

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 previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will be 5.34 percent, the all-others rate made effective by the *Section 129 Determination*. These requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 8, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2008, through January 31, 2009. This review covers imports of stainless steel bar from two producers/exporters: Ambica Steels Limited and Venus Wire Industries Pvt. Ltd. We preliminarily find that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results,

we will instruct U.S. Customs and Border Protection to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 15, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Scott Holland, Seth Isenberg, or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-1279, (202) 482-0588, or (202) 482-1664, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 21, 1995, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 4, 2009, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from India for the period of review ("POR") February 1, 2008, through January 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 6013 (February 4, 2009).

On February 19, 2009, the Department received a timely request for review from Ambica Steels Limited ("Ambica"). On February 27, 2009, we received a timely request for review from Venus Wire Industries Pvt. Ltd. ("Venus Wire"). Also, on February 27, 2009, we received a timely request from domestic interested parties Carpenter Technology Corp.; Crucible Specialty Metals, a division of Crucible Materials Corp.; Electralloy Co., a G.O. Carlson, Inc. company; and Valbruna Slater Stainless, Inc. (collectively, "Petitioners"), for a review of Venus Wire and its affiliates. On March 24, 2009, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), we initiated an administrative review on Ambica and Venus Wire. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009).

On April 10, 2009, the Department issued antidumping duty questionnaires to Ambica and Venus Wire. Ambica

submitted its responses to the antidumping questionnaire in May and June 2009. Venus Wire submitted its responses to the antidumping questionnaire in May, June, and July 2009. After analyzing these responses, we issued supplemental questionnaires to Ambica and Venus Wire to clarify or correct information contained in the initial questionnaire responses. We received responses to these supplemental questionnaires from Ambica in September, November, and December, 2009, and January and February, 2010. We received responses to these supplemental questionnaires from Venus Wire in September, November, and December, 2009, and January and March, 2010.

On February 17, 2010, the Department determined that the January 25, 2010, Section D cost reconciliation submitted by Sieves Manufacturing (India) Pvt. Ltd. ("Sieves") (an affiliated company collapsed with Venus Wire, *see* "Affiliation" section below) was filed after the established deadline and, in accordance with 19 CFR 351.302(d)(i), the Department returned the submission to Sieves. *See* Letter from Susan Kuhbach to Sieves "Rejection of Sieves' Section D supplemental response" dated February 17, 2010. The Department later determined that it had previously granted a separate extension until January 25, 2010, for submission of Sieves' cost reconciliation. *See* Memorandum from Austin Redington, International Trade Compliance Analyst to the File entitled, "Extension Request from Sieves," dated January 15, 2010. Thus, because it was timely filed, the Department requested that Sieves re-submit the Section D cost responses that the Department had previously returned. *See* Letter from Brandon Farlander, Program Manager to Sieves entitled "Resubmission of Sieves' Section D supplemental response," dated February 24, 2010.

On October 29, 2009, we extended the time limit for completing the preliminary results of this review to no later than March 1, 2010, in accordance with section 751(a)(3)(A) of the Act. *See Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 55814 (October 29, 2009).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by

seven days. The revised deadline for the preliminary results of this review is now March 8, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

#### Period of Review

The POR is February 1, 2008, through January 31, 2009.

#### Notice of Intent Not To Revoke Order In Part

On February 27, 2009, pursuant to 19 CFR 351.222(b)(2), Venus Wire requested that the Department revoke it from the antidumping duty order on SSB from India at the conclusion of this administrative review. A request for revocation of an order in part must be accompanied by three elements: (1) the company's certification that it sold subject merchandise at not less than normal value ("NV") during the POR, and that in the future it would not sell such merchandise at less than NV; (2) the company's certification that it has sold the subject merchandise to the United States in commercial quantities during each of the past three years, and (3) the company's agreement to immediate reinstatement of the antidumping duty order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV. See 19 CFR 351.222(e).

