

Therefore, Department needs additional time for its analysis in making its final determinations.

Because of the complex issues in these proceedings, the Department will extend the deadline for issuance of the final results. Thus, the Department intends to issue the final results on or about October 15, 2004, in accordance with sections 751(c)(5)(B) and (C)(ii) of the Act.

Dated: August 31, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-485-805]

#### **Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination Not To Revoke in Part**

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request by S.C. Silcotub S.A. (Silcotub), a producer/exporter of subject merchandise, and in response to a request by United States Steel Corporation (the petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2002, through July 31, 2003.

We preliminarily find that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on the subject merchandise that was exported by Silcotub and entered during the POR. Because the preliminary margin for Silcotub in this review is above *de minimis*, we also preliminarily determine not to revoke the order in part with respect to that company. Finally, we are rescinding the review of

S.C. Petrotub S.A. (Petrotub) because the petitioner withdrew its request for a review of that company.

**EFFECTIVE DATE:** September 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Layton at (202) 482-0371 or Erin Begnal at (202) 482-1442, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On August 10, 2000, the Department published an antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000). On August 1, 2003, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 45218. On August 29, 2003, in accordance with 19 CFR 351.213(b)(2), Silcotub requested a review. In addition, in accordance with 19 CFR 351.222(e), Silcotub requested that the Department revoke the order with regard to Silcotub, pursuant to 19 CFR 351.222(b)(2). On September 2, 2003, the petitioner requested reviews of Silcotub and Petrotub, producers/exporters of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania.

On September 30, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania, covering the period August 1, 2002, through July 31, 2003.

*Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262. On March 31, 2004, the Department published a notice of *Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review* (69 FR 16893), extending the deadline for the issuance of the preliminary results by 90 days. On July 2, 2004, the Department published a second notice of *Extension of the Time Limit for the Preliminary*

*Results of Antidumping Duty Administrative Review* (69 FR 16893), extending the deadline for the issuance of the preliminary results until no later than August 30, 2004. We are conducting this review under Section 751(a) of the Tariff Act of 1930, as amended (the Act).

Romania's designation as a non-market-economy (NME) country remained in effect until January 1, 2003.<sup>1</sup> Since the first five months of the period of review (POR) fell before Romania's graduation to market-economy status and the last seven months of this POR came after its graduation, in its antidumping questionnaire to Silcotub, dated November 14, 2003, the Department determined that it would treat Romania as an NME country from August 1, 2002, through December 31, 2002, and a market-economy (ME) country from January 1, 2003, through July 31, 2003. The first part of this notice refers to the NME portion of the POR (NME POR) and the Department's NME methodology, and the second part of this notice refers to the ME portion of the POR (ME POR) and the Department's ME methodology. In the section of this notice entitled *Preliminary Results of the Review*, we have calculated a weighted-average dumping margin reflecting the margin we calculated for the NME POR and the dumping margin we calculated for the ME POR. This weighted-average figure reflects the margin of dumping for the entire POR.

#### **Partial Rescission of Antidumping Duty Administrative Review**

On November 12, 2003, the petitioner withdrew its request for a review of Petrotub. Because there was no other request for a review of Petrotub and because the letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Petrotub in accordance with 19 CFR 351.213(d)(1).

<sup>1</sup> In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market-economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania—Non-Market Economy Status Review* (March 10, 2003).

### Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

*Specifications, Characteristics, and Uses:* Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gases in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other

related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the

above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as the petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary

for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and CBP purposes, our written description of the merchandise subject to this scope is dispositive.

#### Verification

As provided in sections 782(i)(2) of the Act, in June and July 2004 we verified information provided by Silcotub. We used standard verification procedures, including on-site inspection of the respondent producer's facilities and examination of relevant sales and financial records.

#### Analysis of the NME POR

##### Separate Rates

As stated above, since Romania was classified as an NME country until January 1, 2003, we are treating Romania as an NME country for the first five months of the POR, from August 1, 2002, through December 31, 2002.

It is the Department's standard policy to assign all exporters subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

##### Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

##### Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent (1) sets its own export prices independently of the government and other exporters, (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses, (3) has the authority to negotiate and sign contracts and other agreements, and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; see also *Sparklers*, 56 FR at 20589.

