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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-807]

Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium from the Russian Federation

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

SUMMARY: On May 2, 2011, pursuant to an allegation by AMG Vanadium, Inc. (AMG Vanadium), the Department of Commerce (the Department) initiated an anticircumvention inquiry to determine whether imports of vanadium pentoxide from the Russian Federation (Russia) that are converted into ferrovanadium in the United States are circumventing the antidumping duty order on ferrovanadium and nitrided vanadium (ferrovanadium) from Russia.[1] We preliminarily determine that the importation of vanadium pentoxide by the Evraz Group,[2] which is toll-converted into ferrovanadium in the United States by the Bear Metallurgical Corporation (BMC), prior to sale to unaffiliated customers in the United States, does not constitute circumvention of the aforementioned order, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S.

[1] See Initiation of Anticircumvention Inquiry on Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From the Russian Federation, 76 FR 26243 (May 6, 2011) (Initiation Notice).

[2] The Evraz Group includes OAO Vanady-Tula, East Metals S.A., and East Metals N.A. (EMNA)

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1995, the Department published an antidumping duty order on ferrovanadium from Russia.[3] On February 25, 2011, AMG Vanadium requested that the Department initiate an anticircumvention inquiry pursuant to section 781(a) of the Act, and 19 CFR 351.225(c) and (g), to determine whether imports of vanadium pentoxide from Russia, produced by Evraz Group member OAO Vanady-Tula, that are processed into ferrovanadium in the United States under a tolling agreement with the unaffiliated processor, BMC, and sold by Evraz Group member EMNA to unaffiliated U.S. customers, are circumventing the antidumping duty order on ferrovanadium from Russia. AMG Vanadium submitted additional information in support of its request on March 16, 2011.

On May 2, 2011, the Department initiated the anticircumvention inquiry with respect to the Evraz Group's imports of vanadium pentoxide which are toll-converted into ferrovanadium by BMC in the United States. See Initiation Notice. In June 2011, the Department issued questionnaires to the Evraz Group and BMC. The Evraz Group and BMC responded to their respective questionnaires in July 2011. The Department issued supplemental questionnaires to each company in August 2011. The Evraz Group and BMC responded to these supplemental questionnaires in August and September 2011, respectively.

[3] See Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 35550 (July 10, 1995).

In September 2011, the Department conducted verifications at EMNA and BMC. In October 2011, the Department issued verification reports.[4]

AMG Vanadium submitted comments for consideration in the preliminary determination of this inquiry on December 19, 2011. On January 6, 2012, the Evraz Group and BMC submitted comments in response to AMG Vanadium's submission.

Scope of the Order

The products subject to this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (i.e., more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. 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 the order are 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 order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.50.40, 8112.40.30.00, and 8112.40.60.00 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.

[4] See Memorandum to The File entitled "Verification of the Questionnaire Responses of the Evraz Group S.A." dated October 7, 2011 (Evraz Verification Report), and Memorandum to The File entitled "Verification of the Questionnaire Responses of Bear Metallurgical Company" dated October 7, 2011 (BMC Verification Report).

Scope of the Anticircumvention Inquiry

The product subject to this anticircumvention inquiry is vanadium pentoxide (V_2O_5) from Russia, which is usually in a granular form and may contain other substances, including silica (SiO_2), manganese, and sulfur, and which is converted into ferrovanadium in the United States. Such merchandise is classifiable under subheading 2825.30.0010 of the HTSUS. This inquiry only covers such products that are imported by the Evraz Group and converted into ferrovanadium in the United States by BMC.

Applicable Statute

Section 781(a) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting anticircumvention inquiries under section 781(a)(1) of the Act, the Department determines whether (A) merchandise sold in the United States is of the same class or kind as any other merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise.

With regard to sub-part (C), section 781(a)(2) of the Act specifies that the Department "shall take into account: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States, (D) the extent of production facilities in the United States; and (E) whether the

value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States."

