

administrative reviews of the antidumping duty order on ball bearings and parts thereof from Japan for the period May 1, 2000, through April 30, 2001. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002). On October 15, 2002, the Department amended the final results. See *Ball Bearings and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 63608 (October 15, 2002). NTN Corp., NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., NTN Driveshaft, and NTN-BCA Corp. (collectively NTN), filed a lawsuit challenging the final results. NSK Ltd., NSK Corp., NSK Bearings Europe, MPB Corp., Asahi Seiko Co., and Isuzu Motors, Ltd., were parties to this litigation but their dumping margins did not change as a result of the litigation. On August 20, 2004, the CIT affirmed the Department's final results in part and remanded the review to the Department in part to correct certain ministerial errors concerning the treatment of NTN's freight and warehouse expenses. See *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312 (CIT 2004) (*NSK Ltd.*). Specifically, the CIT directed the Department to exclude NTN's export-price sales from the calculation of NTN's U.S. freight and warehouse expenses. In accordance with the CIT's remand order in *NSK Ltd.*, the Department filed its remand results on October 19, 2004. In those remand results, the Department excluded export-price sales from the calculation of U.S. freight and warehouse expenses and recalculated NTN's margin accordingly.

On January 27, 2005, the CIT sustained the Department's final results of remand redetermination. See *NSK Ltd. v. United States*, 358 F. Supp. 2d 1313 (CIT 2005). NTN appealed the portion of the CIT's decision in which it sustained the Department's use of "facts otherwise available" and "adverse inferences" when determining NTN's antidumping duty margin. NTN did not appeal the CIT's remand order. On March 7, 2007, the CAFC affirmed the CIT's decision. See *NSK Ltd. v. United States*, 481 F.3d 1355 (Fed. Cir. 2007). On May 3, 2007, the CAFC denied a rehearing request. No further appeals were made. Therefore, the CIT's decision is now final and conclusive.

#### Amendment to Final Results

We are now amending the final results of this review to reflect the final

and conclusive decision of the CIT. Our revised calculations for NTN changed the weighted-average margin for ball bearings from 9.34 percent to 9.30 percent for the period of review. The Department will instruct U.S. Customs and Border Protection to liquidate entries of ball bearings from Japan from NTN during the review period in accordance with these amended final results of review.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-866)

#### Folding Gift Boxes from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** July 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6412.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 3, 2007, the Department of Commerce ("the Department") published a notice of opportunity to request an administrative review of the antidumping duty order on folding gift boxes from the People's Republic of China ("PRC"). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 99 (January 3, 2007). On January 31, 2007, the Petitioner<sup>1</sup> and Red Point Paper Products Factory (Dongguan Shilong), Red Point Paper Products Co. Ltd., and Silver Team Trading Ltd. ("Red Point") requested that the Department conduct an administrative review of Red Point. The Department

published a notice of initiation of the antidumping duty administrative review of Folding Gift Boxes from the PRC for the period January 1, 2006 through December 31, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 8969 (February 28, 2007).

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On May 29, 2007, Red Point and the Petitioner withdrew their requests for an administrative review within 90 days of the publication of the notice of initiation of this review. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of folding gift boxes from the People's Republic of China for the period January 1, 2006 through December 31, 2006. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the publication of this notice of rescission of administrative review.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 3, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-13479 Filed 7-10-07; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-868)

#### Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty 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 folding metal tables and chairs ("FMTCs") from the People's Republic of China ("PRC") covering the period June 1, 2005, through May 31, 2006. We have preliminarily determined that sales have not been made below normal value ("NV") by Feili Furniture Development Limited Quanzhou City, Feili Furniture

<sup>1</sup> Harvard Folding Box Company, Inc.

Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively "Feili"), or by New-Tec Integration (Xiamen) Co. Ltd. ("New-Tec"). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR").

