

Tuberias Procasa S.A. de C.V./Tuberias Procarsa S.A. de C.V., and PYTCO S.A. de C.V.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 41 days after the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the period November 1, 2007, to October 31, 2008.

#### Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 28, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-570-868**

#### Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China

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

**ACTION:** Notice of Final Determination of Circumvention of Antidumping Duty Order

**SUMMARY:** We determine that imports from the People's Republic of China ("PRC") of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on folding metal tables and chairs ("FMTCs") from the PRC.

**EFFECTIVE DATE:** May 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian or Charles Riggle, 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) 482-6412 or (202) 482-0650, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 27, 2008, the Department of Commerce ("Department") published its preliminary affirmative determination that folding metal tables with cross-bars are circumventing the antidumping duty order on FMTCs from the PRC.<sup>1</sup> We invited interested parties to comment on our preliminary results. On November 26, 2008, Meco Corporation ("Meco"), the petitioner in the underlying investigation, Cosco Home and Office Products ("Cosco"),<sup>2</sup> an importer of subject merchandise, and Lifetime Products, Inc. and Lifetime (Xiamen) Plastic Products Ltd. (collectively, "Lifetime"), a PRC producer/exporter of folding metal tables, submitted case briefs.

<sup>1</sup> See *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 73 FR 63684 (October 27, 2008) ("*Preliminary Determination*").

<sup>2</sup> Cosco submitted a revised case brief on January 7, 2009, with all untimely submitted new factual information, as well as all references and arguments based thereupon, redacted.

On January 12, 2009, Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively "Feili"), a PRC producer/exporter of folding metal tables, submitted rebuttal comments. On January 16, 2009, Meco, Cosco, Lifetime, and New-Tec Integration (Xiamen) Co., Ltd. and New-Tec Integration Co., Ltd. (collectively "New-Tec"), a PRC producer/exporter of folding metal tables, submitted rebuttal comments.

#### 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:

- Lawn furniture;
- Trays commonly referred to as "TV trays;"
- Side tables;
- Child-sized tables;
- Portable counter sets consisting of rectangular tables 36" high and matching stools; and, 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:

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

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (“HTSUS”). 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 (collectively, “RPA”), the Department ruled on January 13, 2003, that RPA’s poly-fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

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 because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top): 43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from 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 because these products have all of

the components that constitute a folding metal table as described in the scope.

On July 13, 2005, the Department issued a scope ruling determining that “butterfly” chairs are not within the scope of the antidumping duty order because they do not meet the physical description of merchandise covered by the scope of the order because they do not have cross braces affixed to the front and/or rear legs, and the seat and back is one piece of cloth that is not affixed to the frame with screws, rivets, welds, or any other type of fastener.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs imported by Korhani of America Inc. are within the scope of the antidumping duty order because the wooden seat is padded with foam and covered with fabric or polyvinyl chloride, attached to the tubular steel seat frame with screws, and has cross braces affixed to its legs.

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 because moon chairs have different physical characteristics, different uses, and are advertised differently than chairs covered by the scope of the order.

On October 4, 2007, the Department issued a scope ruling determining that International E-Z Up Inc.’s (“E-Z Up”) Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the order.

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2-in-1 Workbench/Scaffold (“Twofold Workbench/Scaffold”) imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, i.e., the folding mechanisms of the Twofold Workbench/Scaffold are mechanisms that rotate either upward or downward at the sides of the top among three modes with locking devices. In storage mode, the legs can be folded in under either the fiberboard surface or under the scaffold surface. In addition, its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

As a result of this affirmative final determination of circumvention, the Department has determined that folding metal tables with legs affixed with cross-bars enabling the legs to fold in sets are covered by the scope of the antidumping duty order on folding

metal tables and chairs from the PRC. Such tables are distinguishable from banquet tables, which are not subject to the antidumping duty order because, but for the cross-bars located near the table top that connects the legs, enabling the legs to fold in sets, these tables otherwise meet the description of merchandise subject to the order.

### Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, “Final Analysis Memorandum for the Minor Alterations Anti-Circumvention Inquiry of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China” (February 19, 2009) (“Final Analysis Memorandum”), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Final Analysis Memorandum is attached to this notice as an appendix. The Final Analysis Memorandum is a public document and is on file in the Central Records Unit (“CRU”) in room 1117 in the main Department building, and is also accessible on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the memorandum are identical in content.

### Final Ruling

In the case of an allegation of a “minor alteration” claim under section 781(c) of the Tariff Act of 1930, as amended (“the Act”), it is the Department’s practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.<sup>3</sup> Because each anti-circumvention inquiry is highly dependent on the facts on the record, and must be analyzed in light of those specific facts, the Department has historically analyzed several additional criteria to determine

<sup>3</sup> See Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987) (“Senate Finance Committee Report”), which explained that in circumvention inquiries regarding minor alterations, the Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.

if circumvention of the order is taking place.<sup>4</sup>

For this final determination, we continue to rely on the criteria that we considered in making our preliminary determination.<sup>5</sup> Based on our review of the record evidence and our analysis of the comments received, the Department continues to find that imports from the PRC of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meet the description of in-scope merchandise, are circumventing the order and are properly considered to be within the class or kind of merchandise subject to the order on FMTCs from the PRC. For a complete discussion of the Department's analysis, see the Final Analysis Memorandum, dated concurrently with this notice.