In addition, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103-316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. See id. Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry. Further, section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of an antidumping duty order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Statutory Analysis

A. Merchandise of the Same Class or Kind

The merchandise sold by the Evraz Group in the United States is ferrovanadium. Based on the description provided by the Evraz Group in its questionnaire responses,[5] this merchandise is of the same class or kind as the merchandise subject to the antidumping duty order.

[5] See the Evraz Group's July 12, 2011, questionnaire response (Evraz QR) at page 8, and the Evraz Group's August 31, 2011, supplemental questionnaire response (Evraz SQR) at pages 6-7.

B. Completion of Merchandise in the United States

As detailed in the Evraz Group and BMC questionnaire responses and the two verification reports (see, e.g., Evraz QR at pages 3-4 and 6-7), the vanadium pentoxide produced in Russia by OAO Vanady-Tula is imported into the United States by members of the Evraz Group[6] and further processed into ferrovanadium by BMC. BMC converts the vanadium pentoxide into ferrovanadium in the United States under a tolling agreement with the Evraz Group. The Evraz Group retains title to the merchandise throughout the conversion process and sells the ferrovanadium in the United States after the completion of the conversion.

C. Minor or Insignificant Process

As explained above, section 781(a)(2) of the Act sets forth the relevant statutory factors to consider in determining whether the processing in the United States is "minor or insignificant." These factors include: (1) the level of investment in the United States; (2) the level of research and development in the United States; (3) the nature of the production process in the United States; (4) the extent of production facilities in the United States; and (5) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. Our analysis of the statutory factors to determine whether the process in the United States is minor or insignificant in accordance with sections 781(a)(1)(C) and 782(a)(2) of the Act follows below.

(1) Level of Investment in the United States

The facilities for converting vanadium pentoxide into ferrovanadium are owned by BMC. BMC has been producing ferrovanadium from vanadium pentoxide since the early 1990s, prior to the initiation of the underlying less-than-fair-value (LTFV) investigation of

[6] Currently EMNA imports, and previously another Evraz Group affiliate Strategic Minerals Corporation (Stratcor) imported, the OAO Vanady-Tula-produced vanadium pentoxide into the United States.

ferrovanadium from Russia. BMC discussed its recent investment activity in its July 18, 2011, questionnaire response (BMC QR) at pages 19-20, and its September 2, 2011, supplemental questionnaire response (BMC SQR) at page 8. Because BMC has requested proprietary treatment for most of the investment information it provided, that information cannot be summarized in this notice. However, the Evraz Group has placed on the record publicly available information concerning the market value of BMC's production facility. Specifically, the Evraz Group noted in the Evraz QR at page 19 that BMC's market value in 2005 was approximately $24 million, and that BMC has engaged in a number of expansion projects in the last 15 years. The Evraz Group also noted in its March 25, 2011, submission (Evraz March 25 Submission) that the International Trade Commission (ITC) concluded in the 1995 antidumping injury investigation that:

> {BMC} is a domestic producer {of ferrovanadium} because the activities in which it engages involve significant production operations and production costs and a level of technical expertise that adds substantial value to the end product it produces… Bear accounted for a significant percentage of domestic production during the period {of the investigation} and its level of employment, production assets, investments, and R&D expenses for production of ferrovanadium are significant.[7]

(2) Level of Research and Development in the United States

While BMC's process for converting vanadium pentoxide into ferrovanadium has not changed since BMC began operations, BMC reported certain research and development activities during the inquiry period. See BMC QR at page 20 and Exhibit 4, as revised in BMC's September 23, 2011, submission. The expenditures associated with these activities are not as high as those made when BMC began operations. Nevertheless, the nature of these activities demonstrates BMC's ongoing improvement of its ferrovanadium production in the United States.

