

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-570-868

Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on folding metal tables and chairs ("FMTCs") from the People's Republic of China ("PRC") covering the period June 1, 2008, through May 31, 2009, and a deferred administrative review for Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively, "Feili")<sup>1</sup> covering the period June 1, 2007, through May 31, 2008. The 2008-2009 administrative review covers Feili and New-Tec Integration (Xiamen) Co., Ltd. ("New-Tec") and the 2007-2008 deferred administrative review covers Feili. We have preliminarily determined that Feili and New-Tec did not make sales in the United States at prices below normal value ("NV") during the periods of review ("POR") pertinent to each company. If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate entries of merchandise exported by Feili and New-Tec during the PORs without regard to antidumping duties.

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<sup>1</sup> The Department initiated both reviews for Feili using the following names: Feili Furniture Development Ltd. Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. However, Feili has informed the Department that its name includes only Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City.

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

EFFECTIVE DATE: [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6412 and (202) 482-0650, respectively.

SUPPLEMENTARY INFORMATION:

#### Background

On June 27, 2002, the Department published the antidumping duty order on FMTCs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People’s Republic of China*, 67 FR 43277 (June 27, 2002). On July 30, 2008, the Department granted Feili’s request for deferral of the June 1, 2007, through May 31, 2008 review, to which no parties objected.<sup>2</sup> On June 1, 2009, the Department published a notice of opportunity to request an administrative review of this order for the June 1, 2008, through, May 31, 2009 POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 26202 (June 1, 2009). In accordance with 19 CFR 351.213(b), interested parties made the following requests for review: (1) on June 23, 2009, New-Tec, a producer and exporter of subject merchandise to the United States, requested that the Department conduct an administrative review of its sales; (2) on June 25, 2009, Cosco Home & Office Products (“Cosco”), a U.S. importer of subject merchandise, requested that the

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<sup>2</sup> *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

Department conduct administrative reviews of Feili and New-Tec for the 2008-2009 POR . On July 29, 2009, the Department initiated the 2007-2008 and 2008-2009 reviews for Feili, and the 2008-2009 review for New-Tec.<sup>3</sup> The Department issued an antidumping duty questionnaire to Feili and New-Tec on August 7, 2009. On September 1, 2009 and September 10, 2009, New-Tec and Feili, respectively, submitted a section A questionnaire response (“AQR”), and on September 15, 2009 and September 25, 2009, New-Tec and Feili, respectively, submitted section C and D questionnaire responses (“CQR” and “DQR,” respectively). On January 5, 2010, the Department requested the Office of Policy to provide a list of surrogate countries for this review. *See* Memorandum to Carole Showers, Director, Office of Policy, “2007-2008 Administrative Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China: Request for Surrogate Country Selection” (January 5, 2010) and Memorandum to Carole Showers, Executive Director, Office of Policy, “2008-2009 Administrative Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China: Request for Surrogate Country Selection” (January 5, 2010). On January 25, 2010, the Office of Policy issued its list of surrogate countries. *See* Memoranda from Kelly Parkhill, Acting Director, Office of Policy, “Request for a List of Surrogate Countries for an Administrative Review of Folding Metal Tables and Chairs (“FMTC”) from the People’s Republic of China (PRC)” (January 25, 2010) (“Surrogate Country Memoranda”).

On February 4, 2010, the Department requested interested parties to submit surrogate value information and to provide surrogate country selection comments. On February 2, 2010 and March 5, 2010 respectively, New-Tec and Mecor Corporation (“Mecor”), a domestic producer

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<sup>3</sup> *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review, 74 FR 37690 (July 29, 2009).

of the like product, Mecos provided comments on publicly available information to value the factors of production (“FOP”). On February 24, 2010 and April 8, 2010, Feili submitted supplemental questionnaire responses. On February 16, 2010 and April 20, 2010, New-Tec submitted supplemental questionnaire responses.

