

*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/manufacturer	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

Commerce (the Department) is conducting an administrative review of the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil (A-351-826). This administrative review covers imports of subject merchandise from V&M do Brasil, S.A. (VMB). The period of review (POR) is August 1, 2002, through July 31, 2003.

We preliminarily determine that sales of subject merchandise by VMB have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

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

**FOR FURTHER INFORMATION CONTACT:**

Helen Kramer or Patrick Edwards, Antidumping and Countervailing Duty Enforcement, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0405 or (202) 482-8029, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 3, 1995, the Department published the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil. See *Notice of Antidumping Duty Order: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). On August 1, 2003, the Department published the opportunity to request administrative review of, *inter alia*, seamless line and pressure pipe from Brazil for the period August 1, 2003, through July 31, 2003. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 45218 (August 1, 2003).

In accordance with 19 CFR 351.213(b)(1), on August 12, 2003, VMB requested that we conduct an administrative review of its sales of the subject merchandise. On September 30, 2003, the Department published in the

**Federal Register** a notice of initiation of this antidumping duty administrative review covering the period August 1, 2002, through July 31, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 56262 (September 30, 2003).

On October 30, 2003, the Department issued its antidumping duty questionnaire to VMB. VMB submitted its response to Section A of the questionnaire on December 8, 2003, and the responses to Sections B and C on January 6, 2004. The Department issued a supplemental questionnaire for all three responses on January 16, 2004. On February 9, 2004, the Department received VMB's supplemental response. VMB submitted its response to Section D of the questionnaire on March 3, 2004. On March 22, 2004, the Department issued a successorship questionnaire to VMB, which also covered issues regarding home market and U.S. sales in the information reported in VMB's first supplemental questionnaire response on Sections B and C. On April 6, 2004, the Department issued a third supplemental questionnaire to VMB, pertaining to the model match characteristics the company had reported in its Sections B and C responses. Import Administration's Office of Accounting issued a supplemental questionnaire regarding VMB's Section D response on April 15, 2004. The Department received VMB's response to the model match supplemental questionnaire on April 16, 2004. On April 20, 2004, the Department issued its outline and agenda for the sales verification during the week of April 26, 2004, and also received the sales reconciliation package from VMB on the same date.

Because it was not practicable to complete the preliminary results of this review within the normal time frame, we extended the time limit for this review until August 30, 2004. See *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Extension of Time Limit to Complete Preliminary Results of Antidumping Administrative Review*, 69 FR 22005 (April 23, 2004). Also on April 23, 2004, U.S. Steel Corporation, petitioner, submitted its pre-verification comments to the Department. We verified VMB's submitted data as discussed below.

**Verification**

As provided in section 782(i) of the Tariff Act (the Act), we verified the sales and cost information provided by VMB for use in our preliminary results using standard verification procedures,

including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. We verified VMB's sales responses from April 26, 2004, through April 30, 2004, and cost responses from July 12, 2004, through July 16, 2004, at VMB's Barreiro plant near Belo Horizonte, Brazil. The results of these verifications are found in the sales verification report dated May 26, 2004, and the cost verification report dated August 30, 2004, on file in the Central Records Unit (CRU) of the Department in room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC. See Memorandum to the File from Helen Kramer and Patrick Edwards, Case Analysts, through Abdelali Elouaradia, Program Manager: Verification of Home Market and U.S. Sales Information Submitted by V&M do Brasil, S.A. in the Administrative Review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, dated May 26, 2004, (Sales Verification Report); and Memorandum to Neal Halper, Office of Accounting Director from Ji Young Oh, Accountant, through Theresa Caherty, Program Manager: Verification Report on the Cost of Production and Constructed Value Data Submitted by V&M do Brasil, S.A., dated August 30, 2004, (Cost Verification Report).

**Period of Review**

The period of review (POR) is August 1, 2002, through July 31, 2003.