(3) Nature of the Production Process in the United States

[7] See Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 (June

The production process for converting vanadium pentoxide into ferrovanadium is detailed in the Evraz QR at pages 16-17 and Exhibit 11, the BMC QR at pages 10-17, and the SQR at pages 1-6. See also BMC Verification Report at page 2. In brief, this process begins with the chemical analysis of the vanadium pentoxide input provided by each customer to determine the correct blend of oxides and reagents. Then the vanadium pentoxide, aluminum, iron scrap, and flux is charged in a magnesite-lined vessel and the reagents are ignited. In the ensuing reaction, the aluminum metal is converted to alumina, forming a slag, and the vanadium pentoxide is reduced to vanadium metal, which dissolves in the molten iron to form ferrovanadium. The resulting slab is then cooled and removed from its vessel, the layer of ferrovanadium metal is separated from the layer of slag, and the ferrovanadium is conveyed to a separate part of the facility for crushing, sizing and packaging. This conversion process results in the complete transformation of the chemical and physical properties of the vanadium pentoxide into ferrovanadium. As such, it is not indicative of a simple completion or assembly operation. Furthermore, as indicated above, the ITC has found that BMC's conversion process constitutes domestic production of ferrovanadium.[8]

(4) Extent of Production Facilities in the United States

BMC reports the extent of its Butler, PA production facility, including its size, the capital equipment installed, and the number of full-time employees, at pages 17-19 of the BMC QR. BMC also produces ferromolybdenum at this facility. Nearly all of its production equipment is suitable to produce either ferrovanadium or ferromolybdenum, and BMC's

1995) (ITC Investigation Report) at page I-9 and n.28; included as Attachment E in the Evraz March 25 Submission.

[8] See ITC Investigation Report at page I-9 (included in Evraz March 25 submission at Attachment E); and Ferrovandium and Nitrided Vanadium from Russia, Inv. No. 731- TA-702 (Second Review), US ITC Pub. 3887 (September 2006) at page 6; included as Attachment F in the Evraz March 25 Submission.

production labor force is trained to perform each of the various functions involved in producing both ferrovanadium and ferromolybdenum. See BMC Verification Report at page 2.

BMC requested proprietary treatment for the information it provided regarding the extent of its production facilities. Relying on publicly available information from BMC's website, the Evraz Group reported in the Evraz QR at page 19 and Exhibit 13, that BMC employs more than 35 workers at its 100,000 square foot facility.

(5) Value of Processing in the United States Compared to Value of the Merchandise Sold in the United States

We calculated the value of the processing in the United States using the tolling fees the Evraz Group paid to BMC from 2008 through 2010, for converting imported vanadium pentoxide into ferrovanadium, as reported by the Evraz Group in its questionnaire responses. To calculate the value of the ferrovanadium sold in the United States, we used the ex-BMC price of ferrovanadium produced at BMC from Russian vanadium pentoxide that the Evraz Group sold to unaffiliated customers in the United States, as reported by the Evraz Group in its questionnaire responses. As the toll-production of ferrovanadium was not often tied to specific ferrovanadium sales, to compare the value of processing to the value of the merchandise sold in the United States, we first calculated monthly weighted averages of the tolling fees paid to BMC. We then matched each ferrovanadium sale to the weighted-average tolling fee corresponding to the month of the ferrovanadium sale. Where there was no toll-production during the month of sale, we matched the ferrovanadium sale to the weighted-average tolling fee for the closest month of production prior to the month of the sale. We then divided the weighted-average tolling fee by the ex-BMC ferrovanadium price to derive a percentage reflecting the value of the processing in the United States relative to the value of the ferrovanadium sold in the United States.

Based on our calculations, we found that the value of processing performed in the United States ranged from approximately 6 percent to 26 percent on individual transactions from 2008 through 2010. When calculated on an annual, weighted-average basis, these percentages ranged from approximately 7 percent to 18 percent during the 2008-2010 inquiry period. However, as noted by the Evraz Group at page 10 of its March 25, 2011, submission and confirmed in our calculations, the cost of converting vanadium pentoxide was relatively constant during this period at roughly $2.00 per pound on a contained vanadium basis, while the price of ferrovanadium fluctuated significantly, ranging from under $10 per pound to over $30 per pound. In particular, ferrovanadium prices in 2008 were significantly higher than ferrovanadium prices in 2009 and 2010, which in turn resulted in a significantly lower weighted-average U.S. processing value ranging from approximately 6 to 8 percent in 2008. During 2009 and 2010, ferrovanadium prices ranged from around $9 to $17 per pound (see, e.g., AMG Vanadium February 25, 2011, anticircumvention inquiry request (AMG Request) at Exhibit 18). Thus, the U.S. processing value ranged from approximately 12 to 26 percent during 2009 - 2010. Because the calculation of the value of U.S. processing is based upon proprietary data, the value-added percentages presented above have been ranged. For a more detailed discussion of the calculation of the value of U.S. processing, see the memorandum to the file entitled "Preliminary Determination Calculation of Value Added in the United States" (Value Added Memo).

