

December 1, 2006

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2004-2005  
Administrative Review of Folding Metal Tables and Chairs from  
the People's Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). The period of review covers June 1, 2004, through May 31, 2005. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial errors, in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

- Comment 1: Market-Economy Purchases
- Comment 2: Verification
- Comment 3: Common-Leg Tables
- Comment 4: Inclusion of Zero-Priced Transactions in the Margin Analysis
- Comment 5a: Treatment of Zero-Priced Transactions as Indirect Selling Expenses
- Comment 5b: Calculation of Freight Expenses for Zero-Priced Transactions on a Shipment-Specific Basis
- Comment 5c: Zero-Priced Merchandise That Was Not Subsequently Sold for Consideration
- Comment 5d: Calculation of the Importer-Specific Assessment Rates
- Comment 5e: Negative Values Derived from the Calculation of the Zero-Priced Transactions
- Comment 6: Material Inputs Provided Free of Charge
- Comment 7: Additional Charges for Origin Receiving Charge ("ORC") and Automated Manifest System ("AMS")
- Comment 8: Scrap Offset
- Comment 9: The Surrogate Value for Polyester Fabric with Down
- Comment 10: The Inflation Factor for Water



- We excluded the zero-priced transactions for all of Feili's and New-Tec's customers that otherwise made no purchases of the same merchandise for consideration during the POR.
- We applied Feili's by-product offset to direct material cost rather than to normal value.

### **Comment 1: Market-Economy Purchases**

Meco argues that the Department should use Feili's and New-Tec's market-economy prices for inputs only for the proportion of the inputs actually purchased from a market-economy supplier, and only when the proportion exceeds a certain level. Moreover, Meco asserts that the market-economy prices should only be used if the Department has first determined that the prices are representative of what the market-economy suppliers normally charge.

As an initial matter, Meco argues that to use market-economy purchase prices for the entire value of an input where some portion of the input was purchased in the PRC fails to account for distortions inherent in the prices for PRC-produced inputs. According to Meco, the statute recognizes that the presence of government controls on various aspects of a non-market economy ("NME") renders invalid the Department's normal method of calculating production costs. Meco states that the Department therefore uses surrogate values to value the respondent's FOPs, except where the respondent has purchased an input from a market-economy country. Meco maintains that the Department's current methodology does not result in a normal value calculation intended by the statute, and suggests that this review presents a perfect opportunity for the Department to implement a change in methodology, and submits that the Department itself has expressed concerns that its current methodology does not accurately reflect a company's costs for an input, and that it is prone to manipulation where a company sources only a portion of an input from a market-economy supplier.<sup>3</sup>

For the final results, Meco proposes that the Department (1) use surrogate values for inputs where the volume of market-economy purchases is less than 33 percent of total purchases for that input; and (2) weight average the market-economy prices with surrogate values for the proportion of the inputs purchased in China where market-economy purchases exceed the 33 percent threshold, and to the extent that the Department determines them to be representative prices.

Furthermore, Meco contends that to weight average market-economy purchases with surrogate values is especially appropriate in the instant review, due to the fact that the Department has

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<sup>3</sup>Meco cites *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 71 FR 14176 (March 21, 2006); *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 70 FR 46816 (August 11, 2005); and *Market Economy Inputs Practice in Antidumping Proceedings Involving Non-Market Economy Countries*, 70 FR 30418 (May 26, 2005), (where the Department solicited comments regarding proposed changes to its current methodology).

never conducted an on-site verification of New Tec, and has not verified Feili since the original investigation. Thus, Mecos claims that the Department has no assurance that the respondents are not affiliated with their respective suppliers, that any inputs purchased from trading companies were actually produced in market-economy countries, or that the inputs were actually used in the production of subject merchandise. Mecos holds that given this set of circumstances, it is inappropriate to assume that the market-economy prices paid represent the best available information with which to value the inputs.

Feili recognizes that the Department's treatment of market-economy purchases in NME proceedings is currently under review. However, according to Feili, even if the Department changes its methodology in this regard, it is the Department's current practice to apply such changes in methodology only to cases that are initiated after the policy change has been announced, in order to afford the public an opportunity to comment, to provide fair public notice, and to ensure due process. Thus, Feili contends that the Department should make no changes to its valuation methodology for the final results.

Furthermore, Feili maintains that there is no evidence on the record to suggest that its reported market-economy purchase prices are either aberrational or unrepresentative. Therefore, for the final results, Feili argues that the Department should continue to value material inputs using the market-economy purchase prices reported in Feili's original Section D questionnaire response.

New-Tec contends that Mecos's argument with respect to the use of market-economy purchase prices in the valuation of material inputs that are sourced from market-economy and NME suppliers is contrary to the Department's regulations and current practice. New-Tec maintains that section 351.408(c)(1) of the Department's regulations states that "where a portion of the input is purchased from a market-economy supplier and the remainder from a non-market-economy supplier, the Department will normally use the price paid for the inputs sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy inputs as a share of total purchases from all sources is 'meaningful.'"

New-Tec claims that of the inputs that it purchased from both market-economy and NME suppliers, it obtained the majority from market-economy suppliers and, as such, that its market-economy purchases constitute "meaningful" amounts in accord with section 351.408(c)(1) of the Department's regulations. Therefore, New Tec submits, the Department's finding in the *Preliminary Results* with respect to New-Tec's market-economy-purchased inputs is correct and consistent with the Department's regulations.<sup>4</sup>

New Tec disagrees with Mecos's contention that its market-economy purchases are not the best available information with which to value inputs purchases from both market-economy and NME suppliers. New-Tec claims that in the previous review, the Department stated that it typically

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<sup>4</sup>New-Tec's Rebuttal Brief cites section 451.408(c)(1) of the Department's regulations when, in fact, the relevant provision is section 351.408(c)(1).

considers market-economy purchases made from an unaffiliated supplier to be acceptable market-economy purchases absent evidence to the contrary.<sup>5</sup> Further, New-Tec argues that Mecco has not provided any evidence showing that New-Tec's reported prices are not representative of actual market-economy prices.

Finally, New-Tec argues that because the Department's proposed changes to the market-economy input methodology have not been finalized, the Department should not apply the new methodology to this review even if a change of methodology were to be made prior to the final results. New-Tec claims that any changes to the methodology at this stage of the proceeding would jeopardize the opportunity for all interested parties to comment on the Department's calculations.

**Department's Position:** Section 351.408(c)(1) of the Department's regulations states that "where a portion of the input is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier." In practice, the Department uses the price paid for the inputs sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy inputs as a share of total purchases from all sources is "meaningful."<sup>6</sup> The Department has determined on a case-by-case basis whether the volume of market-economy inputs was meaningful.

Section IV of the Department's Section D questionnaire requires respondents to report for each raw material the percentage purchased from a market-economy country and the percentage purchased from an NME . Both Feili and New-Tec reported the percentages of each raw material purchased from market-economy countries and from NME suppliers.<sup>7</sup> Based on this information we determined that in every instance where Feili and New Tec purchased inputs from both market-economy and NME suppliers, the percentage purchased from market-economy suppliers was meaningful. Therefore, in accordance with section 351.408(c)(1) of our regulations, we valued the relevant inputs using the actual market-economy prices paid.

