



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

A-570-891  
Admin Review 2009-10  
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MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the  
Administrative Review of Hand Trucks and Certain Parts Thereof  
from the People's Republic of China

SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the final results of the 2009-10 administrative review of the antidumping duty order covering hand trucks and certain parts thereof from the People's Republic of China (PRC). As a result of our analysis, we have made changes from the preliminary results in the margin calculations. We recommend that you approve the positions described in the "Discussion of Issues" section of this Issues and Decision Memorandum.

Listed below is the complete list of the issues in this administrative review from which we received comments from interested parties.

I. List of Comments

- Comment 1: Whether to Value Certain Inputs Using Purchases from Market-Economy Suppliers
- Comment 2: Selection of Surrogate Financial Statements
- Comment 3: Rejecting Certain Separate Rate Applications

II. Background

On January 10, 2012, the Department published the preliminary results of this administrative review of antidumping duty order on hand trucks and certain parts thereof from the PRC. See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 77 FR 1464 (January 10, 2012) (Preliminary Results). New-Tec Integration (Xiamen) Co., Ltd. (New-Tec) was the only company for which a review was requested and the only company we analyzed in this review.



We received case briefs from Gleason Industrial Products, Inc. and Precision Products, Inc. (petitioners) and Welcom Products and Yangjiang Shunhe Industrial Co., Ltd. (Shunhe), and rebuttal briefs from New-Tec and Cosco Home and Office Products, Inc. (Cosco), a U.S. importer.

### III. Discussion of Interested Party Comments

#### Comment 1: Whether to Value Certain Inputs Using Purchases from Market-Economy Suppliers

Petitioners argue that we should not accept New-Tec's reported market economy (ME) purchases and should instead calculate normal value solely using the Department's standard methodology for surrogate values. Petitioners argue that New-Tec failed to submit evidence from ME producers confirming that its purported ME inputs were truly manufactured in an ME country despite the Department requesting documentation three times. New-Tec's response to such requests was that the producers and suppliers refused to provide such documentation to them or to the Department. The petitioners believe New-Tec's failure to produce the requested documents constitutes a failure by New-Tec to cooperate to the best of its ability to support its claims of ME-produced inputs.

Petitioners further argue the certificates of origin that New-Tec provided from its putative ME suppliers do not confirm that the purchased inputs actually originated in ME countries. Furthermore, petitioners argue that other evidence of possible origin (such as certified statements from suppliers) does not overcome New-Tec's failure to provide the Department standard manufacturer and supplier country-of-origin documentation. Petitioners claim the presence of supplier invoices and supplier-issued certificates of origin does not substitute for documentation from the actual manufacturers. Petitioners further state the import/export data submitted by New-Tec in support of its ME purchase claims is inconclusive because they do not prove that New Tec was responsible for the imports. Finally, the petitioners argue that the burden of proof that inputs were manufactured in an ME country, as opposed to a non-market economy (NME) country rests with the respondents and not with petitioners.

New-Tec argues that the Department should continue to use New-Tec's ME purchases to value inputs. The company argues that it provided substantial information supporting its ME purchases, such as copies of suppliers' sales orders, packing lists, shipping documentation, customs documentation from the shipping and receiving port, etc. New-Tec argues it has been highly cooperative in responding to the best of its ability to all requests for documentation regarding market-economy purchases. New-Tec further argues that it met the evidentiary requirements for use of market economy-sourced inputs for surrogate values. New-Tec states the Department should continue to apply 19 CFR 351.408(c)(1), which requires the respondent to provide proof that it purchased inputs from a market-economy supplier with market-economy currency. New-Tec claims it has provided evidence on the record that the ME inputs were purchased from an ME supplier using ME currency and that it met the evidentiary requirements (e.g., New-Tec points out it submitted copies of all documents related to transactions, remittance payments, bank statements, etc.). Thus, New-Tec argues it has gone above the traditional

threshold for establishing market-economy origin from its suppliers and has tried to the best of its ability to establish that its inputs were produced by ME manufacturers. New-Tec further argues that petitioners failed to meet the necessary evidentiary burden to rebut the presumption to use ME purchases. Therefore, New-Tec argues, the Department should continue to use New-Tec's ME purchase prices to value material inputs in the Final Results.