Venus Wire's February 27, 2009, request for revocation was not in accordance with 19 CFR 351.222(e) because it was not accompanied by a certification that (1) Venus Wire had not sold the subject merchandise at less than NV for a three-year period, and would not do so in the future and (2) Venus Wire had sold the subject merchandise to the United States in commercial quantities during each of the past three years. The company provided a certification regarding commercial quantities on November 6, 2009. However, this submission was not filed with the Department within the anniversary month of the proceeding as required by 19 CFR 351.222(e). Venus Wire did not, at any point, provide a certification stating that it had sold the subject merchandise at not less than NV during the current review period and that it would not do so in the future.

Because Venus Wire's request for revocation was incomplete, the Department notified Venus Wire that it was not being considered for revocation in the course of this administrative review. See Letter from Susan Kuhbach

to Venus Wire Pvt. Ltd. "Request for Revocation," dated February 16, 2010.

#### Bona Fide Analysis

In their letter of May 29, 2009, Petitioners alleged that the U.S. transaction reported by Ambica during the POR was not a *bona fide* sale.

We analyzed the transaction, comparing it to other sales of subject merchandise using data obtained from U.S. Customs and Border Protection ("CBP") to determine whether it was a *bona fide* transaction. In terms of price and quantity, we found Ambica's U.S. sale to be within the range of sales of all imports of the subject merchandise, as well as within the range of sales of product in the same Harmonized Tariff Schedule ("HTS") code measured over the entire POR. We also found Ambica's U.S. sale to be within the price range of sales for the same HTS code in the same quarter of the sale. We included this quarterly analysis because we are using quarterly costs. For our complete analysis of these and other relevant factors, see Memorandum from Seth Isenberg, International Trade Compliance Analyst to the File entitled, "Bona Fide Nature of Ambica Steels Limited's Sales in the Period of Review for Stainless Steel Bar from India," dated March 8, 2010, ("Bona Fide Memo") on file in the Central Records Unit in room 1117 of the main Department building ("CRU"). Based on our analysis, we preliminarily determine that Ambica's U.S. sale was a *bona fide* transaction.

#### Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds

150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of the order. See Memorandum from Team to Barbara E. Tillman, "Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling," dated May 23, 2005, which is on file in the CRU. See also *Notice of Scope Rulings*, 70 FR 55110 (September 20, 2005).

#### Affiliation

##### *Precision Metals*

In the 2005–2006 antidumping duty administrative review of SSB from India, the Department determined that Venus Wire and Precision Metals were affiliated within the meaning of section 771(33) of the Act, and also that the two companies should be treated as a single entity for the purposes of that administrative review. See *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595, 51596 (September 10, 2007). In the 2007–2008 antidumping administrative review of SSB from India, the Department again determined that these two companies should be treated as a single entity. See *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009).

During the current, 2008–2009 administrative review, the Department again examined Venus Wire's relationship with Precision Metals. Based on Venus Wire's representations that its corporate affiliation relationship with Precision Metals remained the same during the POR as during the 2005–2006, and 2007–2008 administrative reviews (*see* Venus Wire's May 19, 2009, Section A

questionnaire response (“AQR”) at A–2, 6–10), the Department hereby continues to treat Venus Wire and Precision Metals as a single entity in the current administrative review. *See* Memorandum from Erika McDonald to the File, “Relationship of Venus Wire Industries Pvt. Ltd. and Precision Metals,” dated September 15, 2009, which is on file in the CRU.

#### *Sieves*

On September 2, 2009, the Department determined that Venus Wire and Sieves are affiliated within the meaning of section 771(33) of the Act, and also that the two companies should be treated as a single entity and collapsed for the purposes of the 2007–2008 administrative review. *See Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 74 FR at 47201. *See Stainless Steel Bar From India: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 9787, 9792 (March 6, 2009). Accordingly, we announced our intention to treat Venus Wire and Sieves as a single entity and collapse them for the 2008–2009 administrative review. *See* Memorandum from Erika McDonald to the File, “Relationship of Venus Wire Industries Pvt. Ltd. and Sieves Manufacturers (India) Pvt. Ltd.,” dated September 15, 2009, which is on file in the CRU. We gave interested parties two weeks to provide comments on the collapsing of these two entities. No comments were received. Therefore, the Department continues to treat Venus Wire and Sieves as a single entity in the current administrative review.