Mecco's allegations concerning Feili's and New-Tec's market-economy purchase prices were directed toward the Department's treatment of market-economy purchases in general, rather than toward the validity of any specific purchase that Feili or New-Tec reported. Mecco cited no record evidence indicating that: 1) any of Feili's and/or New-Tec's market-economy purchase

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<sup>5</sup>*Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2906 (January 18, 2006) ("FMTCs I"), and accompanying Issues and Decisions Memorandum, at Comment 2.

<sup>6</sup>See e.g., *FMTCs II*, at Comment 2

<sup>7</sup>See Feili's Section D responses at Appendix VI; See also New-Tec's section D response at exhibit 9 and its May 18, 2006, Third Supplemental Response Exhibit 11.

prices were aberrant; 2) Feili and/or New-Tec were affiliated with any of their suppliers; 3) Feili and/or New-Tec purchased from market-economy suppliers materials that were actually produced in NME countries; or that 4) Feili and/or New-Tec did not actually use the materials purchased from market-economy suppliers to produce the subject merchandise during the POR.

The Department examined the information on the record and issued five supplemental questionnaires to Feili and three to New-Tec.<sup>8</sup> Feili and New-Tec provided all of the information requested by the Department. The Department analyzed that information. Given the authority provided in section 351.408(c)(1) of the Department's regulations to value material inputs using the respondent's actual market-economy purchase prices, and the lack of a specific allegation concerning the validity of those prices, we determined that the broad analytical tests that Meco recommended were not warranted.

On October 19, 2006, the Department published a change in its policy concerning the treatment of the valuation of materials which are sourced from market-economy and non-market-economy suppliers.<sup>9</sup> Specifically, the Department instituted "a rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period."<sup>10</sup> The Department's guidelines also explained that "unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the entire input."<sup>11</sup> The Department also explained that:

{W}hen the volume of an NME firm's purchases from market economy suppliers as a percentage of its total volume of purchases during the period of review is below 33 percent, but where these purchases are otherwise valid and meet the Department's existing conditions (described in the *Background* section above), the Department will weight-average the weighted-average market economy purchase price with an appropriate surrogate value according to their respective

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<sup>8</sup>See the supplemental questionnaires to Feili of November 29, 2005, February 7, 2006, March 22, 2006, May 18, 2006, and June 7, 2006; and the supplemental questionnaires to New-Tec of November 8, 2005, March 15, 2006, and May 2, 2006.

<sup>9</sup>*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback: and Request for Comments* 71 FR 61716, 61717-18 (October 19, 2006)

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*, 71 FR at 61718.

shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>12</sup>

The Department stated that this policy change “will take effect for all segments of NME proceedings that are initiated after publication of this notice in the Federal Register.”<sup>13</sup> Thus, we have not adopted Mecos suggestion that we change our methodology for this review and, for the final results of review, we have continued to use the actual reported market-economy price to value the factors which Feili and New-Tec purchased from both market-economy and NME suppliers.

## **Comment 2: Verification**

Meco contends that the Department should conduct a verification of respondents before issuing the final results of this review. Mecos maintains that section 351.307(b)(iv) of the Departments regulations requires that the Department verify factual information on which it relies in the final results of an administrative review where good cause for verification exists. Mecos further contends that good cause exists to verify both Feili and New-Tec.

First, Mecos contends that, despite its request for verification during the previous review, the Department did not verify New-Tec in that review. Thus, Mecos contends that the Department has never determined whether New-Tecs submissions are complete and accurate. Mecos also notes that the Department has not verified Feili since the original investigation. Mecos argues that the Departments numerous supplemental questionnaires to both New-Tec and Feili indicate the presence of ongoing problems with obtaining sufficient and accurate data from these companies. Thus, Mecos argues that the reliability of Feilis and New-Tecs information is in question.

Second, Mecos claims that both Feili and New-Tec reported that they purchased many of the material inputs used in the production of subject merchandise from market-economy suppliers and paid for them in market-economy currencies. Thus, Mecos argues that the Department should verify whether Feilis and New-Tecs purchases of these inputs were *bona fide* arms-length transactions. Mecos further asserts that the Department should also conduct verification to determine whether there are any potential affiliation issues with respect to relationships, control, or the ability to control between Feili and New-Tec and their respective market-economy suppliers.

Finally, Mecos contends that since Feili and New-Tec produce both subject and non-subject merchandise in the same factories, verification is the only means by which the Department can ensure that the type of input and reported volumes correspond with the inputs and volumes actually used in the production of subject merchandise.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, 71 FR at 61719.

Feili argues that good cause to conduct a verification of its questionnaire responses does not exist because: (1) the supplemental questionnaires issued to Feili in this proceeding were not extraordinary in either number or substance and the Department has never questioned the accuracy of Feili's responses; (2) Feili provided voluminous information and documentation regarding its market-economy raw material purchases during the POR; (3) the Department's regulations do not require that it conduct an on-site verification; and (4) the Department's personnel and resource constraints suggest that the Department currently does not have the resources available to conduct a last-minute on-site verification in this proceeding.

Feili contends that many of the questions in the supplemental questionnaires were less a product of the quality of the data and information provided in the questionnaire responses than they were a result of a newly assigned analyst with new questions that previously had not been posed. Feili asserts that verification is not necessary because the Department's supplemental questionnaires have been standard inquiries typical of supplemental questionnaires issued in other antidumping proceedings.

Feili further argues that, throughout this proceeding, it has provided the Department with an extraordinary amount of data and documentation to support the company's claim that it purchased a significant share of its key raw material inputs from market-economy suppliers and paid for the purchases in a market-economy currency. Therefore, Feili contends that it is not necessary for the Department to verify the data underlying Feili's market-economy purchases. Feili maintains that the Department has given no indication to Feili or its counsel that the Department is in any way dissatisfied with the quality or completeness of Feili's questionnaire responses.

Finally, Feili states that in another proceeding, high-level officials explained that the Department is severely constrained by personnel and budget limitations and has been forced to limit the number of respondents in administrative reviews and the number of overseas verifications. Thus, Feili contends that the Department should not expend its limited resources to verify its responses which, according to Feili, are complete and reliable.

New-Tec argues that the Department should reject Meco's request for verification because: (1) an on-site verification of New-Tec's questionnaire responses in this review is not statutorily required; (2) Meco has failed to demonstrate good cause for the Department to conduct an on-site verification with respect to this review; and (3) the instant review marks the second segment of this proceeding in which New-Tec participated as a respondent.

First, New-Tec contends that, by relying on the fact that New-Tec was not verified in the previous review, Meco erroneously based its showing of good cause on a matter that is irrelevant to this administrative review. New-Tec argues that the fact that it was not verified in the previous review does not establish good cause for verification in this review. Second, New-Tec argues that its purchases of material inputs for the production of subject merchandise from market-economy countries does not, by itself, provide sufficient cause for the Department to

conduct an on-site verification. New-Tec argues that it has met the Department's requirement with respect to its market-economy purchases by providing voluminous copies of the source documents to demonstrate that those transactions were *bona fide* arm's-length purchases from unaffiliated suppliers. Finally, New-Tec contends that the Department should reject Mecco's request for verification because it is contrary to the Department's long-established practice to conduct verification in administrative reviews prior to issuing its preliminary results.

**Department's Position:** Section 782(i)(3) of the Tariff Act of 1930, as amended ("the Act"), specifies that verification is mandatory if "verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G)," and "no verification was made under this subparagraph during the two immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown." Because there have not been "two immediately preceding reviews" with no verification, the Department would only be required to conduct an on-site verification in this review if good cause is shown to do so.