Finally, New-Tec argues the Department should use the values provided by New-Tec's market-economy inputs because such values have been accepted in prior reviews. To support its assertion, New-Tec cites the previous review, in which the Department accepted New-Tec's market-economy inputs. See Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part of Antidumping Administrative Review, 76 FR 36083 (June 21, 2011) (Hand Trucks 2008-2009 Final Results). New-Tec argues that nothing has changed in this segment of the proceeding to factually distinguish it from the prior proceeding. New-Tec notes it has submitted voluminous quantities of information regarding its market economy inputs and argues that petitioners have failed to rebut New-Tec's evidence. Therefore, New-Tec argues the Department should continue to use New-Tec's market economy purchases for the Final Results.

In rebuttal, Cosco concurs with New-Tec's argument.

#### Department's Position:

In order for the Department to use reported ME prices, the inputs at issue must be manufactured in an ME country, as well as having been purchased from an ME supplier and paid for in ME currency. Our regulations state, "where a factor is purchased from a market economy supplier and paid for in a market economy currency, {the Department} normally will use the price paid to the market economy supplier." 19 CFR 351.408(c)(1); see also Antidumping Duties: Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997). Furthermore, "{w}e interpret the preamble to indicate that the regulation is applicable to those inputs which were produced in a market economy. Given this, the regulation does not apply to inputs that were produced in a NME, as is the situation here." See Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 34125 (June 18, 2004) (Carrier Bags from the PRC) and accompanying Issues and Decision Memorandum at Comment 4.

Where we have addressed this issue in past cases, we have consistently required that inputs be manufactured in an ME country, as well as purchased from an ME supplier and paid for in an ME currency, in order for us to value the input using the purchase price. See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium and Nitrided Vanadium from the Russian Federation, 60 FR 27957, 27962 (May 26, 1995) ("In NME proceedings, our consistent methodology has been to determine whether a good or service obtained through a market economy transaction is, in fact, sourced from a market economy rather than merely purchased in it") and Folding Metal Tables and Chairs from the PRC; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 2 ("The Department does not accept ME purchase prices when the input in question was produced within an NME.").

Our basis for this policy is explained in Carrier Bags from the PRC. First, the prices and costs of inputs manufactured by an NME producer, even if purchased from an ME trading company, are subject to the distortions inherent in an economy not controlled by market forces. Second, were we to use the prices of inputs that were produced in an NME country, our methodology for valuing the factors of production would become easily open to manipulation. See Carrier Bags from the PRC, and accompanying Issues and Decision Memorandum at Comment 4.

Addressing the petitioner's argument regarding the obligation of proof for ME inputs, the Department's position is that it is the responsibility of respondents to place on the record information that is accurate and appropriate. The Department also has a rebuttable presumption that ME input prices are the best available information unless case-specific facts provide adequate grounds to rebut the Department's presumption (e.g., the inputs are produced in an NME country). See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review, and Intent To Rescind in Part, 77 FR 26496, 26503-26504 (May 4, 2012); Wooden Bedroom Furniture from the People's Republic of China, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 32. In this case, record evidence suggests that New-Tec appears to have sought to obtain to the best of its ability the requested information from unaffiliated suppliers and manufacturers. See New-Tec's September 9, 2011, submission at 11; see also New-Tec's December 5, 2011, submission at 2. Where outside parties would not provide the requested documentation to New-Tec or to the Department, New-Tec certified that it attempted to contact these parties and that they reportedly gave New-Tec a variety of reasons (if any) for not giving New-Tec the requested information. See New-Tec's December 5, 2011, submission at 2. As these outside parties are not affiliated with New-Tec and are not respondents in this case, they are not required to provide this information. However, the record contains documented attempts by New-Tec to obtain this information and, where it was able, New-Tec has placed on the record the necessary information. Therefore, the Department does not find the lack of participation from New-Tec's suppliers or the input manufacturers as adequate grounds to dismiss entirely New-Tec's claimed ME purchase prices.

