In these instances, as discussed below, and in our preliminary determination, we used values from publicly-available, published information pertaining to Poland, Thailand, and Turkey, or values pertaining to Brazil and Germany as included in the petition. The selection of surrogate countries and certain surrogate values is discussed further below at Comment 6. We have obtained and relied upon published, publicly-available information, wherever possible, to value the factors of production. Following the surrogate value selection methodology outlined in our preliminary determination, we have used the same surrogate values used in the preliminary, with the following exceptions:

- For vanadium slag, we adjusted the surrogate value to account for differences between the grade of the surrogate and Russian materials, as discussed below in Comment 7.
- For additional raw materials identified subsequent to our preliminary determination, we used published price quotes for the South African material (fluorspar), or, in the absence of any available value from South Africa, unit values derived from Thai import statistics (fly ash, aluminum alloy, and cold-rolled steel sheet) or Thai export statistics (paint, thinner).
- For natural gas, we used the Polish natural gas rate published by the International Energy Agency.

As noted above, we relied on surrogate values from Thailand and Poland, countries identified as potential surrogates for Russia in the July 29, 1994, Memorandum from the Office of Policy to Gary Taverman, when no appropriate South African value was available for a particular factor. When no value was available from any potential surrogate country, we used values from Brazil and Germany, as described in our preliminary determination. The selection of the surrogate values for this determination is discussed further in the Valuation Memorandum dated May 19, 1995.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank or, when unavailable, at the rates published by the International Monetary Fund in International Financial Statistics.

Verification

As provided in section 776(b) of the Act, we verified or attempted to verify all information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Rejection of Tulachermet Sales Response

GfE and Shieldalloy argue that the Department should reject Tulachermet's sales response and apply BIA for the final determination because Tulachermet failed verification. The major reasons for the alleged verification failure cited by GfE and Shieldalloy are: (a) The Department's discovery at verification of an unreported sale accounting for a significant portion of the merchandise sold during the POI; (b) Tulachermet's refusal to allow the Department timely access to essential information at verification; (c) Tulachermet's inability to support or substantiate the questionnaire responses; and (d) inaccurate and omitted data. According to GfE and Shieldalloy, these verification failures establish the inaccuracy and unreliability of Tulachermet's response. Thus, BIA should be used for Tulachermet's margin.

Tulachermet claims that the sale in question was omitted inadvertently from the response and was not an attempt to impede the investigation. On the contrary, Tulachermet claims that reporting the sale would have been in its interest as the selling price was substantially higher than the prices of the reported sales. Tulachermet states that the initial refusal to allow the Department to view certain information at verification, which was subsequently permitted, was due to the staff involved with verification not having been given explicit authorization from the chief company official. Tulachermet states that, until recently, all factory output information was considered a state secret, with severe penalties for disclosure to outsiders. Nevertheless, Tulachermet asserts that the Department

subsequently was able to review the information in question and confirm that there were no other discrepancies in Tulachermet's sales response. Accordingly, Tulachermet contends that BIA is unjustified under these circumstances.

Odermet adds that there is no basis to reject Tulachermet's factors of production response since there were no problems with that portion of the response except for labor factors and distances to input suppliers.

DOC Position

During verification, Tulachermet withheld access to a customer contract and correspondence file. Under 19 CFR 353.36(c)(1994), all parties are on notice that "[a]s part of the verification, employees of the Department will request access to all files, records, and personnel of the producers, resellers, importers, or unrelated purchasers which the [Department] considers relevant to factual information submitted." The verification outline presented to Tulachermet prior to verification specifically advised Tulachermet that complete sales records, contracts, and customer correspondence files would be reviewed at verification and should be made available for inspection at verification. While the verifiers were eventually granted access to the file in question, the delay in providing access compromised this critical component of verification. More importantly, the Department had no way to determine whether the file, when finally seen, was complete. As a result, the Department was unable to conclude that no further discrepancies exist. Section 776(b) of the Act provides that if the Department "is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action * * *." Section 776(c) of the Act further states that the Department shall use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation."