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to exports by Silcotub. Silcotub is a private joint-stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. Silcotub is limited only by its articles of incorporation and bylaws. Specifically, the information on the record shows that Silcotub is autonomous in selecting its management, negotiating and signing contracts, setting its own export prices, and retaining its own profits. For a complete discussion of the Department's analysis regarding Silcotub's entitlement to a separate rate, see the August 30, 2004, memorandum, Assignment of Separate Rates for S.C. Silcotub S.A., which is on file in the Central Record Unit (CRU), Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

##### Constructed Export Price

For all sales made by Silcotub to the United States, we used constructed export price (CEP) in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, CBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. For the deductions of foreign inland freight and foreign brokerage and handling, we used

Egyptian surrogate values because these services were provided by Romanian companies and paid for in Romanian lei. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges incurred in the United States and in Switzerland), and indirect selling expenses (incurred in both the United States and Switzerland, and including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

##### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME country, and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

As discussed above, the Department is treating Romania as a NME country for the period August 1, 2002, through December 31, 2002. Furthermore, information available on the record of this review does not permit the calculation of NV using home-market prices, third-country prices, or CV under section 773(a) of the Act. Thus, the Department calculated NV for the NME portion of this review by valuing the factors of production in a surrogate country.

##### Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market-economy countries that are at a level of economic development comparable to that of the NME and are significant producers of comparable merchandise. We chose Egypt as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). For a further discussion of our surrogate-country selection, see the August 30, 2004, memorandum entitled Selection of Surrogate Country. This memorandum is on file in the Department's CRU.

##### Factors of Production

We used publicly available information from Egypt to value the various factors of production. Because some of the Egyptian data were not contemporaneous with the POR, we adjusted the data to the POR using the Egyptian wholesale price index (WPI)

published by the International Monetary Fund.

In accordance with section 773(c) of the Act, we valued Silcotub's reported factors of production by multiplying them by publicly available Egyptian values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Egyptian surrogate values a surrogate freight cost using the reported distance from each supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing material (*i.e.*, where applicable, plastic caps, plastic tags, lacquer, and ink) by Harmonized Tariff Schedule (HTS) number using import statistics from the Egyptian Central Agency for Public Mobilization and Statistics, National Information Center. Where a material input was purchased in a market-economy currency from a market-economy supplier (*i.e.*, billet, steel strap, and clips), we valued the input at the actual purchase price in accordance with 19 CFR 351.408(c)(1). Although Silcotub purchased billets from both a market-economy supplier and non-market-economy supplier, we have valued all billets based on the price for the market-economy purchase. This methodology is consistent with 19 CFR 351.408(c)(1), which explains that the Department will normally value the factor using the price paid to the market-economy supplier where a portion of a factor is purchased from a market economy and the remainder is purchased from an NME supplier.

We valued labor using the method described in 19 CFR 351.408(c)(3). For a complete analysis of surrogate values, see the August 30, 2004, memorandum, Factors-of-Production Valuation for Preliminary Results (Valuation Memorandum), on file in the CRU.

To value electricity, we used the 2001 electricity rates for Egypt reported on the Web site of the International Trade Administration under "Trade Information Center." See <http://www.web.ita.doc.gov/ticwebsite/neweb.nsf/>. We based the value of natural gas in Egypt on a published article that shows the price at which the Government of Egypt purchased natural gas, which was also used in the final results of the previous administrative

review and placed on the record of this review.<sup>2</sup>

We based our calculation of factory overhead and selling, general, and administrative (SG&A) expenses, as well as profit, on 1998/1999 financial statements of El-Nasr Steel Pipes & Fittings Co. (El-Nasr), an Egyptian producer of comparable merchandise. The Department used the 1998/1999 financial statements of El-Nasr in the final results of the previous review and placed on the record of this review. These are the most recent available financial statements from El-Nasr reflecting a profit. We reviewed information on El-Nasr from more recent financial periods (2001–2002 and 2002–2003) and found that the company made no profit in those periods, and the publicly available information lacked sufficient detail to estimate overhead costs.<sup>3</sup> We were not able to obtain more detailed company information from the more recent periods for El-Nasr or any other producers from our list of surrogate countries. For a discussion of the Department's analysis regarding surrogate countries, see the August 30, 2004, memorandum, Selection of Surrogate Country, which is on file in the CRU.

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we used rail rates in Egypt, information also used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which we obtained from a 1999 letter from the Egyptian International House. We adjusted these rail rates for inflation. For further details, see the Valuation Memorandum.

For brokerage and handling, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see the Valuation Memorandum.

#### Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act. For currency conversions involving the Egyptian pound, we used daily

<sup>2</sup> See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Administrative Review*, 68 FR 54418 (September 17, 2003), and corresponding Issues and Decisions Memorandum at Comment 2. See also Valuation Memorandum.