Turning to the specific facts of this case, we note as an initial matter that there is no record evidence that any of the inputs at issue were manufactured in an NME.<sup>1</sup> More importantly, we believe the record of this review establishes the country of manufacture for most of the ME inputs. Specifically, the record of this review contains certificates-of-origin from the suppliers of inputs or from a credible independent agency (i.e., an ME-country's Chamber of Commerce). See New-Tec's June 16, 2011, submission at Exhibit 16. Also, as described above, New-Tec provided voluminous documentation for all of its market economy purchases, most of which we

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<sup>1</sup> See 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 Decision Memorandum at Comment 1 ("Meco cites no record evidence indicating that... (3) Feili and/or New-Tec purchased from market-economy suppliers materials that were actually produced in NME countries") and Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 76 FR 15295 (March 21, 2011), and accompanying Decision Memorandum at Comment 7 ("There is no evidence on the record suggesting that Since Hardware's claimed purchases of cartons were of non-market origin.")

have accepted as evidence that these inputs were purchased in a ME with ME currency. See New-Tec's September 9, 2011 submission at Exhibit 11. Thus, the Department has determined that New-Tec has provided ample evidence that some inputs were indeed purchased from ME suppliers with ME currencies. However, we did not find certificate-of-origin documents or similar types of documents supporting country-of-origin for all market economy purchases that matched New-Tec's reported volumes of imported ME purchases. The Department finds that without these documents as evidentiary support of the input being produced in an ME, we cannot consider these to be valid market economy purchases. As a result, certain of the inputs now have a volume of ME purchases below the 33 percent threshold required for ME treatment and results in the Department having to adjust input prices to one of the methodologies described below. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717 (October 19, 2006) (Antidumping Methodologies: Market Economy Inputs).

Furthermore, in the previous segment of this proceeding the Department accepted a statement of "country of origin" or "made in" on a commercial invoice when it was presented in conjunction with a certificate-of-origin as proof of an item being produced in a market economy. See Hand Trucks 2008-2009 Final Results 76 FR 36083, 36086 and Comment 1. In this review, there were instances where a commercial invoice listed a ME country of origin (e.g., "Made in Taiwan"), but no matching certificate-of-origin document was provided. See New-Tec's September 9, 2011, submission at Exhibits 10 and 11. Therefore, in these instances, the Department has not accepted the commercial invoice alone as sufficient evidence to find that the input was produced in a market economy. We note that in Carrier Bags from the PRC the case record evidence demonstrated the inputs at issue were actually manufactured in the PRC.

Given our weighing of the evidence described above, certain inputs continue to meet the 33 percent threshold (i.e., powder coating, gaskets, screws, rivets, casters, rubber wheels, and corrugated board) and other inputs do not (i.e., hot rolled steel coil, polypropylene resin, slide bar, and primary aluminum ingots). Thus, we have adopted the following methodology for this review, consistent with our past practice: where the record establishes that more than 33 percent of the volume of the input was manufactured in an ME country and the input otherwise qualifies for treatment as an ME purchase, we valued the input using the ME price; where the volume of an input manufactured in an ME country was less than thirty-three percent of the total purchases of the input, or the record establishes the country of manufacture for less than 33 percent of an input, we valued the input using a weighted-average of the volume demonstrated to be manufactured in an ME country, valued using the ME price, and the volume manufactured in an NME, valued using a surrogate value. See (Antidumping Methodologies: Market Economy Inputs), 71 FR 61716, 61717 (October 19, 2006). As a result, we are relying on New-Tec's reported ME purchase prices to value powder coating, gaskets, screws, rivets, casters, rubber wheels, and corrugated board, and a weighted average of purchase price and surrogate value for hot rolled steel coil, polypropylene resin, slide bar, and primary aluminum ingots. Finally, for cold-rolled steel, we are basing the value of the input exclusively on a surrogate value.

The Department notes that, although it has determined in this review that it is reasonable to use New-Tec's reported ME purchases, as described above, in future segments of this proceeding,

depending on the facts of the case, the Department may request additional information from respondents regarding their market economy purchases, e.g., documentation of origin from the actual producers.