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise Sold in the United States

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The vanadium pentoxide is the primary material input into the production of ferrovanadium and a substantial portion of the value of the toll-produced

ferrovanadium is based upon this material cost. With respect to the value of the imported vanadium pentoxide, the Evraz Group reported, and we verified, that during the inquiry period it made no sales of Russian-produced vanadium pentoxide to unaffiliated parties other than a relatively small quantity shipped to a third-country customer under a pre-inquiry period contract. See Evraz QR at pages 14-15 and Exhibit 6, and Evraz Verification Report at page 4. Due to the small quantity, we did not consider these third-country sales for purposes of valuing Russian vanadium pentoxide pursuant to section 781(a)(1)(D) of the Act. Because the only reported source for the price of the imported vanadium pentoxide is the transaction between affiliated parties (i.e., from OAO Vanady-Tula to Stratcor or EMNA) in this case, we estimated the value of the Russian vanadium pentoxide consumed to produce ferrovanadium as the difference between the net price of the ferrovanadium sold to unaffiliated parties and the cost of conversion in the United States (i.e., the inverse of the calculation of the value of U.S. processing described above). Accordingly, we found that the value of the Russian vanadium pentoxide ranged from approximately 74 to 94 percent of the value of the ferrovanadium sold in the United States during the 2008-2010 inquiry period. When calculated on an annual, weighted-average basis, the value of the Russian vanadium pentoxide relative to the value of the ferrovanadium sold in the United States was over 80 percent during each year of the 2008-2010 inquiry period. See Value Added Memo.

E. Factors To Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that the Department shall consider in its decision to include parts or components in an antidumping duty order as part of an anticircumvention investigation. These factors are discussed below.

Pattern of Trade, Including Sourcing Patterns

As discussed in the AMG Request, following the imposition of the antidumping duty order in 1995, imports of ferrovanadium from Russia ceased in total by 1997; however, since 2005, imports of vanadium pentoxide from Russia have increased from 27 metric tons (MT) in 2005 to 2,680 MT in 2010. See also U.S. import statistics submitted by the Evraz Group at Exhibit 3 of the Evraz QR.

Although the Evraz Group was not involved in the U.S. ferrovanadium market until 2008, its affiliates OAO Vanady-Tula and Stratcor sold vanadium pentoxide or ferrovanadium to U.S. customers prior to their respective acquisition by the Evraz Group. OAO Vanady-Tula was a respondent in the underlying LTVF investigation when it was known as SC Vanady Tulachermet. Subsequently, OAO Vanady-Tula had its vanadium pentoxide processed into ferrovanadium in the Czech Republic for sale to the United States and other countries. Stratcor produced vanadium pentoxide in the United States prior to the initiation of the LTFV investigation. Stratcor has had a substantial portion of its vanadium pentoxide products toll-processed at BMC since BMC's establishment, and continues to do so. According to the Evraz Group, the only significant change in the pattern of trade and sourcing of material that has occurred since 2008, when it obtained the marketing rights for OAO Vanady-Tula, is that the Evraz Group is exporting Russian vanadium pentoxide to BMC in the United States, rather than to a Czech company, for conversion into ferrovanadium and ultimate sale to U.S. customers. See Evraz SQR at pages 3-6.

