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December 7, 2007

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 2005-2006 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 ("FMTCs") from the People's Republic of China ("PRC"). The period of review ("POR") covers June 1, 2005, through May 31, 2006. As a result of our analysis, we have made changes to the margin calculations, including corrections of inadvertent programming and ministerial errors. 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: Surrogate Financial Statements
Comment 2: Potential Calculation Adjustments to Infiniti's Financial Statements
Comment 3: Allocation of Direct Labor Hours for Feili
Comment 4: Allocation of Electricity for Feili
Comment 5: Suspension of Liquidation of Tables with Legs Connected by a Cross-Bar
Comment 6: Revocation of the Order
Comment 7: Market-Economy Price for Rivets
Comment 8: Fiberboard Consumption
Comment 9: Packing Labor
Comment 10: Zero-Priced Transactions
Comment 11: Zero-Priced Transactions not Previously Sold in Commercial Quantities
Comment 12: Shipping Costs for Zero-Priced Transactions
Comment 13: Negative Values for Importer-Specific Assessment Rates
Comment 14: The Treatment of origin receiving charges ("ORC") and automated-manifest-system charges ("AMS")
Comment 15: Adjustments for Materials That Were Provided Free-of-Charge
Comment 16: Offsetting Dumped Sales with "Non-Dumped" Sales ("Zeroing")

BACKGROUND

On July 11, 2007, the Department published its *Preliminary Results*.[1] On July 31, 2007, Meco Corporation ("Meco"), the petitioner in the underlying investigation, provided additional comments on the appropriate surrogate values to use as a means of valuing the factors of production, including financial statements from Infiniti Modules Pvt. Ltd. ("Infiniti") and Agew Steel Manufactures Private Limited ("Agew"), Indian producers of merchandise that is identical or comparable to the subject merchandise. On August 3, 2007, Meco requested an extension of the briefing schedule, and on August 7, 2007, the Department denied this request. On August 10, 2007, the Department received a case brief that included a request for a hearing from Meco. On August 13, 2007, the Department received a case brief from Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively "Feili"). On August 13, 2007, Meco requested an extension to submit its rebuttal brief and on the same day, the Department granted to all parties a seven-day extension to submit rebuttal briefs. On August 22, 2007, Meco, New-Tec Integration Co., Ltd. ("New-Tec"), and Feili submitted rebuttal briefs. On September 27, 2007, Meco withdrew its request for a hearing. On November 6, 2007, the Department extended the time period for completion of the final results until December 7, 2007.[2]

CHANGES FROM THE PRELIMINARY RESULTS

Based on our analysis of comments received, we have made changes in the margin calculations for Feili and New-Tec. *See* Issues and Decision Memorandum, at Comments 1-16.

FEILI AND NEW-TEC

- We calculated the surrogate financial ratios using financial statements of two companies, Godrej & Boyce, Manufacturing Co. Ltd. ("Godrej") and Infiniti.[3]

FEILI

- We revised the calculation of the market-economy purchase price for rivets to exclude the total quantity and value of powder coating from the calculations.[4]

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[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 37703 (July 11, 2007) ("*Preliminary Results*").

[2] *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 62628 (November 6, 2007).

[3] *See* Comment 1.

[4] *See* Comment 7.

- We revised the calculation of normal value ("NV") to eliminate fiberboard as a packing material.[5]

- We revised the calculation of normal value to exclude packing labor from the cost of manufacturing ("COM") and include it in the calculation of packing.[6]

- We revised the sample interspersion check to exclude from the margin analysis program only those transactions that had not been previously made in commercial quantities to the same customer.[7]

DISCUSSION OF THE ISSUES

Comment 1: Surrogate Financial Statements

Meco argues that the Department should determine surrogate financial ratios using the audited financial statements of two Indian producers of metal furniture, Infiniti and Agew, which Meco placed on the record of this review after the *Preliminary Results*. Meco argues that Agew's and Infiniti's financial statements are superior to those of Godrej's used in the *Preliminary Results* because: a) Agew's and Infiniti's financial statements are reliable and contain the information required to calculate surrogate financial ratios; b) Agew and Infiniti produce a mix of products that more closely resembles the mix of merchandise that Feili and New-Tec produce and their financial statements are equally contemporaneous to those of Godrej used in the *Preliminary Results*; and c) the Department has a preference for using the financial statements of more than one surrogate producer to calculate the surrogate financial ratios for overhead, selling, administrative and general ("SG&A") expenses and profit. We shall address each of these issues in turn.

a. Reliability and Completeness

Meco claims that Infiniti's and Agew's audited financial statements conform with the Indian generally accepted accounting principles ("GAAP") and are thus, reliable and contain all of the information that the Department requires to calculate surrogate financial ratios. Meco also notes that the Department used Infiniti's financial statements to calculate surrogate financial ratios for the final results of the first administrative review in *Ironing Tables*, 72 FR 13239, at Comment

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[5]*See* Comment 8.