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

**EFFECTIVE DATE:** July 11, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4243 or (202) 482-4551, respectively.

**SUPPLEMENTARY INFORMATION:** On June 27, 2002, the Department published the antidumping duty order on FMTCs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 43277 (June 27, 2002). On June 2, 2006, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 32032 (June 2, 2006). In accordance with 19 CFR 351.213(b)(1), the following requests were made: (1) on June 13, 2006, Feili, a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales;<sup>1</sup> (2) on June 27, 2006, Mecos Corporation ("Meco"), a domestic interested party, requested that the Department review Feili's and New-Tec's sales and entries during the POR; (3) on June 28, 2006, Cosco Home & Office Products ("Cosco"), a U.S. importer of subject merchandise, requested that the Department review Feili's and New-Tec's sales and entries during the POR;<sup>2</sup> (4) on June 30, 2006, New-Tec, a

producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales;<sup>3</sup> and (5) on June 30, 2006, Dongguan Shichang Metals Factory Ltd. and Maxchief Investments Ltd. (collectively "Shichang"), a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales.

On July 27, 2006, the Department initiated this administrative review with respect to Feili, New-Tec, and Shichang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006). On July 28, 2006, Shichang withdrew its request for an administrative review.

The Department issued antidumping duty questionnaires to Feili and New-Tec on September 12, 2006. On September 27, 2006, the Department published a partial rescission of the instant administrative review with respect to Shichang. *See Folding Metal Tables and Chairs: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 56473 (September 27, 2006). On October 6, 2006, Mecos, a petitioner in the original investigation, requested that the Department verify the factual information submitted by Feili and New-Tec. On October 13, 2006, New-Tec and Feili submitted Section A questionnaire responses ("AQRs"), and on November 3, 2006, New-Tec and Feili submitted Section C and D questionnaire responses ("CQRs" and "DQRs," respectively). On December 13, 2006, the Department issued its first supplemental questionnaires to New-Tec and Feili.

On December 19, 2006, the Department requested the Office of Policy to provide a list of surrogate countries for this review. *See Memorandum to Ron Lorentzen, Acting Director, Office of Policy, through Wendy Frankel, Director, Office 8, AD/CVD Operations, from Matthew Quigley, International Trade Compliance Analyst, "Certain Folding Metal Tables and Chairs from the People's Republic of China: Request for Surrogate Country Selection"* (December 19, 2006). On December 21, 2006, the Office of Policy issued its list of surrogate countries. *See Memorandum from Ron Lorentzen, Director, Office of Policy, to Wendy Frankel, Director, Office 8, AD/CVD Operations, "Administrative Review of Certain Folding Metal Tables and Chairs ("Tables and Chairs") from the People's*

Republic of China (PRC): Request for a List of Surrogate Countries" (December 21, 2006) ("Surrogate Country Memorandum").

On January 10 and 12, 2007, respectively, Feili and New-Tec submitted their first supplemental questionnaire responses. On February 12, 2007, the Department requested interested parties to submit surrogate value information and to provide surrogate country selection comments. Mecos provided comments on publicly available information to value the factors of production ("FOP") on February 26, 2007. None of the interested parties provided comments on the selection of a surrogate country.

On March 2, 2007, Mecos submitted comments on both New-Tec's and Feili's first supplemental questionnaire responses. On March 7, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May 31, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 10141 (March 7, 2007). On March 20 and 26, 2007, respectively, the Department issued its second supplemental questionnaire to Feili and New-Tec. On March 30 and April 16, 2007, respectively, Feili and New-Tec submitted their second supplemental questionnaire responses. On May 4, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until July 2, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 25244 (May 4, 2007).

**Verification of Responses**

As provided in section 782(i) of the Act, we verified information provided by Feili and New-Tec. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. The Department conducted the sales and FOP verification at Feili's facilities in Quanzhou, Fujian Province from May 21 to 25, 2007, and New-Tec's facilities in Xiamen, Fujian Province from May 28 to June 1, 2007. Our verification results are outlined in the verification reports for Feili and New-Tec. *See "Verification of the Sales and Factors Response of Feili in the Antidumping*

<sup>1</sup> Feili's request for administrative review did not include a request for revocation.