While we recognize the attempt of Tulachermet to be responsive, the Department cannot consider a response to be verified when the respondent significantly impedes the investigation in the manner described above. The verifiers' discovery of a substantial quantity of unreported POI sales further undermined the integrity of Tulachermet's sales response. Under such circumstances, we were unable to verify Tulachermet's responses. Accordingly, we must reject its sales

response and rely on BIA. Further, because Tulachermet's actions at verification significantly impeded the Department's investigation, as to Tulachermet, we have treated the company as an uncooperative respondent warranting the application of adverse BIA.

Comment 2: Sales Responses from Other Russian Companies

GfE and Shieldalloy claim that Chusovoy and a Russian trading company should have submitted sales responses because, pursuant to information GfE provided for the record, they knew at the time of invoice preparation, if not at the time of sale, that the ultimate destination of the merchandise sold was the United States. GfE and Shieldalloy cite an internal GfE memorandum as evidence that, at the time of sale, Chusovoy knew the ultimate destination of its nitrated vanadium shipment. Since Chusovoy and the trading company each failed to provide a sales questionnaire response for these sales transactions, GfE and Shieldalloy argue that these entities should be assigned a margin based on BIA.

Chusovoy states that knowledge of the ultimate destination at the time of sale is the determinant factor and that, at the time of the sale, Chusovoy did not know this information. Chusovoy asserts that none of the sales documentation between GfE and Chusovoy, including the nitrated vanadium agreement, give any indication as to the ultimate destination of the merchandise. According to Chusovoy, GfE's internal memorandum is a self-serving document, not signed by Chusovoy, which, moreover, indicates the merchandise could be sold to another market as well as the United States.

DOC Position

We agree with Chusovoy. Our verification confirmed that neither Chusovoy nor the Russian trading company had knowledge *at the time of sale* as to the ultimate destination of its merchandise. It is knowledge at the time of the sale, and not the date of shipment, that is relevant in determining the proper respondent for such sales (*see, Magnesium from Russia*). In this situation, GfE was the first party in the distribution channel to know the ultimate destination of the merchandise and is, therefore, the proper exporter respondent for these sales.

Comment 3: Rejection of GfE/ Shieldalloy response

Chusovoy, Galt, and Tulachermet argue that the Department should reject GfE/Shieldalloy's sales response because sales reporting of Russian-sourced merchandise was based on quantity estimates drawn from inventory turnover records, rather than actual sales data. These respondents claim that this averaging approach methodology is counter to the Department's specific questionnaire instructions and creates the potential for minimizing margins from large quantity product sales at lower prices. Accordingly, these respondents contend that the Department should assign GfE/Shieldalloy a margin based on BIA.

GfE and Shieldalloy contend that their reporting methodology is reasonable and sound, given the manner in which the sales were conducted. These sales were not reported using averaged prices, according to GfE and Shieldalloy, but rather at the per-unit price of each sale. GfE and Shieldalloy add that the verification showed the methodology was consistent with the information presented throughout the proceeding.

DOC Position

We have used GfE's and Shieldalloy's questionnaire response in our final determination. Their methodology did not affect the prices reported but rather the quantity of subject merchandise reported. We verified that the sales reporting was complete and that the inventory turnover methodology provided a reasonable basis for determining the quantity of subject merchandise sold during the POI. Further, we found no indication of any sale-specific distortions deriving from the application of this methodology.

Comment 4: Proper Respondent for Galt Sales

GfE and Shieldalloy claim that the exporter for Galt's sales was Hascor BV, or the "Galt/Hascor" joint venture, not Galt, since according to GfE and Shieldalloy, the former was the first exporter with knowledge that the merchandise was destined for the United States. Since neither entity filed a questionnaire response, GfE and Shieldalloy contend that a BIA rate should be assigned to these entities, and that Galt should receive the "all others" rate. Alternatively, GfE and Shieldalloy claim that the Galt response should be rejected because of the number of revisions submitted seven days prior to verification and response errors identified at verification.