#### *Hindustan Inox (formerly Hindustan Stainless)*

Petitioners allege that Hindustan Inox, formerly known as Hindustan Stainless (“Hindustan”), should also be collapsed with Venus Wire. *See* Petitioners’ June 12, 2009, and January 29, 2010, filings. Petitioners argue that Hindustan is a producer and exporter of SSB and, as a Venus Wire affiliate, Venus Wire should report Hindustan’s sales and costs in its responses. However, Venus Wire and Sieves stated that Hindustan did not produce or export SSB during the POR and that Hindustan only did job works of SSB for Sieves. *See* Venus Wire’s November 2, 2009, Section A supplemental questionnaire response (“ASQR”) at 5–6, and 8. *See also* Sieves’ December 31, 2009, Section A supplemental questionnaire response (“ASQR”) at 4, 6. Sieves further reported that while Hindustan is in the process of setting up a facility to manufacture SSB, Hindustan did not start producing

SSB until after the POR. *See* Sieves’ October 19, 2009, Section A questionnaire response (“AQR”) at 8–9. After reviewing record information, we have determined that because Hindustan was not a producer/exporter of SSB during the POR, it should not be collapsed with Venus Wire in the current administrative review.

The collapsed entity of Venus Wire, Precision Metals, and Sieves is hereafter referred to as “Venus.”

#### **Fair Value Comparisons**

To determine whether sales of SSB by Venus and Ambica to the United States were made at less than NV, we compared export price (“EP”) to NV. *See* “Export Price” and “Normal Value” sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted–average NV of the foreign–like product, where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section, below.

#### **Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products sold by Ambica and Venus (“respondents”) in the comparison market covered by the description in the “Scope of the Order” section, above, to be foreign–like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, 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 the respondents’ volumes of home market sales of the foreign–like product to the volumes of their U.S. sales of the subject merchandise. *See* the “Normal Value” section, below, for further details.

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the home market based on the following criteria: (1) general type of finish; (2) grade; (3) remelting; (4) type of final finishing operation; (5) shape; and (6) size. This was consistent with our practice in the original investigation. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Bar From India*, 59 FR 39733, 39735 (August 4, 1994); unchanged in the final, *see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994). Where there were no home market sales of the foreign–like product that were identical in these respects to

the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority, made in the ordinary course of trade. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we compared U.S. sales to constructed value (“CV”).

#### **Date of Sale**

Pursuant to 19 CFR 351.401(i), the date of sale is normally the date of invoice, unless satisfactory evidence is presented that the material terms of sale, price, and quantity are established on some other date. Accordingly, since no such evidence was provided in this proceeding, we have relied on the invoice date as date of sale for both the U.S. and home market sales by Ambica and Venus. *See* Ambica’s June 8, 2009, section B questionnaire response (“BQR”) and Ambica’s November 14, 2009, section A, B, and C supplemental questionnaire (“A, B, & C SQR”) at 12–13. *See also* Venus Wire’s AQR at A–18 and Annexure A–4.

#### **Export Price**

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Section 772(b) of the Act defines constructed export price (“CEP”) as the price at which the subject 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.

Petitioners argue that Venus was affiliated with its U.S. customer, AMS Specialty Steel (“AMS”), during the POR by virtue of a principal–agent relationship. Because of this alleged affiliation, Petitioners contend that Venus should have reported its sales through AMS as CEP sales, rather than as EP sales to AMS. *See* Petitioners’ June 12, 2009 filing at 11–15. Petitioners made an identical claim in the previous administrative review. *See Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 74 FR at 47199 and accompanying Issues and Decision Memorandum at Comment 2. Venus

denied Petitioners' claims and stated that it did not have a principal-agent relationship with AMS and that its sales should not be reported as CEP, since Venus sold material to AMS as its first unaffiliated customer. Venus also presented further support, which cannot be further described here because of its proprietary nature. See Letter from Venus Wire, dated November 4, 2009 and Attachment. After reviewing the information presented by both Petitioners and Venus, we found that there is no evidence to substantiate Petitioners' allegations. Therefore, the Department continues to find that there is no principal-agent relationship between Venus and AMS and will not treat Venus' sales to AMS as CEP sales.