The Department does not find that good cause exists to necessitate performing an on-site verification of this information. The Department has not uncovered anything in the questionnaire responses that causes it to require further review of the responses at an on-site verification. The fact that respondents purchase market-economy inputs and produce non-subject merchandise does not necessarily, by itself, establish good cause for conducting an on-site verification. Therefore, we did not conduct an on-site verification of New-Tec or Feili during the current administrative review.

### **Comment 3: Common-Leg Tables**

Mecco alleges that the Department erred in excluding from the margin calculations for Feili sales of folding metal tables affixed with crossbars that enable the legs to fold in pairs ("common-leg tables"). Mecco argues that it placed evidence and legal argument on the record in its October 31, 2005, request for an anti-circumvention ruling demonstrating that these tables are covered by the scope of the order. Thus, Mecco contends, it is prejudicial to its interests for the Department to treat common-leg tables as non-subject merchandise and exclude them from the margin calculations while the anti-circumvention proceeding for common leg tables is ongoing.

Mecco argues that excluding common-leg tables from the margin analysis permits Feili, and/or any other Chinese producer, to export these tables to the United States outside the discipline of the antidumping duty order, thereby undermining the protection afforded to the domestic industry. Mecco further contends that excluding common-leg tables from the margin analysis would permit respondents to determine what is or is not considered subject merchandise. Therefore, Mecco asserts, even if the Department does not include these sales in the calculations for the final results of review, it should issue instructions to U.S. Customs and Border Protection ("CBP") that common-leg tables are subject to an anti-circumvention inquiry and should not be liquidated.

Feili argues that the *Preliminary Results* demonstrated that the Department does not intend to apply a future anti-circumvention decision retrospectively to Feili's sales of non-subject common-leg tables during the current POR. Furthermore, Feili argues, given that the Department did not initiate the anti-circumvention inquiry until one year after the end of the POR, the Department has no basis on which to include sales of common-leg tables in the margin calculations for the final results of review, adding that any instructions to CBP pertaining to common-leg tables should be issued in the context of the formal anti-circumvention inquiry, not following the final results of this administrative review.

**Department's Position:** The fact that the scope of the order states that folding metal tables "have legs that mechanically fold independently of one another, and not as a set" is what prompted the Department to initiate an anti-circumvention inquiry. Specifically the Department stated in its June 1, 2006, initiation of anti-circumvention inquiry that:

Section 781(c)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when products which are of the class or kind of merchandise subject to an antidumping duty order have been "altered in form or appearance in minor respects . . . whether or not included in the same tariff classification."

Our review of the application indicates that Mecos has provided sufficient information for the Department to initiate a formal anti-circumvention inquiry to determine whether folding metal tables affixed with crossbars that enable the legs to fold in pairs constitute tables that have been altered in form or appearance in minor respects, so as to render these tables subject to the scope of the order on folding metal tables and chairs from the PRC, pursuant to section 781(c) of the Act.<sup>14</sup>

Based on Mecos's request, the Department has initiated an anti-circumvention inquiry, but the evidence and legal argument Mecos placed on the record in its October 31, 2005, request for an anti-circumvention ruling are not on the record of this review. The anti-circumvention inquiry has a separate record. Even if we find that the common-leg table is covered by the order, the effective date would be the date of the initiation of the anti-circumvention inquiry, which is after the POR in the instant proceeding. Thus, we have not included common-leg tables in our antidumping duty analysis for the final results of this review.

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<sup>14</sup>See Memorandum to Wendy Frankel, Director, Office 8, AD/CVD Operations, from Charles Riggle, Program Manager, "Folding Metal Tables and Chairs from the People's Republic of China: Initiation of Anti-Circumvention Inquiry" (June 1, 2006).

**Comment 4: Inclusion of Zero-Priced Transactions in the Margin Analysis**

Feili contends that the Department should not include zero-priced transactions in its margin calculation for purposes of the final results for the following reasons: (1) the total quantity of the zero-priced transactions shipped during the POR is insignificant and will not have a significant impact on the margin; (2) section 777A(a)(2) of the Act allows the Department to ignore adjustments that are insignificant in relation to the price or value of the merchandise; (3) Feili's shipments of zero-priced merchandise represent transactions for promotional and marketing purposes rather than resale and, thus, do not constitute sales; (4) Feili's zero-priced transactions lacked consideration and, therefore, do not meet the criteria established in *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) ("*NSK*") for inclusion in an antidumping margin analysis.

Feili disagrees with the Department's determination in the *Preliminary Results* that Feili made a "significant" number of zero-priced transactions during the POR. On the contrary, Feili contends that proprietary information on the record demonstrates that the total quantity of zero-priced transactions was insignificant in comparison to the total quantity of sales of subject merchandise made for consideration during the POR.

Second, according to Feili, the zero-priced transactions will have an insignificant impact on the margin regardless of whether the Department continues to treat zero-priced transactions as sales in the margin analysis, and section 777A(a)(2) of the Act allows the Department to disregard adjustments which are insignificant in relation to the price or value of the merchandise.

On that point, Feili explains that section 351.413 of the Department's regulations defines an "insignificant adjustment" as any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case might be. According to Feili, Feili's zero-priced transactions would have an overall *ad valorem* effect on the final margin of less than 1.0 percent. Thus, Feili argues, section 351.413 of the Department's regulations also provides the Department with authority to ignore Feili's zero-priced transactions in the final results.

Another reason for which Feili argues that the zero-priced transactions should be excluded from the margin analysis is that the transactions were made solely for promotional and marketing purposes. Feili states that it shipped all zero-priced transactions by express air freight in extremely small quantities, in contrast with its non-zero-priced transactions that were shipped in large quantities via ocean container.

Feili adds that its questionnaire responses state that it provided samples to its customers so that those customers could in turn provide samples to their customers. Thus, Feili argues that the Department should consider its zero-priced transactions as product samples and exclude them from the margin analysis for the final results.

Finally, Feili argues that its zero-priced transactions cannot be considered sales for dumping purposes because they do not match the criteria for sales established in *NSK*. Feili claims that *NSK* held that sales transactions require both transfer of ownership and consideration in order to be considered sales for antidumping purposes. Feili claims that it did not receive consideration for its zero-priced sample transactions, that its customers had no obligation with respect to the zero-priced transactions, and were thus free to dispose of the merchandise “based solely on their whim.” Further, Feili claims that many products involved in zero-priced transactions were never involved in transactions at a price other than zero.

Feili argues that *NSK* reaffirmed that the antidumping law was intended to impose duties on imported goods that are “being sold, or are likely to be sold, at less than fair value.” Feili argues that, as a result of the *NSK* decision, the Department established the practice of excluding zero-priced transactions from its margin analysis, and that the Department further implemented the practice in *Final Results of Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom*, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 57 (“*Ball Bearings 2002*”); and *Honey from the People’s Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004), and accompanying Issues and Decision Memorandum, at Comment 2 (“*Honey from China*”).

Meco argues that the Department acted correctly by including Feili’s and New-Tec’s zero-priced transactions in its margin calculations. First, Meco agrees with the Court of International Trade’s (“CIT’s”) statement in *NSK Ltd. v. United States*, 26 CIT 650, 671-672 (CIT 2002) (“*NSK 2002*”), cited by the Department in the *Preliminary Results*, that there is no reason or logic to a foreign producer “supplying and re-supplying and yet re-supplying the same product to the same customer” or “supply{ing} a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.” Thus, Meco argues that the appropriate method for determining the significance of zero-priced transactions is to analyze the quantity of zero-priced merchandise that a foreign producer supplies to individual customers rather than to compare the quantity of zero-priced merchandise to total shipments, as Feili proposes.