Galt responds that the record, including the verification results, demonstrates that Galt is the exporter in this investigation and is entitled to its own rate. Galt points to a variety of shipment documents, as examined at verification, which specifically identify it as the exporter of the merchandise. Further, Galt adds that, at verification, the Department was able to determine that Galt was the first party in the distribution chain to have knowledge of the destination of the merchandise and, in fact, was the party that determined that the merchandise was to be sent to the United States.

DOC Position

We agree with Galt. Our verification confirmed that Galt is the proper exporter-respondent for its sales because it determines that the merchandise is destined for sale in the United States. The Galt/Hascor joint venture was responsible for garnering the merchandise from Russia and shipping it to a bonded warehouse in the Netherlands. At that point Galt obtained the merchandise, sold it and shipped it to the United States. Revisions to its response were timely and verification discrepancies were relatively minor, affecting only its movement expenses.

Comment 5: Odermet's Intermediate Country Reseller Claim

Odermet claims that, in accordance with Section 773(f) of the Act, its U.S. sales should be compared to its sales to Germany for the following reasons: (1) Odermet was a reseller of the subject merchandise; (2) the Russian manufacturer, Tulachermet, did not know at the time of the sale to Odermet the country to which Odermet intended to export the merchandise; (3) the merchandise was exported by Odermet to a country other than the United States; (4) the merchandise entered the commerce of an intermediate country (Germany) but was not substantially transformed there; and (5) the merchandise was subsequently exported to the United States. Odermet states that verification corroborated its claim, demonstrating that it met all of the above statutory criteria to support its claim. In particular, Odermet states that it demonstrated that the merchandise entered the commerce of Germany and was not warehoused in bond, and that the merchandise could then be resold to customers in Germany and elsewhere, including the United States.

GfE and Shieldalloy contend that Odermet's intermediate reseller claim should be rejected because Odermet failed to establish at verification that the merchandise entered the commerce of

Germany. GfE and Shieldalloy's contention rests on its assertion that Odermet failed to demonstrate that the warehouses used to store the merchandise were non-bonded and that, in nearly every case, merchandise ultimately shipped to the United States was stored in one warehouse in one city, while merchandise ultimately sold to German customers was stored in a different warehouse in a different city. Even if the warehouses were not bonded, GfE and Shieldalloy claim that, as established in Final Determination of Sales At Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China, (58 FR 7537, February 8, 1993) (Sulfur Dyes), storage in a non-bonded warehouse in a third country alone does not demonstrate, in and of itself, that the merchandise enters the commerce of that country. The channel of distribution in this case, they continue, does not support a finding that the merchandise entered the commerce of Germany.

DOC Position

For the Department to accept Odermet's claim, Odermet must demonstrate that it satisfies each of the five statutory criteria under Section 773(f) of the Act, cited above. The Department agrees with Odermet that it has met four of these five criteria. However, we do not agree that Odermet has satisfied the criterion that the merchandise enter the commerce of the intermediate country. Verification revealed that Odermet maintains two distinct distribution channels: (a) Transportation of merchandise from Tulachermet to a warehouse in Duisburg, Germany, for prospective sale to German customers in that region; and (b) transportation of merchandise from Tulachermet to a warehouse in Bremerhaven, Germany, for prospective sale and ocean shipment from the port of Bremerhaven to customers in the United States and other countries outside of Germany. In each case, the sales agreement with the customer was made prior to shipment of the merchandise into Germany. Moreover, the shipment quantity and delivery dates correspond with the specifications in the sales agreements. While for each distribution channel we noted one exception to the pattern, in that one shipment to Duisburg was destined for delivery to overseas customers, and one shipment to Bremerhaven was destined to a German customer, all other shipments followed the above stated pattern. Furthermore, although the Bremerhaven warehouse may not have been a bonded warehouse (we have no

evidence that it was or was not), we found no customs duties or German value-added taxes (VAT) were assessed on U.S. sales through the Bremerhaven warehouse—expenses that would support a finding that such merchandise entered Germany for commercial consumption—while duties and VAT were imposed on sales withdrawn from a bonded warehouse in Duisburg.

