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Sunset Review  
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MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Ferrovandium and Nitrided Vanadium from Russia

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### Summary

We have analyzed the responses of the interested parties in the second sunset review of the antidumping duty order covering Ferrovandium and Nitrided Vanadium from Russia. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

### History of the Order

On July 10, 1995, the Department published in the Federal Register the antidumping duty order on ferrovandium and nitrided vanadium from Russia (See Notice of Antidumping Order: Ferrovandium and Nitrided Vanadium From the Russian Federation, 60 FR 35550 (July 10, 1995)). In the order, the Department assigned a margin of 3.75 percent to Galt Alloys, Inc. (Galt), 11.72 percent to Gesellschaft für Elektrometallurgie m.b.H., 10.10 percent for Odermet, and 108.00 percent as the Russia-wide rate. The Department completed one administrative review since the issuance of the antidumping duty order on ferrovandium and nitrided vanadium from Russia during the period of review, January 4, 1995, through June 30, 1996. See Ferrovandium and Nitrided Vanadium From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review, 62 FR 65656 (December 15, 1997) (Ferrovandium

from Russia). There have been no findings of duty absorption by the Department, and no scope clarifications, rulings, or changed circumstances determinations over the history of this order.

The order remains in effect for all Russian manufacturers, producers, and exporters of the subject merchandise.

The Department conducted the first sunset review on imports of ferrovanadium and nitrided vanadium from Russia pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”), and found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigation. See Final Results of Expedited Sunset Review: Ferrovanadium and Nitrided Vanadium From Russia, 65 FR 60168 (October 10, 2000). The International Trade Commission (“ITC or Commission”) determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Ferrovanadium and Nitrided Vanadium From Russia: Determination, 66 FR 28540 (May 23, 2001). Accordingly, the Department published the notice of continuation of the antidumping duty order. See Continuation of Antidumping Duty Order: Ferrovanadium and Nitrided Vanadium From Russia, 66 FR 30694 (June 7, 2001).

On May 1, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”) Reviews, 71 FR 25568 (May 1, 2006). The Department received the Notice of Intent to Participate from the Vanadium Producers and Reclaimers Association (VPRA) and its members: Gulf Chemical and Metallurgical Corporation and its wholly owned subsidiary, Bear Metallurgical Corporation; and Metallurg Vanadium Corporation (MVC)<sup>1</sup> (collectively “the domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) and (E) of the Act, as manufacturers of a domestic-like product in the United States, and a trade or business association of a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.

We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from any respondent interested parties. As a result, pursuant to section 751(c)(4)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the order.

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<sup>1</sup> MVC operated under the name Shieldalloy Metallurgical Corporation in 1994, when it filed the antidumping duty petition that resulted in this antidumping duty order. Shieldalloy was affiliated with Gesellschaft für Elektrometallurgie m.b.H., an exporter during the period of investigation and a respondent in that investigation.

## Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Interested Party Comments

The domestic interested parties assert that the Department should conclude that revocation of this order would be likely to lead to continuation or recurrence of dumping when applying the Department's Sunset Policy Bulletin 98.3 guidelines in this review.

With respect to the weighted-average dumping margins, in their substantive response, the domestic interested parties point to the only completed administrative review where Galt's margin increased from 3.75 percent (the investigation rate) to 34.66 percent (first administrative review rate). As to import volumes, the domestic interested parties assert that imports of the subject merchandise ceased after the issuance of the order, according to Bureau of Census import data, U.S. Bureau of Customs and Border Protection data, and the domestic interested parties own knowledge of the U.S. market. See Domestic Interested Parties May 31, 2006, substantive response at pages 7 - 8. Therefore, in accordance with the Department's Sunset Policy Bulletin, the domestic interested parties argue that the Department should conclude that there is likelihood that dumping would continue or recur if the order on Russian ferrovanadium and nitrated vanadium were revoked.

#### Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department's determinations of likelihood will be made on an order-wide basis.<sup>2</sup> In determining whether revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping, the Department shall consider (a) the weighted-average dumping margin

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<sup>2</sup> See SAA at 879 and House Report at 56.

for the investigation that continued at any level above de minimis after the issuance of the order, and (b) imports of the subject merchandise for the period before and after the issuance of the order, in accordance with section 752(c)(1)(B) of the Act. For example, declining import volumes accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue because the evidence would indicate that the exporter needs to dump in order to sell at pre-order volumes. See SAA at 889. Further, the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. See SAA at 890.