<sup>2</sup> Although Cosco requested revocation on behalf of Feili and New-Tec, section 351.222(e) of the Department's regulations only permits an exporter or a producer to request revocation. Thus, Cosco cannot request revocation because it is not an exporter or a producer.

<sup>3</sup> New-Tec's request for administrative review did not include a request for revocation.

Review of Folding Metal Tables and Chairs from the People's Republic of China" (July 2, 2007) ("Feili Verification Report"), and "Verification of the Sales and Factors Response of New-Tec in the Antidumping Review of Folding Metal Tables and Chairs from the People's Republic of China" (July 2, 2007) ("New Tec Verification Report").

#### Period of Review

The POR is June 1, 2005, through May 31, 2006.

#### Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

- a. Lawn furniture;
- b. Trays commonly referred to as "TV trays";
- c. Side tables;
- d. Child-sized tables;
- e. Portable counter sets consisting of rectangular tables 36" high and matching stools; and,
- f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28" to 36" wide by 48" to 96" long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size,

affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

- a. Folding metal chairs with a wooden back or seat, or both;
- b. Lawn furniture;
- c. Stools;
- d. Chairs with arms; and
- e. Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>4</sup> Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC, the Department ruled on January 13, 2003, that poly-fold metal folding chairs are within the scope of the order.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. ("Staples"), the Department issued a scope ruling that the chair component of Staples' "Complete Office-To-Go," a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order.

On July 13, 2005, the Department issued a scope ruling determining that "butterfly" chairs are excluded from the scope of the antidumping duty order. Butterfly chairs are described as consisting of a collapsible metal rod frame and a cover, such that when the

chair frame is spread open, the pockets of the cover are slipped over the upper ends of the frame and the cover provides both the seating surface and back of the chair. The frame consists of eight s-shaped pieces (with the ends offset at almost a 90-degree angle) made from metal rods that are connected by hinges. In order to collapse the frame, the chair cover must be removed. The frame is collapsed by moving the four legs inward until they meet in the center, similar to the folding mechanism of a pocket umbrella.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs, with wooden seats that have been padded with foam and covered with fabric or polyvinyl chloride and attached to the tubular steel seat frame with screws, are within the scope of the antidumping duty order.

On May 1, 2006, the Department issued a scope ruling determining that "moon chairs" are not included within the scope of the antidumping duty order. Moon chairs are described as containing circular, fabric-padded, concave cushions that envelop the user at approximately a 105-degree reclining angle. The fabric cushion is ringed and supported by two curved 16-mm steel tubes. The cushion is attached to this ring by nylon fabric. The cushion is supported by a 16-mm steel tube four-sided rectangular cross-brace mechanism that constitutes the moon chair's legs. This mechanism supports and attaches to the encircling tubing and enables the moon chair to be folded. To fold the chair, the user pulls on a fabric handle in the center of the seat cushion of the chair.

#### Non-Market Economy Country Status

Neither Feili nor New-Tec contested the Department's treatment of the PRC as a non-market economy ("NME"), and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 27074, 27075 (May 14, 2007). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. See Section 771(18)(C)(i) of the Act.

#### Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market-economy country or countries

<sup>4</sup> Originally the scope included 9403.20.0010 but, effective July 1, 2003, 9403.20.0010 (metal household furniture) was eliminated from the HTS code. 9403.20.0011 (ironing boards) and 9403.20.0015 (other) were added in its place. 9403.20.0015 contains merchandise in 9403.20.0010 except for ironing boards.

considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Preliminary Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum" (July 2, 2007) ("Surrogate Value Memorandum").

The Department has previously determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. See Surrogate Country Memorandum. Customarily, we select an appropriate surrogate country from the Surrogate Country Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Antidumping Administrative Review of Folding Metal Tables and Chairs: Selection of a Surrogate Country" (July 2, 2007) ("Surrogate Country Selection Memorandum").