**Department’s Position:** With respect to Feili’s first argument, as we stated in the *Preliminary Results*, an analysis of the Section C databases provided by each company reveals that both Feili and New-Tec made a significant number of zero-priced transactions to customers that had purchased the subject merchandise for consideration before and after receiving zero-priced merchandise.<sup>15</sup>

With reference to Feili’s second argument, the Department acknowledges that section 777A(a)(2) of the Act and section 351.413 of the Department’s regulations state the Department *may* ignore any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed

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<sup>15</sup>See *Preliminary Results*, 71 FR at 38857.

export price, or normal value, as the case might be. However, this section of the Act is relevant to *adjustments* to sales. It is not relevant to the inclusion or exclusion of sales. *See* Section 777A(a)(2) of the Act, and section 351.413 of the Department's regulations.

With respect to Feili's third argument, the Department agrees with Mecos that the mode of shipment is not sufficient evidence that New-Tec and Feili received no consideration for the zero-priced merchandise it provided to its customers.

Feili and New-Tec have not claimed that they retained ownership of the merchandise at issue in these U.S. transactions. Thus, the only issue is whether these transactions lacked consideration, which can take both monetary and non-monetary forms. Feili and New-Tec bear the burden of demonstrating that there was no monetary or non-monetary consideration.<sup>16</sup> They failed to demonstrate that these transactions lacked any consideration in this review since neither company provided any evidence that no non-monetary consideration was given. Simply labeling these sales as samples and stating that they received no consideration is insufficient to demonstrate that no consideration was provided for these sales.<sup>17</sup>

With respect to Feili's fourth argument, the Department is not required by statute or regulation to exclude zero-priced or *de minimis* sales from its analysis.<sup>18</sup> Unlike the definition of normal value, the definition of export price contains no requirement that the prices used in export price calculations be the prices charged "in the ordinary course of trade."<sup>19</sup> The CIT has defined a sale as requiring "both a transfer of ownership to an unrelated party and consideration."<sup>20</sup> As a result, the Department only excludes zero-priced transactions if they are properly considered not to be "sales."

Our analysis of the Section C databases reveals that New-Tec and Feili provided zero-priced merchandise to the same customers to whom they were selling subject merchandise in significant quantities, and the product codes reported by New-Tec and Feili for the zero-priced transactions

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<sup>16</sup>*See, e.g., NTN Bearing Corp. of America v. United States*, 25 CIT 664, 687 (2001); and *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").

<sup>17</sup>*See, e.g., NTN Bearing Corp. of America v. United States*, 248 F. Supp. 2d 1256, 1286 (CIT 2003); and *FMTCs II* at comment 4.

<sup>18</sup>*See e.g., FAG U.K. Ltd. v. United States*, 20 CIT 1277, 1281 (1996) ("*FAG U.K.*"); and *FMTCs II*, at comment 4.

<sup>19</sup>*See FAG U.K. Ltd.*, 20 CIT at 1281; *FMTCs II*, at comment 4.

<sup>20</sup>*See NSK 2002*, 26 CIT at 669.

were the same as the product codes for products that their customers had already purchased during the POR.<sup>21</sup> In *NSK 2002*, the CIT 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.”<sup>22</sup> The CIT also stated 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.”<sup>23</sup> Neither New-Tec nor Feili has provided any argument that causes us to reconsider the relevance of these decisions with respect to their sales.

Feili cites two determinations, mistakenly claiming they demonstrate that the Department excludes zero-priced transactions. In fact, these cases support the Department’s decision to *include* these transactions as sales. *Ball Bearings 2002* explains that the respondent must demonstrate there was no consideration before the transaction can be considered a sample. *See Ball Bearings 2002*, at Comment 57. Similarly, *Honey From China* was also a situation concerning actual samples. *See Honey from China*, at Comment 2. However, for the foregoing reasons we have not found these transactions to be samples, so this case is inapposite.

Thus, for the final results, the Department has continued to include the zero-priced transactions in its margin calculation for the following reasons: 1) the quantities of zero-priced transactions are significant; 2) the legal standard for determining what constitutes a “sale” when assessing zero-priced transactions is well-established; 3) New-Tec and Feili failed to meet the burden of proof showing that no consideration was given; 4) precedent exists to include zero-priced transactions when respondents have not demonstrated that no consideration was given for providing subject merchandise; and 5) there is no logic in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales.

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<sup>21</sup>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 2004-2005 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’)” (June 30, 2006), at Attachment I; 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 2004-2005 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: New-Tec Integration (Xiamen) Co. Ltd. (“New-Tec”)” (June 30, 2006), at Attachment I.

<sup>22</sup>See *NSK 2002*, 26 CIT at 671-672.

<sup>23</sup>See *NSK 2002*, 26 CIT at 672.

### **Comment 5: Treatment of Zero-Priced Transactions**

Feili argues that, if the Department continues to include zero-priced transactions in the margin calculation for the final results, it should: 1) treat as indirect selling expenses all of the express air freight costs that Feili incurred to ship zero-priced merchandise to the United States; 2) recalculate the applicable express air freight charges on a shipment-specific basis rather than on a per-unit basis; and 3) exclude all zero-priced transactions for product codes that were only involved in zero-priced transactions during the POR. Each of these is dealt with individually below.

### **Comment 5a: Treatment of Zero-Priced Transactions as Indirect Selling Expenses**

Feili explains that it often provides zero-priced merchandise to its customers so that those customers can, in turn, provide zero-priced merchandise to their downstream customers. As a result, Feili argues that because the zero-priced transactions do not bear a direct relationship to any particular transaction made for consideration, the expenses associated with these transactions should be classified as indirect selling expense rather than freight expenses for the purposes of the margin analysis. Further, Feili contends that because the surrogate value for selling, general and administrative (“SG&A”) expenses includes indirect selling expenses, which should also include the expenses related to zero-priced transactions, the calculation of normal value already accounts for expenses related to its zero-priced transactions. Thus, Feili argues that the Department should not deduct express air freight charges from U.S. price in the calculation of the antidumping duty margin.

Meco argues that the fact that this merchandise was shipped by air freight does not demonstrate that the merchandise was “intended solely for promotional and marketing purposes.” Meco further explains that in the previous segment of the proceeding (*FMTCs II*, at Comment 4), the Department explained that “consideration can take both monetary and non-monetary forms” and that “simply labeling these sales as samples and stating they were zero-priced sales is insufficient to demonstrate that no consideration was provided.” Meco finally argues that it is irrelevant that Feili sometimes provides merchandise to its customers so that they may, in turn, provide their customers with sample merchandise because, as the Department stated in *FMTCs II*, “the transactions relevant to {its} analysis are between {the respondent} and its customers, not between {the respondent’s} customer and its customer.”

**Department’s Position:** Air freight expenses represent movement expenses and should be treated as such in accord with section 772(c)(2)(A) of the Act. Therefore, we have not treated these expenses as indirect selling expenses for the final results of review.