**Scope of the Review**

For purposes of this review, the products covered are seamless pipes produced to the ASTM A-335, ASTM A-106, ASTM A-53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) 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. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural

applications. Pipes produced in non-standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this administrative review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 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). Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this review is dispositive.

### Successorship

Since the publication of the original antidumping duty order in 1995, there have been eight administrative review periods, during which time only two reviews were requested, including the instant review. The original investigation conducted by the Department involved Mannesmann, S.A. (Mannesmann), a Brazilian subsidiary of Mannesmannröhren-Werke AG of Germany. In 1997, Mannesmannröhren-Werke AG merged with the French steel company Vallourec to create Vallourec & Mannesmann Tubes, headquartered in France. Mannesmann came under the Vallourec Group management structure and was renamed as Vallourec & Mannesmann Tubes V&M do Brasil, S.A., eventually being simplified to V&M do Brasil, S.A in 2000. We have conducted a successorship review during this POR because entries for the new entity will be made under that name during the next POR.

The Department is making this successorship determination in order to apply the appropriate company-specific cash deposit rates. In determining whether VMB is the successor to Mannesmann for purposes of applying the antidumping law, the Department examined a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. See, e.g., *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (Brass from Canada); *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Pressure*

*Sensitive Pipe from Italy*, 69 FR 15279 (March 25, 2004); and *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2004). While examining these factors alone will not necessarily provide a conclusive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. See *Brass from Canada*. Thus, if the evidence with respect to the production and sale of the subject merchandise demonstrates that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record,<sup>1</sup> including organizational charts, company brochures, customer lists, and financial documentation, demonstrates that with respect to the production and sale of subject merchandise, VMB is the successor to Mannesmann. Specifically, the evidence shows that VMB has the same production facilities, with the exception of facility expansions and improvements, and most of the same customers, suppliers and management, as Mannesmann had. At verification, we confirmed that VMB's facilities, customers, and suppliers had not changed more than is to be expected in the normal course of business. See Sales Verification Report. We reviewed VMB's organizational and investment structure before and after the merger of Vallourec and Mannesmann's parent company, Mannesmannröhren-Werke AG. We confirmed that there were only minimal changes made to the organizational and investment structure of VMB, i.e., the Advisory Council became a Board of Directors after the merger, a consequence of a changed management orientation structure. Furthermore, we reviewed documentation at verification to support the name change from Mannesmann to VMB. See *id.*, at page 5 and at Exhibit 5. Therefore, we preliminarily find that VMB is the successor to Mannesmann for purposes of this proceeding, and for the application of the antidumping duty law.

### Sales Below Cost Investigation

On January 13, 2004, the petitioner, United States Steel Corporation,

<sup>1</sup> See Sales Verification Report (May 26, 2004) at pages 3-6, Exhibits 2, 5, 9 and 10 and VMB's Supplemental Questionnaire Response, April 6, 2004.

requested that the Department conduct a sales-below-cost investigation. On January 14, 2004, the Department received notification from VMB that it intended to submit comments on the record regarding the petitioner's cost allegations. The Department informed VMB that comments must be received no later than, January 21, 2004, and VMB submitted its comments on petitioner's cost allegation to the Department accordingly. The petitioner responded on January 26, 2004, and the Department subsequently initiated a sales-below-cost investigation on February 3, 2004.<sup>2</sup> For more information on the Department's analysis of VMB's cost of production and calculation of constructed value, see the section on "COP Analysis" below.

### Fair Value Comparisons

To determine whether VMB made sales of seamless standard, line and pressure pipe to the United States at less than fair value, we compared the CEP to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to monthly weighted-average NVs.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by VMB covered by the descriptions in the "Scope of the Review" section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to VMB's U.S. sales of the subject merchandise.

We have relied on the following eight criteria to match U.S. sales of the subject merchandise to sales in Brazil of the foreign like product: product specification, manufacturing process (cold-finished or hot-rolled), grade, wall thickness, outside diameter, schedule, surface finish and end finish.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's October 30, 2003, questionnaire.