The Department used India as the primary surrogate country and, accordingly, has calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. See Surrogate Country Selection Memorandum and Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results of review.

### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. See, e.g., *Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 70949, 70952 (December 7, 2006) (unchanged in the final results).

We have considered whether each reviewed company based in the PRC is eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law ("*de jure*") and in fact ("*de facto*").

Feili and New-Tec each provided company-specific separate-rate information and stated that each met the standards for the assignment of separate

rates. Feili reported that it is wholly owned by market-economy entities. See Feili's AQR, at 2 and Exhibit A-3. Therefore, consistent with the Department's practice, a separate-rates analysis is not necessary to determine whether Feili's export activities are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). For New-Tec, a separate-rates analysis is necessary to determine whether its export activities are independent from government control.

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. See, e.g., *Sparklers*, 56 FR 20588.

New-Tec reported that it is a joint venture. Until April 2006, it was owned by New-Tec International Inc., a South Korean company, and Xiamen Integration Co., Ltd., a PRC company. In April 2006, New-Tec International Inc. transferred its shares to Mr. Lee Ki Cheon, a South Korean national. New-Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the PRC, as revised on October 27, 2005 ("*Company Law*"). Other than limiting New-Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control, lacking record evidence to the contrary. See, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004). We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we

have preliminarily found an absence of *de jure* control for New-Tec.

#### B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*").

Therefore, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See, e.g., *Furfuryl Alcohol*, 60 FR 22545.

With regard to *de facto* control, New-Tec reported that: (1) it independently set prices for sales to the United States through negotiations with customers and these prices are not subject to review by any governmental organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce did not coordinate the export activities of New-Tec; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its board of directors appoints its general manager; (6) there is no restriction on its use of export revenues; (7) its shareholders ultimately determine the disposition of respective profits, and New-Tec has not had a loss in the last two years; and (8) none of New-Tec's board members or managers is a government official. Additionally, New-Tec's questionnaire responses did not suggest that pricing is coordinated among exporters. Furthermore, our analysis of New-Tec's questionnaire responses reveals no other information

indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect to New-Tec's export functions and that New-Tec has met the criteria for the application of a separate rate.

#### Date of Sale

19 CFR 351.401(i) states that:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also, *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Feili and New-Tec, we preliminarily determine that invoice date is the most appropriate date of sale for each respondent. We made this determination based on statements on the record that indicate that Feili's and New-Tec's invoices establish the material terms of sale to the extent required by our regulations. See Feili CQR at C-10 and New-Tec CQR at C-12. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

#### Normal Value Comparisons

To determine whether sales of FMTCs to the United States by Feili and New-Tec were made at less than NV, we compared export price ("EP") to NV, as described in the "Export Price," and "Normal Value" sections of this notice, pursuant to section 771(35) of the Act.

#### Export Price

Because Feili and New-Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States, and use of a constructed-export-price methodology is not otherwise indicated, we have used EP in

accordance with section 772(a) of the Act.

We calculated EP based on the free-on-board or delivered price to unaffiliated purchasers for Feili and New-Tec. From this price, we deducted amounts for foreign inland freight, brokerage and handling and, where applicable, air freight, pursuant to section 772(c)(2)(A) of the Act. See Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Preliminary Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, 'Feili')" (July 2, 2007) ("Feili Preliminary Analysis Memorandum"); and Memorandum to the File from Matthew Quigley, International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, "Analysis for the Preliminary Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New-Tec Integration (Xiamen) Co. Ltd. ('New-Tec')" (July 2, 2007) ("New-Tec Preliminary Analysis Memorandum").

Consistent with the Department's practice, we used two sources to calculate a surrogate value for domestic brokerage expenses. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same data, unchanged for the final determination). The Department averaged December 2003-November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in the final results). These data were averaged with the February 2004-January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's ("Agro Dutch") response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from

India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POR. See *Surrogate Value Memorandum* at 8 and Attachment XV.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at <http://www.infreight.com>. The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. Where applicable, we valued air freight using the rates published on the UPS website: <http://www.ups.com>. The air freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. See *Surrogate Value Memorandum* at 9 and Attachment XVI.