Further, as we explained above and in the previous segment of this proceeding, Feili and New-Tec have the burden to show that they received no consideration for zero-priced subject

merchandise shipped to customers in the United States during the POR.<sup>24</sup> As a result, where New-Tec and Feili shipped zero-priced subject merchandise to customers who also purchased the subject merchandise for consideration, New-Tec and Feili have not met the burden to show that no consideration was given. In addition, the Department affirms its position in *FMTCs II* that “the transactions relevant to {its} analysis are between {the respondent} and its customers, not between {the respondent’s} customer and its customer.”<sup>25</sup> Therefore, the Department has continued to include zero-priced transactions made to customers who purchased subject merchandise for consideration for the final results.

**Comment 5b: Calculation of Freight Expenses for Zero-Priced Transactions on a Shipment-Specific Basis**

Feili argues that if the Department includes Feili’s zero-priced transactions in the margin calculation for the final results, the Department should revise the calculation of the per-unit express air charges to take into account the total weight of all of the pieces included in the shipment. Feili contends that in the *Preliminary Results*, the Department assigned to each transaction a surrogate rate from the publicly available shipping rate schedule from the UPS web site based on the unit weight of each item in the transaction. As a result, Feili claims that a transaction comprised of four ten-pound pieces was assigned the freight rate applicable to four ten-pound shipments, rather than one forty-pound shipment. Therefore, Feili argues that the Department should revise its freight calculation for zero-priced transactions in the final results of review.

No other party commented on this issue.

**Department’s Position:** In the *Preliminary Results* the Department assigned the freight rate from the UPS shipping rate schedule to Feili’s zero-priced transactions based on the weight per-unit of each piece. However, further examination of record evidence indicates that Feili shipped a number of pieces together in one shipment, thus changing the total amount of air freight applicable for each transaction. As a result, for the final results of review, we have valued freight expenses for zero-priced transactions on a shipment-specific basis. We did this by assigning to each shipment of zero-priced transactions a surrogate rate from the publicly available shipping rate schedule from the UPS web site based on the weight of each shipment. Next, we divided the total amount of expense applicable to each shipment by the quantity in the transaction (QTYU) to obtain the amount of air freight applicable to each unit in the transaction.

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<sup>24</sup>See *FMTCs II*, at Comment 4.

<sup>25</sup>*Id.*

**Comment 5c: Zero-Priced Merchandise That Was Not Subsequently Sold for Consideration**

Feili contends that the Department stated in the *Preliminary Results* that it did not exclude zero-priced transactions from the margin calculations with the exception of certain sales that Feili made to a customer that did not otherwise purchase the subject merchandise during the POR. Therefore, Feili argues, if it was the Department's intent in the *Preliminary Results* to include in its margin calculation only those zero-priced transactions for product codes for which Feili made other significant sales, there is no reason to include in its margin calculation for the final results zero-priced merchandise classified under product codes that Feili did not sell and export to the United States for consideration during the POR.

No other party commented on this issue.

**Department's Position:** Our *Preliminary Results* stated that "we have not excluded zero-priced transactions from the margin calculation of this case for either Feili or New-Tec, with the exception of certain sales Feili made to a new customer that did not purchase any subject merchandise during the POR."<sup>26</sup> However, we inadvertently failed to exclude from the margin calculations certain zero-priced transactions made to other customers who did not purchase the same merchandise for consideration during the POR. Therefore, for the final results, we have excluded zero-priced transactions from the margin calculations made to any of Feili's and/or New-Tec's customers who did not otherwise purchase any subject merchandise for consideration during the POR.

**Comment 5d: Calculation of the Importer-Specific Assessment Rates**

Feili contends that if the Department believes that the customer whose zero-priced transactions were included in the margin analysis for the *Preliminary Results*, although it did not purchase the same merchandise for consideration during the POR, is the same customer as another who purchased the same subject merchandise for consideration during the POR, then the Department must calculate importer-specific assessment rates for those two customers as a whole. Feili contends that doing otherwise would lead to non-*de minimis* assessment rates where there should be none.

**Department's Position:** As we explained in Comment 5c, we excluded the zero-priced transactions made to any of Feili's customers who did not otherwise purchase the same merchandise for consideration during the POR. Therefore, the issue of affiliation is not relevant to this analysis. As a result, we have calculated separate importer-specific assessment rates for these customers.

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<sup>26</sup>See *Preliminary Results*, 71 FR at 38858.

### **Comment 5e: Negative Values Derived from the Calculation of the Zero-Priced Transactions**

As summarized above, Feili does not believe that unit margins calculated for zero-priced transactions should contribute to the total potential unpaid dumping duties (“TOTPUDD”). However, Feili argues that if the Department is going to include unit margins for zero-priced transactions in the TOTPUDD, then it should allocate the TOTPUDD only over the value of subject merchandise that Feili sold at prices greater than zero. Thus, Feili contends that the Department should not include the value of the sales which have negative net prices in the denominator of its overall margin calculation:  $(\text{TOTPUDD}/\text{total U.S. Net Price} = \text{Overall Margin})$

Feili asserts that the facts in this proceeding are different from the cases upon which the Department relied in *FMTCS II* to include the negative net U.S. prices it calculated for zero-priced sales.<sup>27</sup> In *Wire Rod* and *Pasta*, the negative values included in the margin calculation did not result from the calculation of net prices for zero-priced transactions. The relevant sales in those two cases were sold at prices greater than zero, and deductions were made according to the Department’s normal practice, resulting in the calculation of negative net U.S. prices for those transactions. Unlike those cases, Feili’s transactions that have negative net U.S. prices result from the inclusion of zero-priced transactions.

Feili asserts that section 351.212 of the Department’s regulations requires the Department to calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of the subject merchandise for normal customs duty purposes. Feili argues that, since it did not import the subject merchandise into the United States, it does not know the entered value of the subject merchandise declared to CBP. However, Feili argues that the entered value for CBP purposes cannot be below zero because there is no provision in the U.S. customs law that permits an importer to report a negative entered value. Therefore, Feili argues that the Department cannot include any negative values determined as the total net sales price and/or total entered value in the calculation of entered value in the importer-specific assessment rate for zero-priced transactions.

Meco disagrees that the Department should recalculate the importer-specific assessment rates. Meco argues that Feili does not cite any evidence on the record to support its assertions, and that Feili does not provide any support to show that the Department departed from its established practice. Meco argues the Department’s calculations are reasonable, given that the two referenced customers could be different importers of record. Meco concludes that the Department should not adjust its calculations for the final results.

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<sup>27</sup>*Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (“*Wire Rod*”), and accompanying Issues and Decision Memorandum, at Comment 7; and *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000) (“*Pasta*”).

Further, Mecos asserts that although the negative net prices calculated in *Wire Rod* and *Pasta* resulted from transactions that were not zero-priced transactions, it is irrelevant whether the negative net prices included in the margin calculations pertain to zero-priced transactions or not. Mecos submits that the relevant fact is that the Department calculated negative net prices following its normal practice. Thus, Mecos asserts that *Wire Rod* and *Pasta* do not support Feili's assertion that negative net prices for zero-priced transactions should be excluded from the calculations. Therefore, Mecos argues that the zero-priced transactions should be included in the margin calculation.