As noted above, BMC has toll-produced ferrovanadium from vanadium pentoxide since it began operations in the early 1990s, prior to the initiation of the LTFV investigation. BMC has continued to produce ferrovanadium from vanadium pentoxide in the same manner. BMC

has maintained a relationship with Stratcor since 1993, first as the toll-converter of vanadium pentoxide produced by Stratcor and later as the toll-converter of vanadium pentoxide imported by Stratcor and EMNA. See, e.g., Evraz Verification Report at page 2, and BMC Verification Report at pages 1-2.

Affiliation

Under section 781(a)(3)(B) of the Act, the Department shall take into account whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country when making a decision in an anticircumvention case. As stated in the Initiation Notice and subsequently confirmed in the questionnaire responses and verification reports, the Evraz Group, through its affiliates, produces vanadium pentoxide in Russia, ships and imports it into the United States, has it converted into ferrovanadium by an unaffiliated company while maintaining title to the product, and sells the completed ferrovanadium to customers in the United States. Thus, the manufacturer, exporter, and U.S. importer of the Russian vanadium pentoxide, as well as the party overseeing the conversion process and ultimate sale of the ferrovanadium in the United States, are all under the common ownership and control of a single entity, the Evraz Group. However, the entity which performs the conversion process (i.e., the entity which actually "completes" the merchandise in the United States) is not affiliated with the Evraz Group.

Subsequent Import Volume

Under section 781(a)(3)(C) of the Act, the Department shall take into account whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation, which resulted in the issuance of the order,

when making a decision in an anticircumvention case. In the Initiation Notice, we noted that AMG Vanadium claimed in the AMG Request that imports of vanadium pentoxide from Russia were zero from 1995 to 2004, and then increased to approximately 2,680 MT by 2010. This assertion is confirmed by U.S. import statistics, as submitted at Exhibit 3 of the Evraz QR, and our verification findings (see Evraz Verification Report at page 4).

Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the criteria under section 781(a)(1) of the Act must be satisfied. In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as pattern of trade, affiliation, and import volume.

With respect to the four criteria under section 781(a)(1) of the Act, we find that three of the four criteria have been satisfied to find circumvention. As discussed above, (A) the merchandise sold in the United States, ferrovanadium, is of the same class or kind as any other merchandise that is the subject of the antidumping duty order on ferrovanadium from Russia; (B) the ferrovanadium sold in the United States is completed in the United States from parts or components (i.e., vanadium pentoxide), produced in Russia; and (D) the value of the Russian-produced vanadium pentoxide used in the production of ferrovanadium in the United States is a significant portion of the total value of the ferrovanadium sold in the United States. However, as discussed below, based on our analysis of all the relevant factors under section 781(a)(2) of the Act and the record information, we do not find that the remaining criterion found at section 781(a)(1)(C) of the Act, the process of assembly or completion in the United States is minor or insignificant, has been satisfied.

Although the Evraz Group is the entity that retains title to the imported vanadium pentoxide, it is BMC which performs the actual conversion of the imported material into ferrovanadium. Therefore, it is BMC's production process which is relevant to our analysis with respect to whether the process of assembly or completion in the United States is minor or insignificant. As discussed above, BMC has been processing vanadium pentoxide into ferrovanadium for approximately twenty years. The ITC concluded in 1995 that BMC's level of domestic activity in toll-converting vanadium pentoxide into ferrovanadium was significant and resulted in substantial added value. BMC's level of activity in the United States was determined to be substantial enough for BMC to be considered a domestic producer of ferrovanadium. See ITC Investigation Report. More recently, in 2006, the ITC continued to view BMC as part of the domestic ferrovanadium industry through its toll-conversion of vanadium pentoxide, and referred to the exclusion of producers of vanadium pentoxide from the domestic industry of ferrovanadium because they produced only the intermediate product involved in ferrovanadium production.[9]

Our analysis of the questionnaire responses and our verification findings yield a similar conclusion to that of the ITC -- that BMC's production process involves significant operations. Specifically, the toll-conversion process is more than a mere finishing or assembly process. As described above, it entails a series of processes that cause the chemical reaction necessary to convert vanadium pentoxide, in powder or flake form, to molten metallic vanadium and then alloys it with metallic iron to form a solid. The result is the complete chemical and physical transformation of one material, vanadium pentoxide, into another material with a completely different physical and chemical structure, ferrovanadium. This process requires a significant