As explained in the Final Analysis Memorandum in Comment 2, we determine that the folding metal tables with cross-bars at issue in this case are not expressly excluded from the order. The order expressly excluded banquet tables. No party has argued that these folding metal tables with cross-bars are banquet tables. As a result of our analysis of the overall physical characteristics of the products subject to this inquiry, we find that the PRC producers and exporters produce and export to the United States folding metal tables that match the physical description of folding metal tables in the scope of the FMTCs order except for the presence of cross-bars connecting the legs placed near the table top.<sup>6</sup> But for the addition of these cross-bars, these tables would be within the scope of the order.

There are no significant differences in the expectations of the ultimate users,<sup>7</sup> uses of the merchandise,<sup>8</sup> and channels of marketing between folding metal tables with and without cross-bars.<sup>9</sup> None of the companies, either producers or customers, provided evidence of customer involvement in the design of the tables with cross-bars.<sup>10</sup> As explained in the Final Analysis Memorandum, there are also no

differences in the manner in which the folding metal tables with cross-bars are advertised or displayed compared with folding metal tables without cross-bars.<sup>11</sup> Furthermore, producers of such tables in the PRC acknowledged that the cost of adding cross-bars to tables in the course of production is negligible.<sup>12</sup> Moreover, we find that test results -- purported to demonstrate improvements to the tables as a result of the addition of cross-bars -- do not demonstrate that the addition of cross-bars improved the strength or stability of folding metal tables. Furthermore, although parties alluded to other supposed advantages attributable to the addition of cross-bars, *i.e.*, elimination of pinch points and quicker folding time, the record demonstrates that companies' advertisements for folding metal tables do not indicate that a cross-bar exists, much less that it represents an advantage over tables without cross-bars.<sup>13</sup> Therefore, we do not find that the cross-bars that are located near the table top provide a significant advantage.

As a result of our inquiry, we determine that imports from the PRC of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are circumventing the order and are properly considered to be within the class or kind of merchandise subject to the order on FMTCs from the PRC. See Section 781(c) of the Act.

#### Continuation of Suspension of Liquidation

In accordance with section 351.225(i) of the Department's regulations, for folding metal tables meeting the description of the folding metal tables described in the scope of the FMTCs order except that they have cross-bars connecting the legs, so that the legs fold in sets, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation and to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after June 1, 2007. With a final affirmative determination of circumvention, the Department normally instructs CBP to continue the suspension of liquidation that was directed in the affirmative preliminary determination of

circumvention, pursuant to 19 CFR 351.225(l)(3). However, because doing so in the instant inquiry would include merchandise that entered during a completed review period, we will instruct CBP to continue to suspend liquidation for entries made on or after July 1, 2007, the first day of the only pending administrative review period of this order.

This final determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: April 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

#### APPENDIX

##### List of Comments and Final Analysis Memorandum

*Comment 1:* Whether the Department Should Terminate the Anti-Circumvention Inquiry

*Comment 2:* Whether Folding Metal Tables with Cross-Bars Are Expressly Excluded from the Scope

*Comment 3:* Whether Folding Metal Tables with Cross-Bars Are Significantly Different from the In-Scope Merchandise

*Comment 4:* Whether Folding Metal Tables with Cross-Bars Represent a Significant Improvement over Folding Metal Tables with Independently Folding Legs

*Comment 5:* Whether to Deny Feili's Partial Revocation Request

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#### DEPARTMENT OF COMMERCE

##### National Telecommunications and Information Administration

##### Call for Applications for Commerce Spectrum Management Advisory Committee

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice and Call for Applications.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) is seeking applications from persons interested in serving on the Department of Commerce's Spectrum Management Advisory Committee (CSMAC) for new two-year terms. The CSMAC provides advice to the Assistant Secretary for Communications and Information and

<sup>4</sup> See, e.g., *Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929-31 (October 31, 2000).

<sup>5</sup> See *Preliminary Determination*, 73 FR 63684.

<sup>6</sup> See Final Analysis Memorandum; see also Preliminary Analysis Memorandum for the Minor Alterations Circumvention Inquiry of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China, at 12 (October 20, 2008) ("Preliminary Analysis Memo").

<sup>7</sup> See *id.*, at 13.

<sup>8</sup> See *id.*, at 15.

<sup>9</sup> See *id.*, at 16.

<sup>10</sup> See *id.*, at 21.

<sup>11</sup> See Final Analysis Memorandum, at 18-20; see also Preliminary Analysis Memorandum, at 18-19.

<sup>12</sup> See Preliminary Analysis Memorandum, at 17.

<sup>13</sup> See Final Analysis Memo at 13-18; see also Preliminary Analysis Memorandum, at 24.