Petitioners argue that Ambica was affiliated with its U.S. customer during the POR by virtue of a principal-agent relationship. See Petitioners' May 29, 2009 filing. Petitioners base the allegation on the fact that the customer advertises itself as an exclusive agent for several unnamed international mills on its website and does not advertise on the site the specific type of bar it purchased from Ambica. Because of this alleged affiliation, Petitioners contend that Ambica should have reported its U.S. sale through its customer as a CEP sale, rather than as an EP sale.

In the absence of an agency contract, "the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test." See *Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24403 (May 5, 1997). The Department's examination of allegations of an agency relationship has focused on a range of criteria, including (but not limited to) the following: (1) the foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; (5) whether the agent/reseller further processes or otherwise adds value to the merchandise; (6) the means of marketing a product by the producer to the U.S. customer in the pre-sale period; and (7) whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions. See *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682

(February 13, 2002) and accompanying Issues and Decision Memorandum, at Comment 23.

As there was no agency contract, the Department examined the above factors. Applying the Department's analytical framework for determining principal-agent relationships, we find no evidence that Ambica has any knowledge of its customer's customers, or has had any involvement with its customers' sales. After reviewing the allegations and Ambica's responses, the Department finds that there is no principal-agent relationship between Ambica and its customer. See *Bona Fide Memo*.

Therefore, for both Ambica and Venus, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because CEP methodology was not otherwise warranted, we have based the U.S. price on EP. For both Ambica and Venus, we based EP on the packed, or delivered duty paid price to unaffiliated purchasers in the United States. We adjusted the reported gross unit price, where applicable, for early payment discounts and other discounts for weight shortages, short payments or quality claims. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, freight incurred in transporting merchandise to the Indian port, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, freight incurred in the United States, U.S. customs duties, and other transportation fees. See Ambica Preliminary Results Calculation Memorandum (March 8, 2010). See also Venus Preliminary Results Calculation Memorandum (March 8, 2010).

#### Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP or CEP shall be increased by among other things, "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that: (1) the "import duty and rebate are directly linked to, and dependent upon, one another;" and (2) "the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on

the exported product." *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (Ct. Int'l Trade 1999). Venus claimed a duty drawback adjustment based on its participation in the Indian government's Duty Entitlement Passbook Program.

The Department finds that Venus has not provided sufficient evidence to establish the necessary link between the import duty and the reported duty drawback. Therefore, because Venus has failed to meet the Department's requirements, we are denying Venus' request for a duty drawback adjustment for the preliminary results. See Venus Preliminary Results Calculation Memorandum.

#### Normal Value

##### A. Home Market Viability

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign-like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. Section 773 (a)(1)(B)(ii)(II) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

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 each respondent's volume of home market sales of the foreign-like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Both Ambica's and Venus' reported home market sales of SSB during the POR were more than five percent of their sales of SSB to the United States. See Ambica's AQR at 3-4 and Venus Wire's AQR at A-3. Therefore, Ambica's and Venus' home markets were viable for purposes of calculating NV.

To derive NV for Ambica and Venus, we made the adjustments detailed in the "Calculation of Normal Value Based on Home Market Prices" section below.

##### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial

differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”),<sup>1</sup> including selling functions,<sup>2</sup> class of customer (“customer category”), and the level of selling expenses for each type of sale. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either comparison market or third country prices),<sup>3</sup> we consider the starting prices before any adjustments. When the Department is unable to match U.S. sales to sales of the foreign-like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Ambica reported that its customer base in the home market consists of end users and trading companies, and in the U.S. market, it consists of a trading company. See Ambica’s AQR at A–18–19. In addition, Ambica has reported five channels of distribution in the home market and one channel distribution in the U.S. market. See Ambica’s AQR at A–15–19. In the home market, Ambica made sales: directly to end–users from the factory; directly to traders from the factory; directly to end–users via Ambica’s distribution warehouses; directly to traders via

Ambica’s distribution warehouses; and by a consignment agent to end–users and/or traders. In Ambica’s single channel of distribution to the U.S. market, Ambica made sales directly to the trader. Ambica reported that its prices did not vary based on channel of distribution and/or customer category. See Ambica’s AQR at 22.