### Constructed Export Price

Section 772(b) of the Act defines CEP as the price at which the subject

<sup>2</sup> See Memorandum from Helen Kramer and Patrick Edwards, Case Analysts to Richard Weible, Office Director: Petitioner's Allegation of Sales Below the Cost of Production by V&M do Brasil, S.A., dated February 3, 2004.

merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In the instant review, VMB sold subject merchandise through an affiliated company, Vallourec & Mannesmann Tubes Corporation (VM Corp.) of Houston, Texas. VMB reported all of its U.S. sales of subject merchandise as CEP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that VMB's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting "the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications." *AK Steel* at 1369. The court declared, "the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate," and noted the phrase "outside the United States" had been added to the 1994, statutory definition of EP. *AK Steel* at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For these CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered duty paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we

deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

#### Normal Value

##### A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared VMB's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because VMB'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 for the subject merchandise, we determined the home market was viable. See VMB's Section A Questionnaire Response at Attachment A–1, December 8, 2003.

##### B. Cost of Production Analysis

Based on a cost allegation submitted by the petitioner pursuant to 19 CFR 351.301(d)(2)(ii), we found reasonable grounds to believe or suspect that VMB made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by VMB. See Memorandum from Helen Kramer and Patrick Edwards, Case Analysts, to Richard O. Weible, Office Director, regarding Petitioner's Allegation of Sales Below the Cost of Production by V&M do Brasil, S.A., February 3, 2004, on file in the CRU.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of VMB's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative expenses (G&A), interest expenses and packing costs. The Department relied on the COP data reported by VMB, except as noted below:

1. We revised the total cost of manufacturing (TOTCOM) for a particular control number, which had a negative TOTCOM because of a minor aberration in VMB's accounting system. We assigned a TOTCOM of the standard costs for this control number.

2. We revised VMB's reported TOTCOM to exclude normalization costs that were related to non-subject merchandise.

3. We revised the G&A expense ratio to exclude the reversal of bad debt expense.

For further details regarding these adjustments, see the Department's "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results V&M do Brasil, S.A." (COP Memorandum), dated August 30, 2004.

We compared the weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to home market prices net of any applicable billing adjustments, indirect taxes (ICMS, IPI, COFINS and PIS), and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of VMB's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of VMB's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) they 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 (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for VMB revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs

within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

#### C. Price-to-Price Comparisons

We matched all U.S. sales to NV. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments, interest revenue and indirect taxes. We made deductions, where appropriate, for foreign inland freight, insurance and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses, warranty expenses, and commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is that of the starting-price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. We consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the United States and CEP profit under section 772(d) of the 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 LOT 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. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern

of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000). In the present review, VMB claimed that there was no LOT in the home market comparable to the LOT of the CEP sales, and requested a CEP offset. See VMB's Section A Questionnaire Response at page 15, December 8, 2003.

VMB claimed two LOTs in the home market based on distinct channels of distribution to two categories of customers: distributors and end-users. We examined the reported selling functions and found that VMB's home market selling functions for all customers include sales forecasting, planning and promotion, order processing, general selling functions performed by VMB sales personnel, and provision for warranties. VMB also claimed packing as a selling function performed for all customers. However, did not consider this to be a selling function relevant to LOT. See VMB's Section A Questionnaire Response at page A-12 and Exhibit A-11, December 8, 2003. VMB further reported several selling functions unique to each channel of distribution: sales and marketing support and research are functions involved only in sales to distributors, while advertising in trade magazines and providing catalogues and after-sales services are provided solely to end-users. VMB also reported the selling function of inventory maintenance with regard to sales to one end-user customer. A small percentage of VMB sales are transferred to unaffiliated

warehouses from which this customer regularly extracts merchandise on a just-in-time (JIT) basis, resulting in an inventory maintenance expense for VMB. See VMB's Second Supplemental Response at page 1, April 6, 2004. VMB also claimed the payment of commissions on sales to some end-users as a selling function. However, we make a separate COS adjustment for commissions and do not consider this as a selling function in our LOT analysis.