The sum of these facts indicates two very different and distinct patterns of distribution, with merchandise shipped to Bremerhaven normally not entering the commerce of Germany, as this merchandise is not intended to be made available to German customers. Under similar circumstances in Sulfur Dyes, where sales intended for U.S. export followed a different sales and distribution pattern from sales intended for domestic consumption in Hong Kong, we found the pattern for U.S. sales to be "most accurately characterized as transshipment." In this investigation, we reach the same conclusion for Odermet's sales. These transshipments do not enter the commerce of Germany and, accordingly, do not merit consideration under Section 773(f) of the Act.

Comment 6: Surrogate Country Selection

Odermet contends that South Africa is not appropriate for use as the surrogate country for Russia in this investigation because current economic data offered by Odermet indicates that South Africa is not economically comparable to Russia in terms of gross domestic product (GDP). Odermet argues that the Department should first attempt to value the factors of production from the "first tier" of comparable economies identified in the Department's surrogate country selection memorandum dated July 29, 1994,—Algeria, Poland, Thailand, Tunisia, and Turkey. Specifically, Odermet proposes the use of a surrogate value for natural gas from Poland. For values that could not be obtained from the above-mentioned countries, such as vanadium slag, Odermet suggests that then the Department would turn to allegedly noncomparable economies such as South Africa, following the methodology applied in Final Determination of Sales at Less Than Fair Value: Cased Pencils from the PRC (59 FR 55625, November 8, 1994) (Pencils).

Chusovoy, Galt, and Tulachermet agree with Odermet that South Africa is not economically comparable to Russia, but acknowledge that vanadium slag has to be valued in South Africa because of the lack of alternatives. However, they contend that values from the first tier

countries should be used for the other factors. Specifically, they propose the use of a Polish labor rate and an Algerian value for natural gas.

GfE and Shieldalloy support the selection of South Africa as the appropriate surrogate country. This selection, they state, is consistent with the statutory requirement of Section 773(c)(4) of the Act that the surrogate country be economically comparable and a significant producer of comparable merchandise. They note that the Department, in its December 22, 1994, Office of Policy Memorandum, has recognized that South Africa is the only producer of comparable merchandise whose level of economic development is reasonably close to that of Russia. GfE and Shieldalloy further assert that none of the first tier countries should be considered as acceptable surrogates for Russia in valuing factors for this investigation because these countries produce neither the subject merchandise nor comparable merchandise. For those instances where values from these countries were used in the preliminary determination or may be considered for the final determination, GfE and Shieldalloy contend that the Brazilian data from the petition should be used. Brazil has been accepted as an appropriate surrogate country for purposes of the initiation of this investigation, and has also been used as the surrogate country in the Magnesium from Russia investigation. The methodology employed in Pencils, they say, is not appropriate here because in Pencils the other countries used as surrogates were producers of comparable merchandise, while in this case the other countries do not produce comparable merchandise.

DOC Position

Section 773 (c)(4) of the Act requires that, to the extent possible, the factors be valued in one or more market economy countries that are: (a) At a comparable level of economic development, and (b) significant producers of comparable merchandise. In this investigation, none of the countries initially identified as potential surrogate countries because of comparable levels of economic development produces comparable merchandise. Of those countries that produce comparable merchandise, only South Africa, which produces the subject merchandise, is the most comparable in terms of economic development, as stated in the December 22, 1994, Memorandum. We acknowledge that economic growth trends in South Africa and Russia are dissimilar, but these differences

notwithstanding, the Department's selection of South Africa satisfies both statutory criteria set forth above.

As for the specific factors cited by the parties, the respondents' claims that Russian wage levels are among the lowest in the world, are not relevant because information regarding specific NME prices or wage rates cannot be relied upon. Thus, the argument based on a comparison of purported Russian wage rates with South African wage rates is inappropriate.

We disagree with GfE and Shieldalloy's proposal to use Brazilian values from the petition where there are no South African values available because Brazil is not a producer of comparable merchandise—there is no information on the record that Brazil has been a significant producer of ferrovanadium or comparable merchandise since 1986.