Comment 2: Selection of Surrogate Financial Statements

Petitioners request that the Department use the financial statements for Office Thai Online Co., Ltd. (Thai Trolley) and Jenbunjerd Co., Ltd. (Jenbunjerd). Petitioners state that evidence on the record shows Thai Trolley and Jenbunjerd manufacture hand trucks. In addition, petitioners claim, both statements are publicly available because they were obtained from the Government of Thailand's Office of Business Development, and are contemporaneous with the period of review (POR). Therefore, the financial statements from Thai Trolley and Jenbunjerd should be used in surrogate financial ratios.

Petitioners also argue the Department should not use Prohandlift's financial statements, as it did in the Preliminary Results. Information on the record demonstrates that this company does not produce hand trucks, but hydraulic pallet trucks, which are not covered under the order. Petitioners claim the Department generally declines to calculate surrogate financial ratios derived from financial statements of companies that do not produce identical merchandise. See Hand Trucks and Certain Parts Thereof from the People's Republic of China Final Results in the Administrative Review, Issues and Decision Memorandum at 13 (June 2011). Petitioners argue that since there are financial statements for two companies that produce identical merchandise (i.e., Thai Trolley and Jenbunjerd), the Department should reject Prohandlift's financial statement.

New-Tec counters that the Department should reject Thai Trolley's and Jenbunjerd's financial statements. New-Tec argues that substantial record evidence calls into question whether Thai Trolley and Jenbunjerd manufacture the goods that they advertise on their websites. New-Tec points out that Thai Trolley states on its website that its business operations consist of "manufacturing, retail and wholesale." In addition, Thai Trolley's financial statement speaks of "revenue from services" and "cost of services," but does not indicate that it has revenue from sale of goods or costs of manufacture that one would see if it were a producer of merchandise. See Petitioners January 30, 2012 submission at Attachment 1. According to New-Tec, Jenbunjerd lists as its main business distribution of plastic containers, hand trucks, forklifts, and machinery both produced by itself and others. Furthermore, New-Tec argues that because Thai Trolley and Jenbunjerd sell a wide-variety of merchandise, not just hand trucks, their financial statements are less suitable than other financial statements on the record.

New-Tec urges the Department to continue using Prohandlift's financial statements. The company argues that Prohandlift produces and sells comparable merchandise. New-Tec states the Department prefers to use financial statements of companies that more closely correspond to the production experience of the respondents subject to review. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decisions Memorandum at 13. This is because, New-Tec avers, the Department has stated a

preference for choosing surrogate financial data that “better reflects the overall experience of producers of comparable merchandise in a surrogate country.” See id.

Cosco joins in arguing that the Department should not use Thai Trolley’s and Jenbunjerd’s financial statements. Cosco contends Thai Trolley’s financial statement is unusable because it lacks specificity and the company’s operations are not similar to New-Tec’s operation. Cosco also contends Jenbunjerd is a reseller, not a manufacturer. Therefore, Cosco asserts that neither of these proposed financial statements constitutes an appropriate surrogate choice for financial ratios.

Cosco also argues that the Department should continue to use Prohandlift’s financial statement. Prohandlift’s product line is, Cosco asserts, much narrower, and generally similar to hand trucks produced and sold by New-Tec. Additionally, Cosco avers, the quality of data in Prohandlift’s financial statement is superior in that it is sufficiently detailed to allow the Department to calculate accurate financial ratios.

#### Department’s Position:

The Department agrees with petitioners, in part. Pursuant to section 773(c) of the Tariff Act of 1930, as amended (the Act), the Department values the factors of production using the “best available information” from a market economy country. For the surrogate financial ratios, the regulations state that the Department “normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.” See 19 CFR 351.408(c)(4). In choosing surrogate financial ratios, it is the Department’s practice to use data from market economy surrogate companies in the primary surrogate country based on the “specificity, contemporaneity, and quality of the data.” See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

We agree that both Thai Trolley’s and Jenbunjerd’s financial statements are publicly available and contemporaneous. See Petitioner’s January 30, 2012, submission. We also agree that evidence on the record shows that Thai Trolley and Jenbunjerd produce hand trucks that we consider to be identical merchandise, as well as comparable merchandise. See id. We disagree with New-Tec’s and Cosco’s arguments that we should not use Thai Trolley’s and Jenbunjerd’s financial statements because the companies are not producers of hand trucks or because they do not solely produce hand trucks. Record evidence shows that both companies do, in fact, produce hand trucks. See Gleason’s January 30, 2012, Surrogate Value Submission at Attachments 1 (Thai Trolley) and 2 (Jenbunjerd). Therefore, we have used both Thai Trolley’s and Jenbunjerd’s financial statements in calculating surrogate financial ratios for these final results.