On March 10, 2010, the Department published a notice in the *Federal Register* partially extending the time limit for the preliminary results of both reviews until no later than May 8, 2010.<sup>4</sup> On April 22, 2010, the Department published a notice in the *Federal Register* fully extending the time limit further for the preliminary results of both reviews until July 7, 2010.<sup>5</sup> From April 27, 2010, through April 30, 2010, the Department conducted sales and FOP verification of New-Tec.<sup>6</sup> In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results of review.

#### Periods of Review

The PORs are June 1, 2007, through May 31, 2008, covering Feili and June 1, 2008, through May 31, 2009, covering both Feili and New-Tec.

#### Scope of Order

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

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and

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<sup>4</sup> See *Folding Metal Tables and Chairs from the People’s Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Reviews*, 75 FR 11120 (May 10, 2010).

<sup>5</sup> See *Folding Metal Tables and Chairs from the People’s Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 20983 (April 22, 2010).

<sup>6</sup> See Memorandum to the File from Charles Riggle, Program Manager and Giselle Cubillos, Case Analyst re: “Verification of the Sales and Factors Response of New-Tec Integration (Xiamen) Co., Ltd. in the Antidumping Review of Folding Metal Tables and Chairs from the Peoples Republic of China,” dated July 7, 2010.

any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric.

Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

Lawn furniture;

Trays commonly referred to as "TV trays;"

Side tables;

Child-sized tables;

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

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is

commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

Folding metal chairs with a wooden back or seat, or both;

Lawn furniture;

Stools;

Chairs with arms; and

Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC (collectively, “RPA”), the Department ruled on January 13, 2003, that RPA’s poly-fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (“Staples”), the Department issued a scope ruling that the chair component of Staples’ “Complete Office-To-Go,” a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top):

43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order because these products have all of the components that constitute a folding metal table as described in the scope.

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

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

On May 1, 2006, the Department issued a scope ruling determining that “moon chairs” are not included within the scope of the antidumping duty order because moon chairs have different physical characteristics, different uses, and are advertised differently than chairs covered by the scope of the order.

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

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2-in-1 Workbench/Scaffold (“Twofold Workbench/Scaffold”) imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, and its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

On May 6, 2009, the Department issued a final determination of circumvention, determining that imports from the PRC of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are circumventing the order and are properly considered to be within the class or kind of merchandise subject to the order on FMTCs from the PRC.

On May 22, 2009, the Department issued a scope ruling determining that folding metal chairs that have legs that are not connected with cross-bars are within the scope of the antidumping duty order on folding metal tables and chairs from the PRC.

On October 27, 2009, the Department issued a scope ruling determining that Lifetime Products Inc.’s (“Lifetime”) fold-in-half adjustable height tables do not meet the description of merchandise within the scope of the antidumping duty order on folding metal tables and chairs from the PRC because Lifetime’s tables essentially share the physical characteristics of banquet tables, which are expressly excluded from the scope of the order and, therefore, are outside the scope of the order.

#### Non-Market Economy Country Status

No party contested the Department’s treatment of the PRC as a non-market economy (“NME”) country, and the Department has treated the PRC as an NME country in all past

antidumping duty investigations and administrative reviews.<sup>7</sup> No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. As such, we continue to treat the PRC as a NME in this proceeding.

### Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below. *See* Memorandum to The File, "Preliminary Results of the 2007-2008 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this notice ("Surrogate Value Memorandum 07-08"), and Memorandum to The File, "Preliminary Results of the 2008-2009 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum" ("Surrogate Value Memorandum 08-09"), dated concurrently with this notice.

The Department determined that Colombia, India, Indonesia, Peru, the Philippines and Thailand are countries comparable to the PRC in terms of economic development. *See* Surrogate Country Memoranda. Once we have identified the countries that are economically comparable

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<sup>7</sup> *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 52645 (September 10, 2008); *see also Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3560 (January 21, 2009).

to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in these reviews. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. On the record of these reviews, we have usable surrogate financial data from India, and no party has submitted surrogate financial data from any other potential surrogate country. Additionally, the data submitted by Mecco and New-Tec for our consideration as potential surrogate values are sourced from India.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a market country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. *See* Surrogate Value Memoranda 07-08 and 08-09. We have obtained and relied upon publicly available information wherever possible.

#### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>8</sup> It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *Id.*

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<sup>8</sup> *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR at 24899 (May 6, 2010).

Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588, at Comment 1 (May 6, 1991) (“*Sparklers*”), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (“*Silicon Carbide*”). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.<sup>9</sup>

#### 1. Wholly Foreign-Owned

Feili reported that it is wholly owned by market-economy entities. Therefore, consistent with the Department’s practice, a separate-rates analysis is not necessary to determine whether Feili’s export activities are independent from government control, and we have preliminarily granted a separate rate to Feili.

#### 2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

New-Tec stated that it is a joint venture between Chinese and foreign companies. Therefore, the Department must analyze whether New-Tec can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

##### A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations

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<sup>9</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

New-Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the PRC ("Company Law"). Other than limiting New-Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control, lacking record evidence to the contrary.<sup>10</sup> We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for New-Tec.

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact,

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<sup>10</sup> See, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004).

subject to a degree of government control that would preclude the Department from assigning separate rates.<sup>11</sup>

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

The evidence placed on the record of this review by New-Tec demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of subject merchandise, in accordance with the criteria identified in *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22587. Accordingly, we have preliminarily granted a separate rate to New-Tec.

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<sup>11</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

## Date of Sale

19 CFR 351.401(i) states that:

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

*See also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Feili and New-Tec, we preliminarily determine that invoice date is the most appropriate date of sale for Feili and New-Tec. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

## Normal Value Comparisons

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

## Export Price

Because Feili and New-Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States, and use of a constructed export price methodology is not otherwise indicated, we have used EP for both Feili and New-Tec in accordance with section 772(a) of the Act.

We calculated EP based on the free-on-board or delivered price to unaffiliated purchasers for Feili and New-Tec. From this price, we deducted amounts for foreign inland freight,

international movement expenses, air freight, and brokerage and handling, as applicable, pursuant to section 772(c)(2)(A) of the Act.<sup>12</sup>

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, published by the World Bank. The Department adjusted the average brokerage and handling rate for deflation. *See* Surrogate Value Memoranda 07-08 and 08-09, New-Tec Preliminary Analysis Memorandum, Feili Deferred Preliminary Analysis Memorandum and Feili 2008-2009 Preliminary Analysis Memorandum.

#### Zero-Priced Transactions

In the final results of previous administrative reviews of FMTCs, we included New-Tec's and Feili's zero-priced transactions in the margin calculation because the record demonstrated that respondents provided the same merchandise in significant quantities, indicating that these "samples" did not primarily serve for evaluation or testing of the merchandise.<sup>13</sup> Additionally, respondents provided "samples" to the same customers to whom it was selling the same products

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<sup>12</sup> *See* Memorandum to The File, "Analysis for the Preliminary Results of the 2008-2009 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New-Tec Integration (Xiamen) Co. Ltd. ("New-Tec")" (July 7, 2010) ("New-Tec Preliminary Analysis Memorandum"), Memorandum to The File, "Analysis for the Preliminary Results of the 2007-2008 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili" (July 7, 2010) ("Feili 2007-2008 Preliminary Analysis Memorandum"), and Memorandum to The File, "Analysis for the Preliminary Results of the 2008-2009 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili" (July 7, 2010) ("Feili 2008-2009 Preliminary Analysis Memorandum").

<sup>13</sup> *See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 4; *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 4; and *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comments 10 and 11.

in commercial quantities.<sup>14</sup> As a result, we concluded that these transactions were not what we consider to be samples because respondents were providing these products to strengthen their customer relationships and to promote future sales.