<sup>3</sup> See <http://www.micor.com.eg/micor/welcome05.htm>, El-Nasr's Web site.

exchange rates published by the Federal Reserve Bank.

#### Analysis of the ME POR

##### Product Comparisons

We compared the CEP to the NV, as described in the *Constructed Export Price* and *Normal Value* sections below, for the market-economy portion of the POR. We first attempted to compare contemporaneous sales in the U.S. and home market of products that were identical with respect to the following characteristics: specification, manufacturing process, outside diameter, schedule, wall thickness, surface finish, and end finish. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the home market based on the characteristics listed above in that order of priority. Where there were no appropriate home-market sales of comparable merchandise, we compared the merchandise sold in the United States to CV in accordance with section 773(a)(4) of the Act.

##### Constructed Export Price

As mentioned in the NME section of this notice, for all sales made by Silcotub to the United States, we used CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, CBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges incurred in the United States and in Switzerland), and indirect selling expenses (incurred in both the United States and Switzerland, and including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

## Normal Value

### A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home-market to serve as a viable basis for calculating NV, we compared Silcotub's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Because Silcotub's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We calculated NV as discussed in the *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value* sections below.

### B. Cost-of-Production Analysis

On January 30, 2004, the petitioner made a sales-below-cost allegation concerning sales by Silcotub in the home market. Based on this allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that home-market sales of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from Romania were made at prices below the cost of production (COP). See *Petitioner's Allegation of Sales Below the Cost of Production for S.C. Silcotub S.A. Memorandum from Martin Claessens to Holly Kuga, Acting Deputy Assistant Secretary, dated February 20, 2004, on file in the CRU.* As a result, the Department has conducted a COP inquiry to determine whether Silcotub made sales in the home market at prices below its COP during the POR within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. *Calculation of Cost of Production.* In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home-market general and administrative (G&A) expenses, selling expenses, packing expenses, and interest expenses. We relied on the COP data submitted by Silcotub in its response to the COP questionnaire.

2. *Startup Adjustment.* Section 773(f)(1)(C)(ii) of the Act authorizes adjustments for startup operations "only where (I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II)

production levels are limited by technical factors associated with the initial phase of commercial production. For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles." Moreover, the *Statement of Administrative Action Accompanying the Uruguay Round Agreement Act*, H. Doc. No. 103-315, Vol. 1 (SAA), at 836 directs that attainment of peak production levels will not be the standard for identifying the end of the startup period because the startup period may end well before a company achieves optimum capacity utilization. In addition, the SAA indicates that the Department will not extend the startup period so as to cover improvements and cost reductions that may occur over the entire life cycle of the product. The SAA instructs further that a producer's projections of future volume or cost will be accorded little weight, as actual data regarding production are much more reliable than a producer's expectations. The SAA also states that the burden is on the respondent to demonstrate its entitlement to a startup adjustment; specifically, the respondent must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems.

Silcotub claimed a startup adjustment for a modernization project commissioned during January to April 2003, with the startup period falling from April to August 2003, which included installing new equipment and replacing parts of the core production lines in its factory in order to extend the company's product range. We preliminarily determine that the statute's requirements for granting Silcotub a startup adjustment have not been met, as Silcotub is not producing a new product that required substantial investment. We recognize that Silcotub was unable to produce seamless pipe greater than 4.5 inches in diameter prior to the upgrade and is now able to produce pipe up to 5.75 inches in diameter, but we preliminarily view Silcotub's modernization as a limited expansion of its product range.

3. *Test of Home-Market Sales Prices.* We compared the adjusted weighted-average COP to the home-market sales of the foreign like product, as required

under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home-market prices, less any applicable movement charges, discounts, and rebates.

4. *Results of the COP Test.* We disregard below-cost sales where 20 percent or more of a respondent's sales of a given product during the POR were made at prices below the COP and thus were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and based on comparisons of price to weighted-average COPs for the POR. In this instance, we determined that the below-cost sales of the product were made at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Silcotub made sales below cost, and we disregarded such sales where appropriate.

### C. Calculation of Normal Value Based on Home-Market Prices

For those sales at prices above COP, we based NV on home-market prices. Home-market starting prices were based on packed prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. For comparison to CEP, we deducted home-market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). In addition, because the NV level of trade is more remote from the factory than the CEP level of trade and available data provide no appropriate basis to determine a level-of-trade adjustment between NV and CEP, we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act (*see the Level of Trade* section, below).

### D. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison

market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses.