[9] See Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Second Review), USITC Pub. 3887 (September 2006) at page 6, included as Attachment F of the Evraz March 25 submission.

financial investment in a physical plant and equipment – one BMC made at its inception – and the employment of a significant number of skilled and/or trained employees. While the reported investment and R&D expenditures BMC made since 2008 may not be as large as those made at BMC's establishment, we would not necessarily expect a high degree of new investment and R&D in BMC's case, as it is a well-established enterprise which performs a well-established conversion/production process. BMC's recent investment and R&D expenditures nevertheless demonstrate its commitment to sustain and improve its current operations.

In assessing the calculation of the value of the processing in the United States compared to the value of the ferrovanadium sold in the United States, we must take into account the qualitative factors described above, with particular focus on the nature of the production process, consistent with past case precedent and the intent of Congress. In prior anticircumvention inquiries, the Department has explained that Congress directed the agency to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported into the processing country.[10] Additionally, the Department has explained that, following the Uruguay Round Agreements Act, Congress redirected the agency's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.[11] As discussed above, during the inquiry period, the value of the toll-conversion was relatively constant, while ferrovanadium prices fluctuated greatly. Therefore, the value of the U.S. production activity relative to the ferrovanadium sales price varied greatly between 2008 and 2010. When

[10] See, e.g., Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 46571, 46575 (August 6, 2003) (Pasta Circumvention Prelim), unchanged in Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 54888 (September 19, 2003) (Pasta Circumvention Final).

[11] See Pasta Circumvention Prelim, 68 FR at 46575, unchanged in Pasta Circumvention Final.

ferrovanadium prices were high in 2008, we observed that the U.S. value added percentage we calculated ranged from approximately 6 to 8 percent. As ferrovanadium prices stabilized in 2009 and 2010, we observed that the vast majority of the U.S. value-added percentages we calculated ranged from approximately 15 to 20 percent. See Value Added Memo at Attachments 3 and 4. In calculating these percentages, we note that the Department has not established specific value-added percentages that would signal the significance of value added. Rather, the Department examines the totality of the circumstances in light of the statutory criteria on a case-by-case basis.

AMG Vanadium notes at page 12 of the AMG Request that the Department has found valued-added percentages of 10 to 20 percent to be "small" in the context of affirmative determinations of circumvention. However, the production or finishing processes in the cases cited in the AMG Request differ qualitatively from the ferrovanadium production process in this inquiry. With respect to the granular polytetrafluoroethylene (PTFE) resin from Italy circumvention inquiry, the Department determined that the subject of the inquiry, PTFE wet raw polymer, already possessed the basic physical characteristics that distinguished granular PTFE resin from other forms of PTFE resin. Thus the respondent's post-treatment activity in the United States of cutting PTFE wet raw polymer and drying it to form granular PTFE resin was deemed relatively minor.[12]

In the brass sheet and strip from Canada circumvention inquiry, a re-roller in the United States imported brass plate from Canada (which was outside the scope of the antidumping duty order) and performed rolling, annealing, pickling, and slitting operations which resulted in brass sheet and strip. The Department concluded in that inquiry that the re-

[12] See Granular Polytetrafluoroethylene Resin From Italy: Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100, 26110 (April 30, 1993).

roller "imported brass plate, a product which was {only} one rolling step short of constituting sheet and strip {the merchandise subject to the order}."[13] That is, only with respect to product thickness did the imported brass plate differ physically from the brass sheet and strip included in the antidumping duty order. Therefore, the Department determined that the value added by the re-roller in the United States was small.