#### Zero-Priced Transactions

During the course of this review, both Feili and New-Tec reported a significant number of zero-priced transactions to their U.S. customers. See Feili's CQR at C-2; and New-Tec's CQR at Exhibit 5. An analysis of the Section C databases provided by each company reveals that both companies made a significant number of zero-priced transactions with customers that had previously purchased the same merchandise in commercial quantities. See Feili Preliminary Analysis Memorandum at Attachment I; and New-Tec Preliminary Analysis Memorandum at Attachment 9.

In the final results of the 2003-2004 and the 2004-2005 administrative reviews of FMTCs, we included New-Tec's zero-priced transactions in the margin calculation stating that the record demonstrated that: (1) New-Tec provided many pieces of the same product, indicating that these "samples" did not primarily serve for evaluation or testing of the merchandise; (2) New-Tec provided significant numbers of the same product to its U.S. customer while that customer was purchasing that same product; (3) New-Tec provided "samples" to the same customers to whom it was selling the same products in commercial quantities; and (4) New-Tec acknowledged that it gave these products at zero price to its U.S. customers (already purchasing the same items) to sell to their own customers. *Folding Metal Tables and Chairs from*

*the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 4; *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum, at Comment 4. As a result, we concluded that these transactions were not what we consider to be samples because New-Tec was not providing product to entice its U.S. customers to buy the product. *Ibid.*

The Federal Circuit has not required the Department to exclude zero-priced or de minimis sales from its analysis but, rather, has defined a sale as requiring "both a transfer of ownership to an unrelated party and consideration." See *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997). The CIT in *NSK Ltd. v. United States* stated that it saw "little reason in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time," and that "it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client." *NSK Ltd. v. United States*, 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002). Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples. See, e.g., *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs "to the party in possession of the necessary information"). See also *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) ("The burden of creating an adequate record lies with respondents and not with {the Department}." (citation omitted). Moreover, even where the Department does not ask a respondent for specific information to demonstrate that a transaction is a sample, the respondent has the burden of presenting the information in the first place to demonstrate that its transactions qualify for exclusion. See *NTN Bearing Corp. of America. v. United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993).

An analysis of Feili's and New-Tec's Section C computer sales listings reveals that both companies provided zero-priced merchandise to the same customers to whom they were selling or

had sold the same products in commercial quantities. See Feili Preliminary Analysis Memorandum at Attachment I, and New-Tec Preliminary Analysis Memorandum at Attachment 9. Consequently, based on the facts cited above, the guidance of past court decisions, and our previous decisions, for the preliminary results of this review, we have not excluded these transactions from the margin calculation for either Feili or New-Tec.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by-products, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources a meaningful amount of an input from a market-economy country and pays for it in market-economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). Further, the Department disregards prices it has reason to suspect may be dumped or subsidized. See, e.g., *China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)).

Feili and New-Tec each reported that a significant portion of its purchases of raw material and/or packing inputs was sourced from market-economy countries and paid for in market-economy currencies. See Feili's DQR at

D-3 and New-Tec's DQR at 44. Therefore, pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by respondents for inputs purchased from market-economy suppliers during the POR and paid for in a market-economy currency.

With regard to both the Indian import-based surrogate values and the market-economy input values, we disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decisions Memorandum at Comment 8 (declining to use market-economy input prices from South Korea or India); *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003), and accompanying Issues and Decisions Memorandum at Comment 2 (declining to use market-economy input prices from India); *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (declining to use input prices from Indonesia, South Korea and Thailand). This practice is also consistent with the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100-576 at 590 (1988), reprinted in 1988 U.S.C.A.N. 1547, 1623-24. Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. *See*