The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) has not required the Department to exclude zero-priced or *de minimis* sales from its analysis but, rather, has defined a sale, as used in section 772 of the Act, as requiring “both a transfer of ownership to an unrelated party and consideration.”<sup>15</sup> The Court of International Trade (“CIT”) in *NSK Ltd. v. United States* stated that it saw “little reason in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time,” and that “it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.”<sup>16</sup> Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples.<sup>17</sup> Moreover, even where the Department does not ask a respondent for specific information to demonstrate that a transaction is a sample, the respondent has the burden of presenting the information in the first place to demonstrate that its transactions qualify for exclusion as a sample.<sup>18</sup>

An analysis of Feili’s and New-Tec’s section C computer sales listings reveals that they provided zero-priced merchandise to customers to whom they already are selling the same products in commercial quantities, indicating that Feili and New-Tec were not providing this zero-priced merchandise for a customer’s evaluation and testing, with the hope of future sales.

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<sup>14</sup> *Id.*

<sup>15</sup> *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997).

<sup>16</sup> *See NSK Ltd. v. United States*, 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002).

<sup>17</sup> *See, e.g., Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs “to the party in possession of the necessary information”). *See also Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (“The burden of creating an adequate record lies with respondents and not with {the Department}.”) (citation omitted).

<sup>18</sup> *See NTN Bearing Corp. of America v. United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993).

Consequently, based on the facts cited above, the guidance of past court decisions, and our previous decisions, for the preliminary results of this review, we have not excluded these zero-priced transactions from the margin calculations for Feili and New-Tec.

#### Billing Adjustments

We have not adjusted Feili's U.S. sales price with its reported billing adjustments for brokerage and handling charges incurred in China and reimbursed by its U.S. customers in U.S. dollars. After careful examination of this issue, we have preliminarily determined that these charges are not included within the Department's surrogate value for brokerage and handling and, therefore, do not warrant an offset to the brokerage and handling expense. *See* Feili Deferred Preliminary Analysis Memorandum and Feili 2008-2009 Preliminary Analysis Memorandum.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department bases NV on FOPs because the presence of government controls on various aspects of NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, in these preliminary results, we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with 19 CFR 351.408(c)(1), the Department normally uses publicly

available information to value the FOPs. However, when a producer sources a meaningful amount of an input from a market-economy country and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input.<sup>19</sup> Further, the Department disregards prices it has reason to suspect may be subsidized.<sup>20</sup>

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>21</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>22</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

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<sup>19</sup> See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs).

<sup>20</sup> See, e.g., *China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)) ("*China National Machinery*"), and see *Frontseating Service Valves from the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) ("*Frontseating Service Valves*").

<sup>21</sup> Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("*OTCA 1988*") at 590.

<sup>22</sup> See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4-5; Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at pages 17, 19-20; See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at page 23.

## Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Feili and New-Tec for the PORs. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, public availability, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Feili and New-Tec, *see* the Surrogate Value Memoranda 07-08 and 08-09.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by Global Trade Information Services ("GTIS").<sup>23</sup> However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the

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<sup>23</sup> See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009).

number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.<sup>24</sup>

However, the data reported in the Global Trade Atlas (“GTA”) software, published by GTIS, reports import statistics, such as from India, in the original reporting currency and thus this data corresponds to the original currency value reported by each country. Additionally, the data reported in the GTA software is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

We further adjusted material input values to account for freight costs incurred between the supplier and respondent. We used the freight rates published by [www.infobanc.com](http://www.infobanc.com), “The Great Indian Bazaar, Gateway to Overseas Markets.” The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through July 2009. Since these dates are not contemporaneous with the 2007-2008 POR, we deflated the rates using Indian WPI. *See* Surrogate Value Memoranda 07-08 and 08-09.

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<sup>24</sup> *See Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

Feili and New-Tec made raw materials purchases from market-economy suppliers. Therefore, in accordance with our practice outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>25</sup> where at least 33 percent of an input is sourced from market-economy suppliers and purchased in a market-economy currency, the Department will use actual weighted-average purchase prices to value these inputs.<sup>26</sup> Where the quantity of the input purchased from market-economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, the Department will weight-average the weighted average market-economy purchase price with an appropriate surrogate value. *See Antidumping Methodologies: Market Economy Inputs*. For a complete description of the factor values we used, see Surrogate Value Memoranda 07-08 and 08-09 and Feili and New-Tec Preliminary Analysis Memoranda.