[6]*See* Comment 9.

[7]*See* Comment 11.

1.[8] Thus, Meco argues, the Department has already determined that Infiniti's financial statements are complete and reliable.

Meco admits that Agew's financial statements do not include a profit and loss statement and that the Department declined to use them in *Ironing Tables,* 72 FR 13239, at Comment 1. Meco claims that the Department rejected Agew's financial statements because Agew was not a publicly held company and because it was not clear whether the financial statements were wholly publicly available, given the unavailability of Agew's profit and loss statement. Meco asserts, however, that in *CLPP*, 71 FR 53079, at Comment 1,[9] the Department determined that the financial statements of private companies filed with the Indian Registrar of Companies are in the public realm.[10] Thus, Meco argues, Agew's financial statements are in the public realm. Despite the fact that Agew's financial statements do not include an audited profit and loss statement, Meco claims that Agew's financial statements contain all of the information required to calculate overhead, SG&A, total income, manufacturing expenses, depreciation and profit before tax.

Feili and New-Tec argue that it is the Department's practice to disregard incomplete and illegible financial statements as a basis for calculating surrogate financial ratios where the statements are missing key sections, such as the income statement or sections of the auditor's report, which are vital to the Department's analysis and calculations.[11] Feili maintains that in *Rebar*, 66 FR 33528, at Comment 2, the Department chose to use the financial information of a surrogate company that had usable financial statements and disregard the financial statements of a second surrogate producer that the Department deemed incomplete.

Feili further contends that the schedules contained in Agew's audited financial statements do not detail every line-item that appears in the profit and loss statement. As an example, Feili asserts that nine of the line items on the profit and loss statement used to determine the financial ratios in the *Preliminary Results* are not reflected in the notes to Godrej's audited financial statements.

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[8] *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Administrative Review*, 72 FR 13239, 13241 (March 21, 2007) ("*Ironing Tables*") and accompanying Issues and Decision Memorandum at Comment 1.

[9] *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) ("*CLPP*") and accompanying Issues and Decision Memorandum, at Comment 1.

[10] *Id.*

[11] Feili cites *CLPP,* 71 FR 53079, at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001) ("*Rebar*") and accompanying Issues and Decision Memorandum, at Comment 2; *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) ("*CTL Plate*") and accompanying Issues and Decision Memorandum, at Comment 10, citing, *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan*, 67 FR 15535 (April 2, 2002) ("*Silicomanganese*") and accompanying Issues and Decision Memorandum, at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003) ("*Silicon Metal*"), at Comment 9.

Thus, Feili contends that any surrogate financial ratios determined without using Agew's profit and loss statement would be unreliable and incomplete.

Feili disagrees with Meco's contention that the Department's decision in *Ironing Tables,* 72 FR 13239, at Comment 1, was inconsistent with its statement in *CLPP,* 71 FR 53079, at Comment 1, where the Department stated that the financial statements of private companies that file annual reports with the Indian Registrar of Companies are in the public domain. Feili maintains that in *CLPP,* 71 FR 53079, at Comment 1, the absence of the profit and loss statement was not at issue in that case. Further, Feili contends that *CLPP,* 71 FR 53079, at Comment 1, reaffirmed that the Department does not use incomplete or illegible financial statements to calculate surrogate financial ratios. Feili also argues that Agew's financial statements are illegible, especially with respect to Schedule "P," which reports the value of stores consumed.

Finally, Feili argues that Agew is not a going concern. Feili argues that *Persulfates,* 70 FR 6836, at Comment 3,[12] established that it is the Department's practice to not use the financial statements of "sick" companies in the calculation of surrogate financial ratios because of the inherent unreliability of the underlying data. Feili claims that page 2 of the auditor's report indicates that Agew's negative net worth raises substantial doubt concerning its existence as a going concern. Further, Feili maintains that page 5 of the auditor's report indicates that accumulated losses represent more than 50 percent of its net worth.