Feili Preliminary Analysis Memorandum and New-Tec Preliminary Analysis Memorandum. Further, we did not use any market-economy purchases of raw materials sourced in countries against which the PRC has an outstanding antidumping duty order. *See* World Trade Organization's Committee on Anti-Dumping Practices Semi-Annual Report Under Article 16.4 of the Agreement, G/ADP/N/CHN, for the period 1 July - 31 December 2005, available at [www.wto.org](http://www.wto.org), and included in Attachment XIX of the Surrogate Value Memorandum. *See* New-Tec Preliminary Analysis Memorandum at 6 and Attachment 10. In addition, consistent with the Department's practice, we did not use prices paid by respondents for inputs purchased from market-economy suppliers prior to the POR.<sup>5</sup> *See* Feili Verification Report at 23 and Exhibit 14; Feili Preliminary Analysis Memorandum at 8 and Attachments II and III; New-Tec Verification Report at 25 and Exhibit 7; and New-Tec Preliminary Analysis Memorandum at 6 and Attachments 2 and 11.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir.

1997). For a detailed description of all surrogate values used for respondents, see the Surrogate Value Memorandum at Attachment I.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at <http://www.gtis.com/wta.htm> ("WTA"). The WTA data are reported in rupees and are contemporaneous with the POR. *See also* Surrogate Value Memorandum at Attachment V. Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund. *See* Surrogate Value Memorandum at 2 and Attachments II and III. We further adjusted these prices to account for freight costs incurred between the supplier and respondent. We used the freight rates published by Indian Freight Exchange available at <http://www.infreight.com>, to value truck freight. The truck freight rates are contemporaneous with the POR. Therefore, we made no adjustments for inflation. For a complete description of the factor values we used, see the Surrogate Value Memorandum at 8 and Attachment XIV.

Feili and/or New-Tec reported that they made market-economy purchases representing a meaningful portion of the total purchases of cold-rolled steel, hot-rolled steel, powder coating, polypropylene plastic resin, polyethylene resin, fiberboard, polyvinyl chloride sheet, vinyl sheet, polyester fabric, washers, rivets, gasket, screws, cardboard, carton, corrugate paper and fiberboard. *See* Feili Preliminary Analysis Memorandum at 8 and New-Tec Preliminary Analysis Memorandum at 5. Therefore, we valued these inputs using their respective per-kilogram market-economy purchase prices. Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. *See* Surrogate Value Memorandum at 3-4, Feili Preliminary Analysis Memorandum, and New-Tec Preliminary Analysis Memorandum.

To value hydrochloric acid used in the production of FMTCs, we used per-kilogram domestic values obtained from *Chemical Weekly*. We adjusted this

<sup>5</sup> *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 3. *See also* *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 33, where the Department stated that it would not use "market-economy inputs if they are insignificant or purchased outside of the period of investigation."

value for taxes and to account for freight costs incurred between the supplier and each respondent, respectively. We used per-kilogram import values obtained from the WTA for all other material inputs used in the production of FMTCs.

To value diesel oil, we used per-kilogram values obtained from Bharat Petroleum, published December 1, 2005. See Surrogate Value Memorandum at Attachment VIII. We made adjustments to account for inflation and freight costs incurred between the supplier and respondents. See Surrogate Value Memorandum at 6 and Attachments VIII - IX.

To value liquid petroleum gas, we used per-kilogram values obtained from Bharat Petroleum, published on October 3, 2005. We made adjustments to account for inflation and freight costs incurred between the supplier and respondents. See Surrogate Value Memorandum at 6 and Attachment X.

To value electricity, we used the 2000 electricity price data from International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2003), available at <http://www.eia.doe.gov/emeu/international/elecprti.html>, adjusted for inflation. See Surrogate Value Memorandum at 5 and Attachment VII.

To value water, we used the Revised Maharashtra Industrial Development Corporation water rates for June 1, 2003, available at <http://www.midcindia.com/water-supply>, adjusted for inflation. See Surrogate Value Memorandum at 6 and Attachment XI.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on the Import Administration's home page. See Expected Wages of Selected NME Countries (revised November 2005) (available at <http://ia.ita.doc.gov/wages>). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2003*, ILO, (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2003. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. See Surrogate Value Memorandum at 7 and Attachment XII.