Ambica reported a single LOT in both the home market and the U.S. market, and has not requested an LOT adjustment. See Ambica’s BQR at 21, and Ambica’s June 8, 2009, section C questionnaire response (“CQR”) at 22; see also Ambica’s A, B, & C SQR at 27.

We examined the information reported by Ambica regarding the type and level of selling functions performed, and customer categories. Specifically, we considered the extent to which, sales process/marketing support, freight/delivery, inventory maintenance, and quality assurance/warranty service varied with respect to the different customer categories and channels of distribution (*i.e.*, distributors and processors) across the markets.

We preliminarily find the LOTs for the home market channels of distribution similar with regard to sales and marketing, inventory maintenance, and quality assurance/warranty service. Further, freight and delivery services were identical in all channels in the home market. Therefore, we consider the home market to constitute a single LOT. We compared the U.S. LOT to the LOT reported for sales in the home market. We found the LOT in the United States to be similar to the LOT in the home market. Thus, we preliminarily have compared U.S. sales to home market sales at the same LOT.

Our LOT findings with regard to Venus are summarized below. Because Venus Wire and Sieves have reported their LOT information in separate responses, we have examined each response separately. However, our final LOT determination for the collapsed entity of Venus is a consolidated LOT determination of the collapsed entity of Venus Wire and Sieves.

Venus reported one channel of distribution and a single LOT in both the home market and the U.S. market.

Venus reported that it sells to trading companies, distributors, and end users at the same LOT in the home market. Also, Venus reported that it sells to distributors, trading companies, and end users at the same LOT in the U.S. market. See Venus Wire’s CQR at 28 and December 15, 2009, section B & C supplemental questionnaire (“B & C SQR”) at 16. Venus reported that its prices did not vary based on channel of

distribution and/or customer category. See Venus Wire’s AQR at A–16.

We examined the information reported by Venus regarding its sales processes for its home market and U.S. market sales, including customer categories and the type and level of selling activities performed. See Venus Wire’s AQR at A–17–19. Specifically, we considered the extent to which sales process/marketing support, freight/delivery, inventory maintenance, and quality assurance/warranty service varied with respect to the different customer categories and channels of distribution across the markets. Because there was only one channel of distribution and because the selling functions were identical for all home market sales, we found that the home market channel of distribution comprises one LOT. Because there was only one channel of distribution and because the selling functions were identical for U.S. sales, we evaluated the U.S. channel of distribution and found that it also comprises one LOT. Next, we compared the U.S. LOT to the home market LOT. See *id.* Venus reported similar levels of freight/delivery in both the home market and U.S. market. See *id.* Further, Venus reported no inventory maintenance in either the home market or the U.S. market, and reported that it provided no warranty services in any of its channels of distribution. See *id.* The only minor difference that Venus reported was in relation to sales process/marketing support, where Venus indicated that it advertises and promotes its U.S. market sales, but not the home market sales. See *id.* Based on our examination of the selling functions performed in the single channel of distribution in the U.S. market, we find that Venus’ U.S. sales were at a single LOT.

Based on the foregoing, we preliminarily find that Venus’ sales in the home market and the United States were made at the same LOT. Thus, we were able to match EP sales to sales at the same LOT in the home market and no LOT adjustment was necessary.

### C. Cost Averaging Methodology

The Department’s normal practice is to calculate an annual weighted–average cost for the entire POR. See, *e.g.*, *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying

<sup>1</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and each respondent’s sales occur somewhere along this chain. In performing this evaluation, we considered the respondent’s narrative response to properly determine where in the chain of distribution the sale occurs.