#### *Level of Trade/CEP Offset*

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the CEP transaction. The NV level of trade is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

In implementing these principles in this review, we asked Silcotub to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the

United States. Silcotub identified one channel of distribution in the home market and two customer categories in the home market, end-users and distributors. For a description of the selling functions performed in the home market by Silcotub, *see* the Analysis Memorandum. Based on our analysis of selling functions for Silcotub's two customer categories in the home market, we determined that one level of trade exists for Silcotub's home-market sales.

For the U.S. market, Silcotub also reported one channel of distribution, CEP sales made through Silcotub's affiliated importer, Duferco Steel. All U.S. sales were CEP transactions. Therefore, the U.S. market has one level of trade. For a description of the selling functions performed by Silcotub for CEP sales, *see* the Analysis Memo. We compared CEP sales (after deductions made pursuant to section 772(d) of the Act) to home-market sales, and we determined that the differences in selling functions performed for home-market and CEP transactions indicate that home-market sales involved a more advanced stage of distribution than CEP sales.

Based on our analysis, we determined that CEP and the starting price of home-market sales represent different stages in the marketing process and are thus at different levels of trade. Therefore, when we compared CEP sales to home-market sales, we examined whether a level of trade adjustment may be appropriate. In this case Silcotub sold at one level of trade in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Silcotub's sales of other similar products, and there is no other record evidence upon which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in Romania for Silcotub is at a more advanced stage than the level of trade of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by Silcotub. This offset is equal to the amount of indirect selling expenses incurred in the home market not exceeding the amount of indirect selling expenses deducted from the U.S. price in accordance with 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home-market prices or CV.

#### *Currency Conversion*

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

#### *Preliminary Determination Not To Revoke*

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation of a company from the order based on an absence of dumping. This procedure is described in 19 CFR 351.222(b)(2). Revocation under that provision requires, *inter alia*, that a company requesting revocation from the order must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). The Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Final Results of Antidumping Duty Administrative Review, and Partial Rescission of Antidumping Duty Administrative Review, and Revocation of Antidumping*

*Duty Order in Part: Certain Pasta From Italy*, 67 FR 300–303 (January 3, 2002).

On August 29, 2003, Silcotub submitted a request, in accordance with 19 CFR 351.222(e)(1), that the Department revoke the order in part on certain small diameter carbon and alloy seamless standard, Line, and pressure pipe from Romania with respect to its sales. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from Silcotub that, for three consecutive years, including this review period, it sold the subject merchandise in commercial quantities at not less than NV and would continue to do so in the future. Silcotub also agreed to its immediate reinstatement in this antidumping order, as long as any producer or exporter is subject to the order, if the Department concludes, subsequent to revocation, that Silcotub sold the subject merchandise at less than NV.

For these preliminary results, the Department has relied upon Silcotub's sales activity during the 2000–2001, 2001–2002, and 2002–2003 PORs in making its decision regarding Silcotub's revocation request. Although Silcotub had two consecutive years of sales at not less than NV, Silcotub has not received a zero or *de minimis* margin in the instant review. Thus, Silcotub is not eligible for consideration for revocation, and we preliminarily determine not to revoke the order with respect to Silcotub's sales of certain small diameter carbon and alloy seamless standard, Line, and pressure pipe to the United States.

*Preliminary Results of the Review*

We preliminarily determine that the following dumping margin exists for the period August 1, 2002, through July 31, 2003. This margin is the weighted-average margin of all sales made in both the NME and ME portions of the POR:

Exporter/manufacture	Weighted-average margin percentage
Silcotub .....	1.38

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit

case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, and (3) a table of authorities. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

*Assessment*

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess antidumping duties on the merchandise subject to review pursuant to 19 CFR 351.106(c)(2). This rate will be assessed uniformly on all entries of that particular importer made during the POR.

*Cash Deposits*

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Silcotub will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate described in the

final results of this review. We invite comments on the value to be used for the "all others" rate.

These cash-deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

The cash-deposit rate we establish in the final results of this review will be applied prospectively to cover future entries. Given that the effective date of the Department's decision to treat Romania as an ME was within the POR, we have applied both NME and ME methodologies to calculate the dumping margins in this review. The Department is considering whether it is more appropriate to base Silcotub's cash-deposit rate on a weighted-average margin calculated using only sales from the seven-month ME portion of the POR or, alternatively, a weighted-average margin calculated using all sales from both the NME and ME portions of the POR. We invite comments on this issue.

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2004.

**James J. Jochum**,  
Assistant Secretary for Import Administration.

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–351–826]

**Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review**

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

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request from V&M do Brasil, S.A., the Department of