For factory overhead, selling, general, and administrative expenses ("SG&A"), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2005. From this information, we were

able to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (i.e., cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. See Surrogate Value Memorandum at 7 and Attachment XIII for a full discussion of the calculation of these ratios.

For packing materials, we used the per-kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and respondent. See Surrogate Value Memorandum at 3-4 and Attachment V.

#### 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

We preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Margin (Percent)
Feili .....	0.10*
New-Tec .....	0.23*

\* *de minimis*

#### Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the date on which the case briefs are due. See 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the deadline for submission of the rebuttal briefs. See 19 CFR 351.310(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these

preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. In this review, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR, as appropriate.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication 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, as provided for by section 751(a)(2)(C) of the Act: (1) for the above-listed respondents, which have a separate rate, the cash deposit rate will be the company-specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 70.71 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. 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) 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2007.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

[FR Doc. E7-13382 Filed 7-10-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-802]

#### Preliminary Results of Antidumping Duty Changed-Circumstances Review: Gray Portland Cement and Clinker From Mexico

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

**SUMMARY:** In response to a request from an interested party and pursuant to Section II. B.6 of the Agreement between the Office of the United States Trade Representative, the United States Department of Commerce, and Secretaria de Economia on Trade in Mexican Cement (the Agreement) dated March 6, 2006, the Department of Commerce is conducting a changed-circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. The changed-circumstances review covers exports of subject merchandise to the United States during the period October 1, 2006, through December 31, 2006, from one firm, Holcim Apasco, S.A. de C.V. We have preliminarily determined that sales were made below normal value during the changed-circumstances period of review.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** July 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3477 and (202) 482-1690, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 4, 2007, the Department of Commerce (the Department) initiated a changed-circumstances review of the antidumping duty order on gray portland cement and clinker (cement) from Mexico. See *Gray Portland Cement and Clinker From Mexico: Initiation of an Antidumping Duty Changed-Circumstances Review*, 72 FR 328 (January 4, 2007). According to the Agreement, upon request, the Department shall conduct an expedited changed-circumstances review to establish a new estimated duty deposit rate for any Mexican Cement exporter (and its affiliated parties) that meet the following criteria: (a) Had an estimated duty deposit rate under the order on cement; (b) did not receive the new estimated duty deposit rate of three U.S. dollars (\$3.00) per metric ton referenced in Section II.A.4.b of the Agreement; and (c) exported Mexican cement to the United States in the year preceding the effective date or exports Mexican cement to the United States while the Agreement remains in force.

On December 14, 2006, pursuant to section II.B.6 of the Agreement, Holcim Apasco, S.A. de C.V. (Apasco), requested that the Department conduct a changed-circumstances review of certain export sales of the subject merchandise to the United States made by Apasco during the period October through December 2006.

#### Scope of the Order

The products subject to the order include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) item number 2523.29, and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as "other hydraulic cements." Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act), we will verify certain information submitted by Apasco using standard verification procedures, including an examination of relevant sales and

financial records and the selection of original documentation containing relevant information. Upon completion of verification, we will place on the record a copy of our verification report in the Central Records Unit (CRU), Room B-099 of the main Department building. Verification is currently scheduled to begin July 23, 2007.

#### Export Price

Apasco reported export-price (EP) sales. We calculated EP based on the packed, delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

#### Normal Value

##### A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondent'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)(C) of the Act. Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based normal value on home-market sales.

During the period October through December 2006, the respondent sold Type II LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. See section 771(16) of the Act. The respondent sold cement produced as Type II, Type II/III/V, and Type III cement in the home market. We have attempted to match the subject merchandise to identical merchandise sold in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We were able to find home-market sales of identical and similar merchandise to which we could match sales of Type II LA cement sold in the U.S. market.

We have reviewed the information on the record and have determined that Type II cement produced and sold in the home market is the identical match