We disagree, however, with petitioners’ suggestion that Prohandlift’s financial statement should be rejected out of hand simply because it does not produce identical merchandise. We agree in principle with New-Tec and Cosco that the regulations provide for consideration of comparable or identical merchandise in order for a producer’s financial statement to qualify as an appropriate

source for surrogate financial ratios. See 19 CFR 351.408(c)(4). The regulations do not require that the surrogate financial ratio be derived from the financial statement of a company that produces identical merchandise.

However, in this case, because we have found that Thai Trolley and Jenbunjerd produce identical merchandise, and Prohandlift only produces comparable merchandise, the merchandise that Thai Trolley and Jenbunjerd produce is more specific to New-Tec's exports of hand trucks subject to the order, and therefore the best available information. For this reason we have determined to use only Thai Trolley and Jenbunjerd's financial statements in these final results for purposes of calculating financial ratios. Doing so (rather than using a combination of all three financial statements) is consistent with our general practice of preferring financial statements of identical producers over companies that produce comparable merchandise. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012), and accompanying Issues and Decision Memorandum at Comment 2. If we were to use a combination of Thai Trolley, Jenbunjerd, and Prohandlift, we would dilute the selected surrogate financial statement by including comparable merchandise.

### Comment 3: Rejecting Certain Separate Rate Applications

Although no review was requested for WelCom or Shunhe, both companies submitted unsolicited separate rate applications well after the expiration of the 60-day deadline for submitting such applications. These filings were rejected as improper and untimely. See Preliminary Results, 77 FR 1464, at 1466 ("Because no request for review of Shunhe and Welcom was submitted by an interested party, we did not initiate an administrative review with regard to either company's shipments of subject merchandise. Accordingly, we preliminarily determine that neither firm is eligible to apply for a separate-rate in this review.").

Welcom and Shunhe submitted a joint case brief arguing the Department was unreasonable in rejecting their separate rate applications (SRAs). They state the Department should have accepted both SRAs because 1) they were filed in a timely manner after the final scope ruling (see below), 2) accepting them would not be unduly burdensome, and 3) the rejection of the SRAs results in a substantial hardship and an inaccurate dumping margin for Welcom and Shunhe.

Welcom and Shunhe state they were not subject to the Order until several months after the Initiation Notice. This assumption was based, the companies aver, on prior Department scope rulings finding Shunhe's hand trucks to be outside the scope of the Order. Welcom and Shunhe proceeded assuming the Department would likewise find its latest iteration of WelCom's "Magna Cart" line of hand trucks outside the scope of the Order. However, WelCom and Shunhe relate, on September 6, 2011, the Department ruled that WelCom's MCK Magna Cart is subject to the hand truck order. This ruling was, WelCom and Shunhe insist, the first notice they had of possible antidumping duty liabilities. WelCom and Shunhe contend that because they filed their respective SRAs within 60 days of the scope ruling, the filings should be considered timely because this is the time frame the Department allows exporters to file SRAs after

initiation. WelCom and Shunhe liken their plight to that of respondent Amanda Foods in Grobest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States, No. 10-00238, Slip Op. 12-9 (Ct. Int'l Trade 2012) (Grobest). According to WelCom and Shunhe, Grobest stands for the proposition that the Department must accept untimely separate rate applications.

Welcom and Shunhe state that if the Department were to accept their SRAs it would not be unduly burdensome on the Department because the Department is currently reviewing only one mandatory respondent, New-Tec. Welcom and Shunhe assert the Department is already familiar with New-Tec from previous reviews and there are no other separate rate applicants for this review. Also, the Department had already extended the preliminary results by 120 days by the time they filed their SRAs.

Finally, Welcom and Shunhe argue that rejecting the SRAs results in substantial hardship and an inaccurate dumping margin for them, because of the disproportionate dumping margin that could result.