Comment 7: Valuation of Vanadium Slag

Respondents contend that the Department should adjust the vanadium slag value, based on a price quote submitted in the petition for South African Highveld slag containing 24% vanadium pentoxide, to reflect the lower purity of the Russian slag in addition to the lower vanadium pentoxide content of 12 to 20%. Simply adjusting the value for vanadium pentoxide content ("straight-line proportionality" method) is not sufficient, respondents claim, because the additional impurities contained in the Russian slag add to the cost of extracting vanadium pentoxide from the raw material. They argue that this renders the Russian slag less valuable than the prime grade South African Highveld slag, even after adjusting for the different concentration levels of vanadium pentoxide. Chusovoy, Galt, and Tulachermet propose an adjustment to the Highveld slag value based on the price differential for processed vanadium pentoxide of Highveld 98% merchandise to 90% merchandise, according to price information published in the Metal Bulletin. These respondents claim that basing the price differential on this data is appropriate given the strong market linkage between vanadium pentoxide, the intermediate product, and ferrovanadium, the final product. Moreover, they contend it is appropriate to base the adjustment on the difference between Highveld vanadium pentoxide and other vanadium pentoxide prices because the surrogate value for slag is based on the Highveld slag value.

Odermet adds that the Metal Bulletin price-based adjustment methodology is

the only reasonably sound basis for valuing vanadium slag, given that there is no source of publicly available published information for vanadium slag prices and that, as vanadium slag is the major input for processed vanadium pentoxide, the pricing of vanadium pentoxide is relevant to valuing vanadium slag. Finally, Odermet states that this case differs from the Final Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide from the PRC (57 FR 6801, February 28, 1992) (Antimony) situation, where the Department used the straight-line proportionality method because it had no prices for different concentrate levels. Here, Odermet contends, the Department does have the information to make the appropriate adjustment.

GfE and Shieldalloy state that the adjustments, proposed by respondents, are not supported economically. GfE and Shieldalloy argue that respondents have failed to demonstrate the relationship between selected European transaction prices for processed vanadium pentoxide and any value differential between the South African and Russian raw materials. They cite a similar situation in Antimony where the Department made no adjustment to the raw material value because, without actual prices, the data was inconclusive as to the adjustment to be made. In addition, GfE and Shieldalloy contend that the respondents' price adjustment methodology is flawed because it utilizes price comparisons between an ultra-refined product manufactured from Highveld slag that is not likely to be used in ferrovanadium production, to the lowest prices published. After discounting those comparisons, GfE and Shieldalloy assert that the price differentials between processed grades are significantly less than those claimed by respondents.

DOC Position

Based on the submitted information, verification findings, and the Department's own research, we agree with the respondents that the South African vanadium slag value should be adjusted to reflect the lower purity of Russian vanadium slag. Our analysis and research suggest a strong relationship between vanadium pentoxide prices and vanadium slag value, particularly as vanadium slag is the principal raw material for vanadium pentoxide production and there are few, if any, other markets for vanadium slag. We have confirmed, through a South African publication, South Africa's Mineral Industry 1993/94, that the Highveld prices cited by Chusovoy, Galt, Odermet, and Tulachermet reflect

the typical Highveld product, while the prices for the other 98% products reflect Chinese origin, and the 90% products are of Russian slag. Based on this information, we have adjusted the vanadium slag surrogate value according to the Metal Bulletin vanadium pentoxide price differentials. Our methodology for adjusting both Tulachermet's and Chusovoy's slag values is detailed in the Valuation Memorandum.

Comment 8: Adjustment to Factory Overhead Percentage

Chusovoy, Galt, and Tulachermet claim that the surrogate value for factory overhead, which was derived from GfE's experience at its German facility and submitted in the petition, should be adjusted for the known differences between the GfE production plant and the Russian plants. These respondents contend that the Department verified that the Russian plants are fully depreciated and lack special environmental equipment. The respondents claim further that depreciation, including depreciation for environmental control equipment, accounts for the majority of the GfE factory overhead percentage. Accordingly, the respondents argue that the Department should reduce the factory overhead percentages by at least half to reflect the absence of any depreciation element in the Russian producers' factory overhead.