With respect to the butt-weld pipe fittings from the People's Republic of China (China) circumvention case, the Department's inquiry covered imports of pipe fittings finished in Thailand that were completed from unfinished "as-formed" pipe fittings manufactured in China. The Thai processor performed cutting, heat treatment, shot blasting, machining, cleaning, and coating operations on the unfinished pipe fittings. No additional materials (other than coating materials) were added to the unfinished pipe fitting, thus the processing in the intermediate country did not alter the chemical composition of the Chinese material. Accordingly, the Department found that the finishing operations performed in Thailand were minor.[14]

In the above-cited cases, while the value-added percentage may have been as high as 20 percent, the production processes were relatively minor, involving finishing operations that did not alter the chemical structure or basic physical nature of the imported material. In contrast, the processing of vanadium pentoxide into ferrovanadium requires the complete transformation of the chemical and physical properties of the imported material. Therefore, the valued-added ranges we calculated, as discussed above, when viewed in combination with this fundamental alteration of the imported material, are not small. After considering these factors, as well as the

[13] See Brass Sheet and Strip From Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order 58 FR 33610, 33613 (June 18, 1993).
[14] See Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order, 59 FR 62, 64 (January 3, 1994), unchanged in Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Affirmative Final Determination of Circumvention of Antidumping Duty Order, 59 FR 15155 (March 31, 1994).

level of investment, research and development, and extent of production facilities, we preliminarily conclude that the process of completing/producing ferrovanadium from vanadium pentoxide in the United States is neither minor nor insignificant, pursuant to section 781(a)(1)(C) of the Act.

Pursuant to section 781(a)(3), we also considered the additional factors of pattern of trade, affiliation, and import trends after the initiation of the investigation which resulted in the antidumping duty order on ferrovanadium from Russia.

Pattern of Trade

As discussed above, imports of ferrovanadium from Russia ceased within two years of the imposition of the antidumping duty order in 1995. Imports of vanadium pentoxide from Russia increased almost ten-fold from 2005 to 2010. While toll-processing of vanadium pentoxide has been a consistent aspect of the U.S. ferrovanadium industry, the sourcing of substantial quantities of vanadium pentoxide from Russia is a recent trend. In other words, imports of vanadium pentoxide from Russia did not begin until 10 years after the order was imposed. We do not find that these changes in the pattern of trade, when viewed in conjunction with the other statutory factors under section 871(a)(3) of the Act, support including vanadium pentoxide in the antidumping order.

Affiliation

Generally, we consider circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using the imported parts or components. As discussed above, in this case, the manufacturer of the Russian vanadium pentoxide (Evraz Group member OAO Vanady-Tula) and the party converting the merchandise into ferrovanadium in the United States (BMC) are not

affiliated parties. BMC toll-processes the Russian vanadium pentoxide under the terms of its agreement with the Evraz Group.

Import Volume

Imports of vanadium pentoxide from Russia did not begin until 10 years after the order was imposed. We do not find that this change in imports, when viewed in conjunction with the other statutory factors under section 781(a)(3) of the Act, supports including vanadium pentoxide in the antidumping order.

Preliminary Negative Determination

Based upon our analysis of all of the factors under section 781(a) of the Act, as detailed above, we preliminarily find that circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia is not occurring by reason of imports of vanadium pentoxide from Russia by the Evraz Group.

Public Comment

Case briefs from interested parties may be submitted no later than 30 days from the date of publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. See 19 CFR 351.309(c). This summary should be limited to five pages total, including footnotes. Rebuttal briefs limited to issues raised in the case briefs may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d).

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be

received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. We intend to hold a hearing, if requested, no later than 40 days after the date of publication of this notice.

The Department intends to publish the final determination with respect to this anti-circumvention inquiry, including the results of its analysis of any written comments, no later than August 24, 2012. This deadline date reflects a 180-day extension of the original deadline date for the final determination pursuant to section 781(f) of the Act. This deadline extension is necessary due to the complicated nature of this proceeding and in order to allow sufficient opportunity for the submission and analysis of interested party comments for the final determination.

This negative preliminary circumvention determination, extension of the time limit for the final determination, and notice are in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

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Paul Piquado
Assistant Secretary
for Import Administration

January 31, 2012
Date

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