Using the information provided by the domestic interested parties, the Department finds that imports of the subject merchandise have ceased during this sunset review period. Given that dumping margins at levels above de minimis continued to exist after the issuance of the order for Russian producers and exporters and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

## 2. Magnitude of the Margin Likely to Prevail

### Interested Party Comments

The domestic interested parties request that the Department report to the ITC the margin that was determined in the final LTFV determination in the original investigation for all exporters except Galt. According to the domestic interested parties, these margins are the only calculated rates that reflect the behavior of exporters without the discipline of an antidumping duty order.

With regard to Galt, the domestic interested parties contend that the Department report to the ITC the margin of 34.66 percent calculated in the 1995-1996 administrative review (the first and only administrative review conducted for this order). Following the Department's Sunset Policy Bulletin guidelines, they argue that it is reasonable to assume that Galt increased its margin of dumping in an effort to maintain individual market share, and it is also reasonable to assume that Galt cannot sell the subject merchandise in the United States without dumping. Therefore, according to the domestic interested parties, the more recently calculated rate best reflects the behavior of this exporter without the discipline of the order in place.

The domestic interested parties acknowledge that the Department rejected this reasoning when they argued it in the first sunset review. For this sunset review, the domestic interested parties contend that the Department should reconsider its position because the SAA and the Sunset Policy Bulletin allow the Department to provide a more recently calculated margin to the ITC where a particular company's margin increased after the issuance of the order.

### Department's Position

Pursuant to section 752(c)(3) of the Act and the SAA at 890, the Department normally will provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

Since the first sunset review, the Department has not conducted any administrative reviews of this order. The Department finds that it is appropriate to provide the ITC with the rates from the investigation, as in the first sunset review, because these are the only calculated rates that reflect the behavior of manufacturers and/or exporters without the discipline of an order in place. As in the first sunset review, we continue to reject the domestic interested parties' argument that the 34.66 percent rate calculated for Galt from the 1995 - 1996 review, rather than the 3.75 percent rate from the investigation, should be reported to the ITC.<sup>3</sup>

As we explained in the first sunset review, the SAA provides that the Department normally will select a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place. See SAA at 890 and the House Report at 64. Although the SAA provides that, in certain instances, we may consider a more recently calculated margin for a specific company, i.e., where dumping margins have decreased over the life of an order and imports have remained steady or increased, in this case, after the issuance of the order dumping margins increased and import volumes decreased. Therefore, we do not find that a more recently calculated margin is more appropriate, and the domestic interested parties have provided no reasonable basis for the Department to deviate from its practice and from its finding in the first sunset review by reporting the 34.66 percent rate.<sup>4</sup>

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<sup>3</sup> Galt was a U.S.-based exporter/importer and a respondent in both the investigation and the 1995-1996 administrative review. Galt exported subject merchandise it purchased from unaffiliated Russian producers. During the administrative review, one of the two unaffiliated producers failed to cooperate in that review and the Department applied adverse facts available to calculate normal value for merchandise obtained from that producer. See Ferrovanadium from Russia at 65657.

<sup>4</sup> We note that, subsequent to the 1995-1996 administrative review, Galt was acquired by RTI International Metals Inc. (RTI) (then known as RMI Titanium Co.) in 1997. In 2004, RTI purchased the remaining outstanding Galt stock and renamed the unit RTI Alloys. According to publicly available information on the internet, Galt/RTI Alloys is heavily involved in the titanium industry and does not appear to have conducted any ferrovanadium business since its acquisition. See the Attachment to this memorandum for printouts from our research, which include press reports and excerpts from RTI Annual Reports.

Thus, the Department will report to the ITC the same margins as listed in the Final Results of Review section.

Final Results of Review

We determine that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

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Manufacturer/Exporter	Weighted-Average Margin (percent)
Galt Alloys, Inc.	3.75
Gesellschaft für Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation and Metallurg, Inc.)	11.72
Odermet	10.10
All Other Russian Manufacturers and Exporters <sup>5</sup>	108.00

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Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)

<sup>5</sup> Prior to Russia's graduation to market-economy status, this rate was referred to as the Russia-wide rate.