GfE and Shieldalloy state that factory overhead was properly calculated using the petition information derived from GfE experience, and this value remains the best available information. They assert that GfE's depreciation experience is likely to be the same as the Russian companies. Moreover, as there is no evidence of any known differences between the GfE's experience and the Russian producers', the respondents' claim for a factory overhead adjustment is unsubstantiated and the suggested adjustment methodology is arbitrary.

DOC Position

The Department has been unable to locate other, publicly available, data for the factory overhead surrogate value. (The Department's attempts to find factory overhead data is described in the *Valuation Memorandum*.) Thus, the only available data is the percentages stated in the petition. The respondents' assertions provide an insufficient basis for us to make any adjustments to these percentages.

Comment 9: BIA Labor Factors

GfE, Shieldalloy, and Odermet assert that the Department should use the

labor factors reported by Chusovoy as BIA for the unreported Tulachermet labor factors. GfE and Shieldalloy state that Chusovoy's factors should be used because they are the highest available labor factors and, given Tulachermet's refusal to provide this information, the most adverse data should be applied. Odermet favors the use of Chusovoy labor factors because it believes these factors reflect more accurately the Russian approach to production of the subject merchandise.

DOC Position

Tulachermet failed to submit its production labor factors. Accordingly, it is appropriate to make adverse assumptions about its labor factors in assigning BIA. Thus, consistent with Department practice, we have applied the data from the public version of Chusovoy's response, because these factors are higher than that reported in the petition.

Comment 10: Freight Valuation for Odermet Exports

Odermet argues that its freight expenses from the Russian factory to German warehouses were paid in a market-economy currency to a market-economy freight forwarder and, thus, should be accepted as reported, even though the freight forwarder contracted with NME trucking companies to perform the actual service. Odermet claims that the subcontracting arrangement is irrelevant; all that is required for establishing the market price for the freight service is the convertible currency transaction to the market economy freight forwarder. To do otherwise and value the freight service using a surrogate value would lead, according to Odermet, to such "absurd" situations as finding surrogate values for PRC-origin inputs when calculating the cost of production for a Japanese producer.

DOC Position

We disagree with Odermet. In NME proceedings, our consistent methodology has been to determine whether a good or service obtained through a market economy transaction is, in fact, sourced from a market economy rather than merely purchased in it. For example, in *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994), we did not value Chinese port charges according to the U.S. dollar price quote obtained from a market economy freight forwarder because of our assumption that such services were actually provided by

Chinese sources. Instead, we valued port charges according to the information obtained from the surrogate country. Since such goods and services are produced in a NME, we cannot rely on the market economy payment transaction as the basis for valuing these charges because the costs upon which these expenses are based are not themselves market-based. Although Odermet arranges the freight transportation through its market economy freight forwarder, the forwarder's costs for contracting to NME trucking companies cannot be relied on and, thus, the price charged to Odermet cannot be relied upon.

Comment 11: Input Freight for Tulachermet's Vanadium Slag Factor

GfE and Shieldalloy allege that the Department erred in not including surrogate freight charges for the expense of transporting vanadium slag from the source to Tulachermet. Although the surrogate value is based on an FOB South African port price, which includes inland freight expenses, GfE and Shieldalloy claim that an additional amount for the freight expense should be added to Tulachermet's FMV calculation because the distance between Tulachermet's supplier and Tulachermet is four to five times greater than the distance from the South African supplier to the South African port.

Odermet states there is no support for GfE and Shieldalloy's contention regarding the source of the raw material and distance to it from the port.

DOC Position

When relying on a surrogate value that is freight-inclusive, the Department's consistent practice has been to accept that value as the surrogate value for the good as delivered to the NME consumer, without any attempt to adjust for alleged differences in freight costs (see, e.g., *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 588818 (November 15, 1994)). In most cases, we do not have sufficient information regarding the freight expense included in the surrogate value in order to make the adjustment. Moreover, a value inclusive of freight represents the level of the surrogate value we intend to reflect—the surrogate price of the good available to the producer at its factory gate. We add an additional value for freight from the supplier to the producer only when such freight is not included in the surrogate value. Since the surrogate value for vanadium slag is freight-inclusive, we have made no

adjustment to the vanadium slag value for purported differences in freight expenses.