**Department's Position:** The Department disagrees with Feili's contention that we should allocate TOTPUDD only over the value of subject merchandise with a value greater than zero in the margin calculation. We addressed the issue of negative net sales prices in *Pasta* and *Wire Rod*, explaining that we calculated the margins by deducting the selling expenses applicable to the reviewed sales in accord with section 772(c) of the Act. In those cases, we determined that negative prices resulted from the fact that the U.S. price was not high enough to cover the costs associated with making the sale, and a negative net U.S. sales price was the result.<sup>28</sup> In *Wire Rod*, we stated that there is nothing in the statute or regulations that would allow us to mitigate the effect on the margin of highly dumped sales with negative net U.S. prices.<sup>29</sup> We calculated the U.S. net price for all sales in this review in accord with section 772(c) of the Act. In those instances where the U.S. price did not cover the selling or movement expenses applicable to the sale, the net price fell below zero. It is not relevant to our analysis whether the negative net price resulted from adjustments to (a positive) U.S. price or from adjustments to a zero-priced transaction, as long as the net price was calculated in accord with section 772(c) of the Act, and the zero-priced transaction was considered to be a sale. Therefore, consistent with the practice established in *Pasta* and *Wire Rod*, we have made no changes to our calculation methodology for the final results of review.

#### **Comment 6: Material Inputs Provided Free of Charge**

Feili disagrees with the Department's treatment of material inputs that were provided free of charge. Feili claims that the Department calculated normal value for the sales at issue by assigning a surrogate value to the free polyester fabric consumed in producing the subject merchandise, then added the surrogate value for the free polyester fabric to U.S. price. Feili contends that this adjustment has a greater impact on normal value than U.S. price because the surrogate value for the free polyester is applied to normal value prior to the calculation of overhead, SG&A, and profit, whereas the surrogate value of the free polyester is applied to U.S. price without a corresponding increase to account for the financial ratios. Thus, Feili argues, the amounts added to each side of the dumping equation are not the same.

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<sup>28</sup>See *Pasta*, at Comment 26; and *Wire Rod*, at Comment 7.

<sup>29</sup>See *Wire Rod*, at Comment 7.

Feili admits that it is possible that it may have incurred handling and storage costs for the polyester fabric received free of charge from the company's U.S. customers, and that it may have incurred additional overhead and SG&A costs in assembling and delivering the final products that included the polyester fabric. However, Feili asserts that there is no record evidence to indicate that it earned any additional profit by incorporating the free polyester fabric into its finished products.

Thus, for the final results of review, Feili argues that, for those transactions for which Feili's U.S. customers provided free polyester fabric, the Department should increase the U.S. price by the surrogate value for the polyester fabric plus an additional amount that corresponds to the increase in normal value resulting from the surrogate profit ratio.

Meco argues that the Department correctly applied the adjustment for the polyester fabric that was provided free of charge. Meco contends that Feili offers no support in either the record or Department practice for its assertion that the Department distorted the margin by improperly imputing profit to the polyester fabric that was provided free of charge, and claims that there is no logical reason to assume that Feili did not earn some profit from the use of the polyester fabric provided free of charge.

Meco contends that this calculation is no different from the calculation of profit in constructed value when a producer uses a subcontractor in its manufacturing processes. Meco argues that the Department's calculations identify the normal value of the product sold in the United States, and that product includes the full value, including profit, of polyester fabric provided free of charge. Thus, Meco contends, the Department should not make any changes to its calculation for the final results of review.

**Department's Position:** Following our prior practice, we added the surrogate value for the materials provided free of charge to direct materials in the normal value calculation, in accordance with section 773(c)(1) of the Act. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 13, ("*Mushrooms*"). We adjusted the U.S. price by adding the same per-unit value as calculated in the normal value build-up for the customer-provided factors at issue. This was done to ensure: first, that we followed the statute by including this FOP in the normal value; second, that we properly accounted for the U.S. price's non-inclusion of the customer-provided inputs; and third, that we added the same amount to both the normal value and U.S. price. We note that Feili argues that we should ensure that we make a parallel adjustment to both normal value and U.S. price by revising our methodology and adding the cost of the polyester fabric not to direct materials, but directly to normal value after the calculation of overhead, SG&A, and profit amounts. We have not revised our methodology, however, because all inputs into the production process are valued prior to the calculation of overhead, SG&A, and profit amounts. These amounts are calculated using ratios derived from a surrogate company's

financial statements. We have not changed the ratios or our normal methodology. Therefore, for the final results, we have made no changes to our calculations for this item.

**Comment 7: Additional Charges for Origin Receiving Charge (“ORC”) and Automated Manifest System (“AMS”)**

Feili alleges that the Department erroneously failed to add Feili’s reported billing adjustments (“BILLADJU”) to the U.S. price. According to Feili, the Department determined that additional charges to cover additional ORC and AMS charges were not warranted because the Department determined, as it did in the previous review, that the customer repaid Feili in U.S. dollars for an additional expense that Feili incurred (and paid) in *renminbi* (“RMB”).

Feili contends that during the POR, it paid for all of its inland freight and brokerage expenses, including additional ORC and AMS charges in RMB. Feili further argues that, in setting its U.S. sales price, it needs to consider its return on both the negotiated sales price for the merchandise and any additional ORC and AMS charges in order to ensure that the final negotiated U.S. sales price takes these additional charges into account. Thus, Feili notes that it only charged its U.S. customers the additional ORC and AMS fees to the extent that it incurred the expenses in RMB, whereupon it adds the additional ORC and AMS charges as a separate line-item on the invoice issued to its customers.

Feili claims that the Department’s NME rules<sup>30</sup> do not allow for U.S. dollar payments (*i.e.*, a market-economy currency) to “offset” RMB expenses that are incurred in China and paid for in RMB. Therefore, Feili contends that the Department’s final results should reflect the fact that revenue earned in U.S. dollars cannot be used to “directly reimburse” RMB-incurred expenses and, accordingly, should adjust Feili’s net prices by the per-unit amounts reported to the Department in the BILLADJU field.

Meco contends that the Department appropriately disregarded these additional charges, which represent additional movement expenses for which Feili separately invoiced the U.S. customer. Meco further maintains that because the charges were not reflected in the reported gross unit price, the effect of excluding them from the U.S. net price calculation is neutral.

Meco asserts that, in arguing that the Department should add these charges to the reported U.S. sales prices, Feili relies primarily on its prior assertion that revenues earned in U.S. dollars cannot be used to “directly reimburse” RMB-based expenses. However, Meco contends that Feili offers no support for this claim. As a result, Meco argues that the Department should reject Feili’s claims and continue to disregard these expenses in the final results of review.

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<sup>30</sup>Feili did not provide any documentation for this claim.

**Department's Position:** Consistent with information placed on the record,<sup>31</sup> our findings in the *Preliminary Results* and in the prior review,<sup>32</sup> we determine that the additional charges that Feili invoiced its customers for ORC and AMS charges represent movement expenses that were not otherwise included in the invoice price, reported to the Department or accounted for in the Department's calculations. As a result, were we to add these additional charges to the invoiced price as Feili requests, we would then subtract them as movement expenses in accordance with section 772(c)(2)(A) of the Act and section 351.401(e) of the Department's regulations. As this would have a neutral impact on the margin, we have made no changes to our calculations for the final results of review.

With respect to Feili's claim that the Department's NME rules do not allow for U.S. dollar payments (*i.e.*, a market-economy currency) to "offset" RMB expenses that are incurred in China and paid for in RMB, we are unable to address this comment because Feili did not identify such a "rule" in any section of the statute or the Department's regulations.