To value liquid petroleum gas, we used per-kilogram values obtained from Bharat Petroleum, published June 4, 2009. We made adjustments to account for inflation and freight costs incurred between the supplier and New-Tec. *See* Surrogate Value Memoranda 07-08 and 08-09. To value diesel, we used per-kilogram values obtained from Bharat Petroleum, published December 2, 2008. We made adjustments to account for deflation for Feili's 2007-2008 administrative review, whereas the source is contemporaneous with the 2008-2009 POR. *See* Surrogate Value Memoranda 07-08 and 08-09.

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated

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<sup>25</sup> *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>26</sup> For a detailed description of all actual values used for market-economy inputs, *see* New-Tec Preliminary Analysis Memorandum dated concurrently with this notice.

March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided. *See* Surrogate Value Memoranda 07-08 and 08-09.

To value water, we used the revised Maharashtra Industrial Development Corporation (“MIDC”) water rates available at <http://www.midcindia.com/water-supply>, which we deflated using Indian WPI. *See* Surrogate Value Memoranda 07-08 and 08-09.

For direct, indirect, and packing labor, pursuant to a recent decision by the Court of Appeals for the Federal Circuit, we have calculated an hourly wage rate to use in valuing each respondent’s reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.<sup>27</sup> Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. *See* Surrogate Value Memoranda 07-08 and 08-09.

For factory overhead, selling, general, and administrative expenses (“SG&A”), and profit values, both New-Tec and Mecos submitted identical financial statements to those that were submitted and considered by the Department for use as surrogate financial statements in the preceding administrative review, none of which is contemporaneous with the current POR.<sup>28</sup> The Department examined these financial statements in the 2007-2008 review of New-Tec, and found that Maxima Systems Limited (“Maxima”) produced a greater proportion of comparable merchandise than the other companies (Infiniti Modules PVT Ltd., Godrej & Boyce Manufacturing Company Limited, and Tube Investments of India, Ltd.) and, therefore, best met

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<sup>27</sup> *See Dorbest Ltd. v. United States*, 2009-1257 at 20 (CAFC 2010) (“*Dorbest*”).

<sup>28</sup> *See* New-Tec’s January 21, 2009, Surrogate Value Comments at Exhibit 1, and Mecos’s January 21, 2009, Surrogate Value Comments at Exhibit 7.

the Department's criteria for surrogate financial ratios.<sup>29</sup> Because parties have submitted for the instant review the same surrogate financial statements as those from the 2007-2008 review of New-Tec, and the record indicates that Maximaa produced a greater proportion of comparable merchandise than other surrogate companies whose financial statements were placed on the record, we find that Maximaa continues to be the best available information with which to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memoranda 07-08 and 08-09 for a full discussion of the calculation of these ratios.

For packing materials, we used the per-kilogram values obtained from the GTA and made adjustments to account for freight costs incurred between the PRC supplier and New-Tec's and Feili's plants. *See* Surrogate Value Memoranda 07-08 and 08-09.

#### Currency Conversion

We made currency conversions into U.S. dollars, where appropriate, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

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<sup>29</sup> *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 68568 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

## Preliminary Results of Review

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

<b>Manufacturer/Exporter</b>	<b>Margin (Percent)</b>
New-Tec (6/1/2008-5/31/2009)	0.00*
Feili (6/1/2008-5/31/2009)	0.00*
Feili (6/1/2007-5/31/2008 )	0.04*

\* *de minimis*

## Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than five days after the date on which the case briefs are due. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. *See* 19 CFR 351.310(d). The Department will issue the final results of this administrative review, which will include the results of its

analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.<sup>30</sup> Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information. *See* 19 CFR 351.301(c)(3).

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of

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<sup>30</sup> *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

these reviews. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to these reviews.

Where the respondent reports reliable entered values, we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for New-Tec and Feili, the cash deposit rate will be the company-specific rate established in the final results of the 2008-2009 review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or

reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 70.71 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

July 7, 2010  
(Date)

[FR Doc. 2010-17172 Filed 07/13/2010 at 8:45 am; Publication Date: 07/14/2010]