Comment 12: Odermet's Export Shipment Expenses

Odermet claims it correctly reported its per-unit freight expenses based on gross weight, rather than contained vanadium weight, because this methodology reflects the manner in which it is billed for freight services.

GfE and Shieldalloy contend that, as USP is reported in terms of contained vanadium weight, the freight expenses should be reported on the same basis and thus must be corrected.

DOC Position

We agree with GfE and Shieldalloy and have adjusted these expenses accordingly. Price adjustments are always made on the same basis upon which price is reported. Although Odermet is correct that expenses should be reported on the same basis on which they are incurred, since Odermet reported its sales prices on a contained vanadium weight basis, the proper basis for allocating movement expenses on a per-unit basis is contained vanadium weight. To allocate these expenses on a gross weight basis would understate the expense to Odermet, not overstate it as Odermet claims.

Comment 13: Inflation Adjustments and Exchange Rate Conversions for Surrogate Values

GfE and Shieldalloy contend that the Department erred by not properly inflating pre-POI surrogate values to the POI for raw materials where the value was based on 1993 data. These parties contend that the pre-POI surrogate values must be converted to U.S. dollar values using contemporaneous exchange rates in order to accurately reflect costs and market conditions during the time these costs were incurred. Thus, according to GfE and Shieldalloy, to value these factors properly, the Department should first convert the value to U.S. dollars using the average exchange rate for 1993, and then inflate the value to the POI using the ratio between the average price index for 1993 and the average price index for the POI.

Chusovoy, Galt, and Tulachermet contend that the exchange rate methodology used in preliminary determination was proper, and that GfE and Shieldalloy's methodology is internally inconsistent. If contemporaneous exchange rates must be used, they say, then contemporaneous prices must also be used. However, Chusovoy, Galt, and

Tulachermet add that there is no reason to inflate these 1993 prices because the period during which the subject merchandise was produced includes months in 1993, and there is no basis to conclude that average prices for 1993 went up or down relative to average prices during the POI.

DOC Position

The Department's consistent practice has been to first inflate non-contemporaneous surrogate values to the POI, to reflect the economic trends in the surrogate country, and then convert the POI value to U.S. dollars according to the POI exchange rate (see, e.g., *Pencils*). Converting to U.S. dollars first and then inflating the U.S. dollar-denominated prices risks pulling into the valuation equation variables that have no bearing on factor prices in the surrogate country. Moreover, our practice is not to inflate values when the time period of the value—in this case 1993—overlaps with any part of the POI—in this case December 1993. GfE and Shieldalloy offer no compelling arguments to change our practice; thus we have made no changes to our inflation rate and exchange rate adjustment methodologies.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we directed the Customs Service to suspend liquidation of all entries of ferrovanadium and nitrated vanadium from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after January 4, 1995, which is the date of publication of our notice of preliminary determination in the **Federal Register**. We shall instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below, as of the effective date of this notice. The suspension of liquidation instructions will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin
Galt Alloys, Inc.	3.75
Gesellschaft far Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation, and Metallurg, Inc.)	11.72
Odermet	10.10
Russia-wide Rate	108.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Dated: May 19, 1995.

Susan G. Esserman,
Assistant Secretary for Import Administration.

[FR Doc. 95-13011 Filed 5-25-95; 8:45 am]

BILLING CODE 3510-DP-P

Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation

AGENCY: Inport Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request a Section 753 Injury Investigation for Countervailing Duty Orders.

SUMMARY: The Department of Commerce (the Department) is notifying domestic interested parties of their right to request an injury investigation under section 753 of the Tariff Act of 1930, as amended (the Act), for countervailing duty orders listed in the Appendix that were issued under former section 303 of the Act.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT:

Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-2786; or Vera Libeau, Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205-3176.