#### **Comment 8: Scrap Offset**

Feili claims that the Department did not incorporate its reported by-products in the normal value calculation until after the application of the surrogate financial expenses. According to Feili, it is the Department's practice to make any by-product offset in the calculation of cost of manufacturing ("COM") when the surrogate company, from which the surrogate financial ratios are derived, treats scrap or by-product sales as a reduction to "raw materials" or cost of manufacture, rather than as a credit to its revenue. Feili contends that the Department acted in accordance with this policy established in past cases.<sup>33</sup>

In support of its argument Feili submits that Note 11 on page 34 of the 2004-2005 financial statement for Godrej & Boyce Manufacturing Company Ltd. ("Godrej & Boyce"), from which

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<sup>31</sup>See Feili's October 13, 2005, Section C response at 15-16; *see also* Feili's December 21, 2005, 1<sup>st</sup> Supplemental Section A, C and D Questionnaire Response at 11-12; and Feili's February 23, 2006, 2<sup>nd</sup> Supplemental Questionnaire at 5.

<sup>32</sup>See *FMTCs II*, at comment 9.

<sup>33</sup>See, *e.g.*, *Final Results of Administrative Review: Automotive Replacement Glass Windshields From the People's Republic of China*, 70 FR 54355, (September 14, 2005), and accompanying Issues and Decision Memorandum, at Comment 2; *Final Determination of Sales at Less than Fair Value: Chlorinated Isocyanurates from the PRC*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum, at Comment 17; *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Vietnam*, 69 FR 71005 (December 8, 2004), and accompanying Issues and Decision Memorandum, at Comment 4B; and *Amended Final Determination: Fish Fillets from Vietnam*, 68 FR 43713, 43714 (July 24, 2003).

the Department derived the surrogate financial ratios, states that Godrej & Boyce accounted for the value of scrap sales in the value of raw material purchases listed on the income statement. Feili asserts that because Godrej & Boyce accounted for its scrap sales as a part of raw materials consumed rather than as income, the Department should revise its normal value calculations for the final results of review to include Feili's by-product offset in the calculation of COM.

No other party provided commented on this issue.

**Department's Position:** We agree with Feili. An analysis of Godrej & Boyce's audited financial statements indicates that the value of raw material purchases recorded on the income statement has been adjusted for "miscellaneous sales of scrapped materials."<sup>34</sup> However, the relevant figure for determining the cost of manufacturing for the surrogate company is not the value of raw material purchases but the value of raw materials consumed.<sup>35</sup> Therefore, we examined Godrej & Boyce income statements to determine how it calculated the value of raw materials consumed. We found that Godrej & Boyce calculated the value of raw materials consumed as the sum of opening inventory plus raw material purchases less ending inventory.<sup>36</sup> Therefore, the value of raw materials consumed includes the value of raw material purchases (with the offset for sales of scrap). As a result, we determined that the value of the COM reported on Godrej & Boyce's income statement takes into account the value of scrap sales.

In previous cases, we have stated that it is the Department's current practice to apply the financial ratios in a manner consistent with the facts of the case and with the accounting methodology used by the surrogate companies to account for by-product revenue and thus, it is appropriate to apply the surrogate financial ratios to the respondents' COM in a manner consistent with the surrogate

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<sup>34</sup>See Feili Letter to the Department, "Folding Metal Tables and Chairs from the People's Republic of China: Submission of Publicly Available Information to be Used as Surrogate Values," (April 21, 2006) ("Feili Surrogate Value Submission"), at Attachment 4, page 34.

<sup>35</sup>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, "Preliminary Results of the 2004-2005 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum" (June 30, 2006).

<sup>36</sup>See Feili Surrogate Value Submission at Attachment 4, page 24.

companies' treatment of COM.<sup>37</sup> Accordingly, for the final results of review, we have applied Feili's by-product offset to material costs rather than deduct it from normal value.

**Comment 9: The Surrogate Value for Polyester Fabric with Down**

Feili alleges that the Department incorrectly valued Feili's consumption of polyester fabric with down ("PFDOWN") with a surrogate value for down (*i.e.*, without any fabric) and applied an aberrational price of approximately 784 rupees per kilogram.

Feili argues that the Department assigned a surrogate value for down, not fabric with down, to Feili's consumption of polyester fabric with down. Feili claims that it defined PFDOWN as "polyester fabric with down" in its original October 13, 2005, Section D questionnaire response ("Feili DQR") at Exhibit D-6, and in all subsequent responses. As a result, Feili claims that it proposed using Indian import statistics classified under the HTS category 5902.20.90, which covers polyester fabric impregnated with "other," as the surrogate value for PFDOWN. Feili contends that this HTS classification number best corresponds to the actual fabric impregnated with down that Feili consumed and reported in the PFDOWN field.

Feili asserts that if the Department values PFDOWN using HTS category 5902.20.90, it would have to convert the price recorded in the Indian import statistics from a price per square meter to a price per kilogram. Feili explained that it is not aware of any information on the record of this administrative review that could be used to make this conversion. However, Feili notes that in the investigation of wooden bedroom furniture from the PRC, the Department used a factor of 0.162 kilograms per square meter to convert the price of polyester from square meters to kilograms. Therefore, Feili proposes that the Department apply this conversion factor for the final results of review.

Meco argues that HTS category 6701.00.90 is the appropriate category with which to value Feili's consumption of "polyester fabric with down." Meco disagrees that HTS category 5902.20.90 adequately represents polyester fabric with down because, as Feili's case brief at Exhibit 3 demonstrates, HTS category 5902 represents "tyre cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon." Meco contends that Feili had ample opportunity in its questionnaire response to provide a more complete description of "polyester

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<sup>37</sup>See, e.g., *Guangdong Chemicals Import & Export Corporation v. United States*, Court 05-00023, Slip Op. 06-142 (September 18, 2006); *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Antidumping Duty Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004), and accompanying Issues and Decision Memorandum, at Comment 4B.

fabric with down,” but did not do so. Thus, Mecos argues that there is no evidence on the record that “tyre cord fabric” is the appropriate category for this input. Further, Mecos argues that Feili has not explained why HTS 6701.00.90 is incorrect other than to say that it is “aberrational.” Therefore, Mecos argues that for the final results of review, the Department should continue to use HTS category 6701.00.90 as the surrogate value for PFDOWN.

**Department’s position:** In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market-economy country. The Department’s practice for selecting surrogate value information is to use publicly available information and it considers several factors when considering the most appropriate information, including the quality, specificity and contemporaneity of the data.<sup>38</sup>

Because the two suggested HTS categories are from the same source and cover the same time period, we find them to be equivalent in terms of quality and contemporaneity. We next considered specificity. The WTA Indian import statistics describes HTS category 6701 as “Skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scapes),” and HTS category 6701.00.90 as “other articles of skin and other parts of birds other than feather dusters,” whereas HTS category 5902.20.90 represents “Tyre cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon: Of polyesters.”<sup>39</sup> Thus, because Feili described its material input as polyester fabric with down, by definition it can be neither tyre cord fabric, nor high tenacity yarn, nor nylon or other polyamides or viscose rayon. Therefore, for the final results of review, we have continued to use HTS category 6701.00.90 using the criteria of specificity.

#### **Comment 10: The Inflation Factor for Water**

Feili states that the Department attempted to adjust the Maharashtra water rate for inflation by using average wholesale price index values available from the RBI Indian Handbook of Statistics on Indian Economy (“RBI Handbook”). Feili contends that in the *Preliminary Results*, the Department calculated an inflation factor for the Maharashtra water value by dividing the average index price for “fuel, power, light, and lubricants” during the POR by the June 2003 index price for “all commodities” rather than “fuel, power, light, and lubricants.” Feili contends that the “fuel, power, light, and lubricants” index and the “all commodities” index are not the same index and thus, the calculation of an inflation factor mixing the two sources is inaccurate. Feili argues that in order to accurately adjust the surrogate value for water inflation, the Department must draw the numerator and denominator of the inflation factor from the same index.