We weighed the relative importance of each of VMB's reported selling functions in the home market. Advertising, a function provided solely to end-users, accounts for a negligible percentage of the value of total sales during the POR. We found no evidence on the record that VMB provided any pre- or post-sale technical assistance not covered under warranty expenses. At verification, VMB claimed for the first time that it provides substantial further processing services to end-user customers, in effect acting as a service center. However, there is no evidence of this on the record. Based upon the above analysis, we preliminarily conclude that the selling functions for the reported channels of distribution are sufficiently similar to consider them as one LOT in the home market.

Because VMB reported that all of its U.S. sales are CEP sales made through one channel of distribution to its U.S. affiliate, we preliminarily agree with VMB's claim that there is only one LOT in the U.S. market. We examined the claimed selling functions for VMB's CEP sales, *i.e.*, the selling functions performed for the sale to VM Corp., which include sales forecasting, order processing, packing for shipment to the United States, technical assistance, and warranties. See VMB's Section A Questionnaire Response at page A-12 and Exhibit A-11, December 8, 2003. As stated above, we did not consider packing as a selling function, and there is no evidence on the record that VMB provided any technical assistance for its U.S. sales. VM Corp. handles the remaining selling functions of sales negotiations, planning, and customer service involved in the CEP sales to the unaffiliated customer in the United States.

We compared VMB's selling functions in the home market with the selling functions for U.S. sales to its affiliate, VM Corp. We preliminarily find that VMB's selling functions for sales to the United States, namely, sales forecasting, order processing, delivery and warranties, are less numerous than VMB's selling functions for its home market sales. Further, in the home market, the chain of distribution is

further from the factory, e.g., many sales are made to distributors and may go through unaffiliated warehouses; in contrast, the CEP LOT is determined by the selling function performed at the point of sale to the affiliated importer and, thus, the CEP LOT is at a less advanced stage of distribution. We therefore examined whether a LOT adjustment or CEP offset may be appropriate. As we have preliminarily determined that VMB sold at only one LOT in the home market, there is no basis for determining a pattern of consistent price differences between LOTs. Moreover, we preliminarily find that there is no home market LOT comparable to the CEP LOT. Further, we do not have record information that would allow us to examine pricing patterns based on VMB's sales of non-subject merchandise, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP transactions, we preliminarily determine that a CEP offset adjustment is appropriate, in accordance with section 773(a)(7)(B) of the Act.

**Currency Conversion**

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

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 2002, through July 31, 2003, to be as follows:

Manufacturer / Exporter	Margin (percent)
V&M do Brasil, S.A. ....	0.90

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date

of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. See section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date. The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

**Assessment Rates**

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if the importer-specific assessment rate calculated in the final results is above *de minimis* (i.e., at or above 0.50 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated an importer-specific assessment rate for the subject merchandise by aggregating the dumping duties due for all U.S. sales to the importer and dividing the amount by the entered value. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered value of the subject merchandise on VMB's affiliated importer's entries during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm

covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 124.95 percent, the "all others" rate established in the LTFV investigation. See *Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

We are issuing and publishing this notice 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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**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 083104C]

**Endangered and Threatened Species; Permit for Take of Anadromous Fish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Michael Clarke, City of San Luis Obispo, California, has been issued a permit to take the South Central California Coast Evolutionarily Significant Unit (ESU) of steelhead trout (*Oncorhynchus mykiss*) within the San Luis Obispo Creek watershed for the purpose of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office: NOAA Fisheries, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802; phone (562) 980-4045; fax (562) 980-4027.

**FOR FURTHER INFORMATION CONTACT:** Anthony Spina at phone number (562)