<sup>2</sup> Selling functions associated with a particular chain of distribution help us to evaluate the LOT(s) in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses (“G&A”) and profit for CV, where possible.

Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing ("COM") recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or CV during the same shorter averaging periods. *See Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) ("*SSPC from Belgium*") and accompanying Issues and Decision Memorandum at Comment 4; *see also Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) ("*SSSS from Mexico*") and accompanying Issues and Decision Memorandum at Comment 5.

#### 1. Significance of Cost Changes

In prior cases, the Department established 25 percent as the threshold for determining that the changes in COM are significant enough to warrant a departure from our standard annual costing approach. *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4; *see also Stainless Steel Sheet and Strip in Coils From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45708, 45710 (August 6, 2008), unchanged in *SSSS from Mexico* and accompanying Issues and Decision Memorandum at Comment 5. To determine whether the changes in production costs were significant, we analyzed, on a product-specific basis, the extent to which the total COM changed during the POR. We did this by analyzing, on a CONNUM-specific basis, the difference between the lowest quarterly average COM and the highest quarterly average COM, as a percentage of the lowest quarterly average COM. In the instant case, record evidence shows that Ambica and Venus experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly

COMs during the POR and that the change in COM is primarily attributable to the price volatility for stainless scrap and ferro-alloys, major inputs consumed in the production of the merchandise under consideration. *See* "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Ambica Steels Ltd.," from Stephanie C. Arthur to Neal M. Halper, dated March 8, 2010 ("Ambica Cost Calculation Memorandum") and "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Venus Wire Industries Pvt. Ltd.," from LaVonne L. Clark to Neal M. Halper, dated March 8, 2010 ("Venus Cost Calculation Memorandum"). In examining company-specific purchase information for these inputs, we found that the prices changed dramatically throughout the POR and consequently directly affected the cost of the material inputs consumed. *See* Ambica Cost Calculation Memorandum and Venus Cost Calculation Memorandum. As a result, we have determined for the preliminary results that the changes in COM are significant enough to warrant a departure from our standard annual costing approach, as these significant cost changes create distortions in the Department's sales-below-cost test as well as the overall margin calculation.

#### 2. Linkage Between Cost and Sales Information

As noted above, the Department preliminarily found cost changes to be significant in this administrative review; thus, the Department subsequently evaluated whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department's definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See SSSS from Mexico* and accompanying Issues and Decision Memorandum at Comment 5; *see also SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes.

To determine whether a reasonable correlation existed between sales prices and their underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the five highest-

volume home market CONNUMs. For Ambica, our comparison revealed that sales prices and costs trended consistently with each other for all of these five products, thereby establishing a reasonable link between the underlying costs and sales prices. *See* Ambica Cost Calculation Memorandum.

While we were able to use data from Venus to establish the significance of cost changes discussed above, we did not have the necessary information from Venus to establish the linkage between cost and sales information. The Department requested the necessary information from Venus to perform the linkage analysis in supplemental questionnaires dated October 14, 2009; December 30, 2009; and March 1, 2010. Because we have not yet received all of the necessary information from Venus to complete the linkage between sales prices and their underlying costs, we have relied on facts available for purposes of these preliminary results. Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Here, we lack information necessary to determine whether a linkage between Venus' sales prices and their underlying costs reasonably exists. Therefore, we must rely upon facts available. As facts available, we have relied on the determination that a reasonable linkage exists for Ambica, the other respondent to this proceeding. As noted in the Ambica Cost Calculation Memorandum, the Department determined that Ambica's quarterly-average price and cost changes appear to be reasonably correlated and that Ambica's average quarterly cost trended consistently with the change in the average quarterly sales prices. Therefore, as facts available, we have determined a reasonable linkage also exists between Venus's sales prices and its underlying costs. We plan to analyze this issue when the necessary data have been received from Venus. *See* Venus Cost Calculation Memorandum.