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<sup>38</sup>*Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>39</sup>See the WTA website at <http://www.gtis.com/wta.htm>.

No other party commented on this issue.

**Department's Position:** We agree with Feili. We inadvertently divided the average index price for "fuel, power, light, and lubricants" for the POR by the June 2003 index price for "all commodities." Therefore, for the final results of review, we have calculated the inflation factor for water by dividing the POR average index for "all commodities" by the June 2003 index price for "all commodities."

#### **Comment 11: Regression-Based Surrogate Value for Labor**

New-Tec asserts that the Department's use of "regression-based wage rates reflective of the observed relationship between wages and national income in market-economy countries" set forth in section 351.408(c)(3) of the Department's regulations is contrary to the requirements of section 773(c)(4) of the Act because the wage-rate calculation is derived from the gross national income ("GNI") of a basket of countries that includes both NME countries and market-economy countries that are not economically comparable to the PRC. New-Tec claims that section 773(c)(4) of the Act requires the Department to value the FOPs using, "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are -- (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Thus, because the regression-based wage-rate calculation incorporates price information from NME countries, New-Tec contends that the Department undermines the underlying premise of the NME methodology that NME prices and costs are not reliable because the underlying economies are not market driven. Consequently, New-Tec argues that the resulting wage rates lack accuracy, fairness, and predictability.

New-Tec further argues that the Department applied the regression-based wage rate calculations in a manner inconsistent with the requirements of section 773(c)(4) of the Act because the calculations are based on the GNI of a number of countries that are not economically comparable to the PRC. New-Tec notes that the Department's calculations include information from high-income countries such as Switzerland, the United Kingdom, Norway, and Germany, and omit information from developing countries such as Bangladesh, the Czech Republic, Uruguay, Venezuela, Hungary, and Indonesia. As a result, New-Tec contends, the Department's calculation results in a wage rate for the PRC that is four times higher than the wage rate of India, the main surrogate country in this review. Further, New-Tec complains that the Department has not explained why labor is the only FOP exempt from the requirement of using surrogate value information from countries at a comparable level of economic development.

New-Tec argues that the Department recently acknowledged that its calculation of the labor wage rate may be erroneous and in need of recalculation. New-Tec claims that in *Allied Pacific v. United States*, 435 F. Supp. 2d 1295 (CIT 2006) ("*Allied Pacific*"), the Department took a voluntary remand to recalculate the regression-based wage rate for 2002. New-Tec further contends that in *Allied Pacific*, the Department was challenged on the inclusion of non-

comparable source countries and the exclusion of available data on developing countries from its calculations.

Thus, for the final results of review, New-Tec contends that the Department should abandon its regression-based wage-rate calculation methodology and instead use the country-wide wage rate for India. Alternatively, New-Tec argues, if the Department continues to use its regression-based wage-rate methodology, it should revise its calculation to include all of the market-economy countries for which GNI and wage data are available.

Meco disagrees with New-Tec's characterization of the facts of *Allied Pacific*, which the Department is currently considering on remand for the CIT. Meco asserts that this remand does not involve a challenge to the Department's regression-based methodology itself but, rather, a change in the calculation of the PRC wage rate that is clerical in nature.

Meco also asserts that there is no determination or finding that the regression-based wage-rate methodology itself is unlawful, and that New-Tec has pointed to none. Consequently, Meco contends that New-Tec's assertion that the country-wide wage rate of India is more lawful or accurate for use in this proceeding is without legal foundation. Moreover, Meco contends that while the Department may calculate a different wage rate for the POR that is applicable to this review, it has clearly stated that it will continue to use the rates currently posted on its website in NME proceedings. Thus, for the final results of review, Meco contends that the Department should continue to use its expected NME wage rate for both Feili and New-Tec.

**Department's Position:** Section 351.408(c)(3) of the Department's regulations directs the Department to value labor in cases involving NME countries as follows:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

When drafting this regulation, the Department determined not to rely on the sole wage rate from the selected surrogate country because, while per capita GNI rates and wages are positively correlated, there is great variation in the wage rates of the market-economy countries the Department typically treats as being economically comparable.<sup>40</sup>

The Department did not require that countries used in the Department's regression analysis be significant producers of comparable merchandise from comparable economies in every case. In

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<sup>40</sup>See *Antidumping Duties: Countervailing Duties Part II*, 61 FR 7308, 7345 (February 27, 1996) ("*Proposed Rule*"); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27367 (May 19, 1997).

this respect, in proposing and implementing section 351.408(c)(3) of the Department's regulations, we determined that in valuing labor, an analysis different in some aspects from valuing other FOPs was warranted in light of the Department's concerns about wide variances in wage rates between comparable economies.

Therefore, the Department's regulation is fully consistent with section 773(c)(4) of the Act, which allows the Department to use prices or costs in one or more market-economy countries. The Department's regression methodology is a permissible means of determining the observed relationship between income and wages using market-economy country data that, in aggregate, when applied to the NME's income, produce a factor that reflects market-economy wage rates at a comparable level of economic development.

The Department further disagrees with New-Tec's contention that it misapplied the regression-based wage rate. Countries with similar economies can have very different average wage rates. Although per capita GNI rates and wages are positively correlated, there is great variation in the wage rates of the market-economy countries the Department typically treats as being economically comparable. For example, the Department considers both India and Egypt to be economically comparable to the PRC; however, Egypt has a significantly higher wage rate than India. Therefore, because labor as a factor is available in every country and labor data covering multiple countries are obtainable, the Department finds that its regression methodology, which is based on data from a wide range of market-economy countries, enhances the accuracy, predictability and stability of the wage rate.<sup>41</sup>

Similarly, due to the variability in wage rates as correlated with GNI, relying on only a small subset of countries comparable to the PRC would not render a meaningful result for two reasons. First, relying on only wage rates from countries determined by the Department for surrogate-country selection purposes to be comparable to the PRC (a data set consisting of five to six countries), would not provide the Department with a sufficiently large data set to conduct a reliable regression analysis. Second, conducting the regression analysis on a subset of comparable countries would return results limited only to those countries, and not the broader set of market economies contemplated by the Department's regulation. Thus, the regulations, as implemented, provide for a more accurate and more predictable result by utilizing data from multiple countries.

In conclusion, we disagree that we should use India's average wage rate as a surrogate value for PRC labor because use of such data as a surrogate for PRC labor would be contrary to section 351.408(c)(3) of the Department's regulations.

Finally, while we agree in principle with New-Tec's last point, we have not recalculated the regression-based labor rate in the current review. Although the Department published a new

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<sup>41</sup>*Final Rule*, 62 FR at 27367.

policy with respect to expected NME wages on October 19, 2006,<sup>42</sup> including in the regression analysis “data from all market economy countries that meet the criteria described below and that have been reported within one year prior to the Base Year,” in its implementing notice, the Department stated that the new policy would take effect “for the 2006 calculation of expected NME wage rates.”<sup>43</sup> Therefore, we have made no changes to our valuation of labor for the final results.

### **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 this review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

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Agree

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Disagree

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date

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<sup>42</sup>*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback: and Request for Comments*, 71 FR 61716 (October 19, 2006)

<sup>43</sup>*Id.*