Petitioners argue that Welcom and Shunhe failed to preserve their legal right for an administrative review of the 2009-2010 period. Petitioners note the Department had initiated the formal scope ruling on October 27, 2010. Petitioners further note the Department gave public notice of opportunity to request an administrative review of the hand trucks order, with a deadline of December 31, 2010, which was well past the scope inquiry initiation. They further state that Welcom and Shunhe erroneously presumed the Department would exclude their product from the scope of the order and failed to take into account the possibility that the hand trucks they shipped during the POR may not meet the criteria for exclusion from the order. Both Welcom and Shunhe received adequate notice through the Department's Federal Register notice of their legal right to request a review of these shipments, but both failed to act with due diligence to preserve that right. Therefore, the Department should continue to deny Welcom's and Shunhe's untimely request.

Petitioners further argue that the rules governing scope inquiries otherwise do not grant Welcom and Shunhe a special right to a separate rate. Petitioners state that the Department's actions in this matter are not dictated by the rules governing administrative reviews, but under the guidelines pertaining to scope inquiries. In this instance the Department is not required by statute or by regulation to consider in an ongoing review sales of a product included within the scope of an order as the result of a recent scope ruling. Furthermore, Grobest involved a party – Amanda Foods – for which a review had already been timely requested and initiated, and thus is not at all similar to the instant review. Therefore, under its discretion, the Department should continue to reject the separate applications.

Neither New-Tec nor Cosco commented on this issue.

#### Department's Position:

Section 19 CFR 351.213 of the Department's regulations instruct that the time for requesting a review is by the last day of the anniversary month of the order. The Department received a

timely request for review of New-Tec Integration (Xiamen) Co., Ltd. Neither Shunhe nor WelCom requested a review, nor did any other party request a review of Shunhe or WelCom. Thus, the Department's initiation notice identified New-Tec Integration (Xiamen) Co., Ltd. as the only company for which a review had been requested. See Initiation Notice, 76 FR 5137 (Jan. 28, 2011).

Shunhe and WelCom did not request a review, but merely assumed that their merchandise would not be covered by the order. They requested a scope ruling, presuming their merchandise was not subject to the Order. When the scope ruling concluded otherwise, the companies subsequently submitted separate rate applications. However, because no review had been requested for either company, they were not entitled to apply for separate rates. The pendency of their scope ruling request had no bearing on their ability to request a review at the time specified in 19 CFR 351.213, nor does the outcome of that scope ruling create a new alternative means of recovering that forgone opportunity to request review. The separate rate application is not a substitute for requesting a review; to the contrary, the separate rate application is a filing available to those companies for which a review has been requested. See Initiation Notice, 76 FR at 5137 (“All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification.... For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested . . . to certify that they continue to meet the criteria for obtaining a separate rate” or “to demonstrate eligibility for a separate rate in this proceeding”).

Moreover, to the extent WelCom and Shunhe intimate that they were somehow prejudiced by not knowing whether their merchandise would be subject to the order, the scope ruling they requested sought to determine whether a product that was clearly a hand truck met the narrow exception for certain kinds of hand trucks.<sup>2</sup> Thus, it was imprudent to presume that none of their merchandise would be subject to the order.

As petitioners correctly observe, the court's decision in Grobest is distinguishable from this case for the primary reason that a timely review request for Amanda Foods had indeed been made – the only issue in that case was whether their *subsequent* untimely separate rates application should have been accepted. See Initiation Notice for Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 74 FR 13178, 13179 (Mar. 26, 2009); see also 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, 75 FR 12206, 12207 (Mar. 15, 2010). Further, to the extent WelCom and Shunhe argue the balance of hardships weighs in favor of accepting their separate rate applications, the factors laid out in Grobest do not apply to this situation because, unlike Amanda Foods, WelCom and Shunhe simply failed to request a review, despite proper public notice of the opportunity to do so. Thus, we are not considering the untimely separate rate applications.

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<sup>2</sup> See Hand Trucks and Certain Parts Thereof from the People's Republic of China (PRC): Final Scope Ruling - WelCom Products (MC2 Magna Cart, MCI Magna Cart, and MCK Magna Cart), A-570-891, at 1 (Sept. 6, 2011).

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review and the final margin in the Federal Register.

Agree  Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

July 9, 2010  
Date