For both Ambica and Venus, we found there to be a significant change (*i.e.*, one that exceeded 25 percent) in COM between the high and low quarters, as well as a reasonable linkage

of sales prices and costs during the shorter cost averaging period. Accordingly, we have preliminarily determined that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculations. Therefore, we preliminarily used quarterly indexed annual-average direct material costs and annual weighted-average conversion costs in the COP and CV calculations for Ambica and Venus. For ferritic and martensitic products manufactured by Ambica, we have continued to use a single weighted-average total COM.

#### D. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the COP in the most recently completed review of SSB from India (*see Stainless Steel Bar From India: Final Results of Antidumping New Shipper Review*, 72 FR 72671 (December 21, 2007) (Ambica) and *Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review*, 74 FR 47198 (September 15, 2009) (Venus)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Ambica and Venus may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Ambica and Venus. We relied on home market sales and COP information provided by Ambica and Venus in its questionnaire responses, except where noted below:

#### Ambica

Using Ambica's quarterly cost information from the November 23, 2009 response, for austenitic grades of product, we measured the cost changes, in terms of a percentage, to develop direct material indices for each quarter. We used these indices to calculate an annual weighted-average material cost for the POR and then restate that annual average material cost to each respective quarter on an equivalent basis. *See* Ambica Cost Calculation Memorandum.

#### Venus

We relied on Venus' quarterly cost information from the January 11, 13, and 25, 2010 responses and measured the cost changes, in terms of a percentage, to develop direct material indices for each quarter. We used these indices to calculate an annual weighted-average material cost for the POR and then restate that annual average material cost to each respective

quarter on an equivalent basis. We revised Venus' calculation of its quarterly raw materials costs to exclude remelted material inputs because we currently do not have adequate information on the record to determine if these costs are under-stated or double-counted. Further, we revised Venus' financial expenses to exclude an overstatement of net foreign exchange gain. *See* Venus Cost Calculation Memorandum.

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, within an extended period of time, such sales were made in substantial quantities, 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. As noted in section 773(b)(1)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on a quarterly costing approach for certain merchandise produced by Ambica and merchandise produced by Venus. This methodology (1) restates the quarterly material costs in terms of the "base period" (i.e., the first quarter), (2) calculates an annual weighted-average cost for the POR, and (3) restates it to each respective quarter. We find that this quarterly costing method meets the requirements of section 773(b)(2)(D) of the Act.

Where less than 20 percent of the respondent'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 and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the 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 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 home market sales of other models, more than 20 percent were sold at prices below the 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.

Based on the additional information we plan to obtain after the preliminary results regarding the linkage between quarterly costs and sales, we plan to provide a post-preliminary analysis of COP for Venus.

#### E. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex-factory or delivered prices to unaffiliated customers in the home market. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, 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, as well as for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. We did not make further adjustments to Ambica's or Venus' home market data.

#### 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 reported by the Federal Reserve Bank.

### Preliminary Results of the Review

For the firms listed below, we find that the following weighted-average percentage margin exists for the period February 1, 2008, through January 31, 2009:

Exporter/Manufacturer	Margin
Venus Wire Industries Pvt. Ltd. /Precision Metals/Sieves Manufacturing (India) Pvt. Ltd. ....	5.54 percent
Ambica Steels Limited ..	0.00 percent

### Public Comment

The Department will disclose the calculations performed within five days of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), 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. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue, and 2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review, including the results of our analysis of issues raised in the briefs, no later than 120 days after publication of these preliminary results.

### Assessment Rates

If these preliminary results are adopted in the final results, we will instruct CBP to assess antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review in the **Federal Register**.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondent for which it has reported the importer of record and the entered value of the U.S. sales, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Where the respondent did not report the entered value for U.S. sales to an importer, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis* (i.e., less than 0.50 percent) in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *id.*

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SSB from India 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 companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*); (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less than fair value ("LTFV") investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, or the original LTFV investigation, the cash deposit rate will

be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the all-others rate established in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994). These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-802]

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), covering the period of review ("POR") of February 1, 2008, through January 31, 2009. As discussed below, we preliminarily determine that sales have been made below normal value ("NV"). If these preliminary