Therefore, Feili argues that the Department should reject the use of Agew's financial statements for purposes of determining the surrogate financial ratios in the final results because: 1) Agew's financial statements are incomplete; 2) certain tables, such as Schedule "P," which includes stores and spares, are illegible and cannot be reconciled to other information in Agew's financial statements; and 3) Agew's financial statements indicate that it did not make a profit during the relevant fiscal year. In contrast, Feili argues that the Department should continue to use Godrej's audited financial statements because they are legible and complete, demonstrate that Godrej earned a profit during the relevant fiscal year, and show that Godrej produces comparable merchandise.

b. Comparability and Contemporaneity

Meco argues that section 773(c)(1)(B) of the Trade and Tariff Act of 1930 ("the Act") and section 351.408(c)(4) of the Department's regulations require the Department to use the best available information obtained from producers of identical or comparable merchandise in a comparable market-economy country to value overhead, general expenses, and profit in the determination of NV. Meco contends that, although the Department prefers to use financial statements that are contemporaneous with the POR, contemporaneous financial statements are not available for this time period, so that the financial statements of Godrej, Infiniti and Agew, all of which cover the

[12] *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) ("*Persulfates*") and accompanying Issues and Decision Memorandum, at Comment 3

year ending March 31, 2005, are thus equally contemporaneous. Further, Meco contends that in *Ball Bearings,* 68 FR 10685, at Comment 1D,[13] the Department stated that although "we prefer to use more contemporaneous financial statements, using financial data that are more representative and more accurate is equally important."

Meco contends that, in the *Preliminary Results*, and in all previous segments of the proceeding, the Department used Godrej's financial statements to determine surrogate financial ratios because they were the only financial statements on the record of the respective proceedings. However, Meco contends that Godrej, in contrast to Feili and New-Tec, is a highly-diversified Indian manufacturer which produces a broad range of products, many of which differ significantly from FMTCs in cost structure and production experience. Meco contends that in *Ironing Tables,* 72 FR 13239, at Comment 1, the Department stated that Godrej's production of steel furniture accounted for only one quarter of its total sales in fiscal year 2005. As a result, Meco argues that Godrej's production and financial experience is not representative of Feili's and New-Tec's and that Agew and Infiniti produce a mix of products that, more closely than Godrej, resembles the mix of merchandise that Feili and New-Tec produce.

Meco asserts that Infiniti produces both folding metal chairs and similar products, such as stacking chairs with metal frames; tables, desks, and storage pieces for schools and cafeterias; office chairs; and other types of furniture. Meco claims that Infiniti's sales of metal chairs and tables alone account for 66 percent of its total fiscal year 2005 sales. Further Meco claims that the remainder of its sales consist of comparable products, such as storage systems and work surfaces.

Similarly, Meco asserts that Agew produces a much narrower range of products than Godrej, including steel doors, steel windows, and metal hardware such as peg stays, hinges, and brackets. Meco argues that Agew's products are comparable to FMTCs because they are fabricated from steel and, in the case of the hardware, identical or highly comparable to the kinds of hardware that Feili and New-Tec produce and use in the production of subject merchandise.

Meco contends that, unlike Godrej, Feili and New-Tec produce mostly FMTCs and similar non-subject merchandise that use a few basic manufacturing processes. Meco claims that Infiniti and Agew use manufacturing processes that are identical or nearly identical to those of Feili and New-Tec. Thus, Meco argues that Agew's and Infiniti's production process, financial experience and product lines are more representative than Godrej's of Feili's and New-Tec's experience. As a result, Meco argues that their financial statements are the most representative, accurate and appropriate for purposes of this review.

Feili and New-Tec contend that the Department should derive the surrogate financial ratios solely from Godrej's financial statements for the year ending in March 2005. Feili and New-Tec claim that Godrej's financial statements are the most appropriate source of surrogate financial ratios

[13] *Final Determination of Sales at Less than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003) ("*Ball Bearings*") and accompanying Issues and Decision Memorandum, at Comment 1D.

because: 1) Godrej produces merchandise that is directly comparable to the subject merchandise; 2) the Department has used Godrej's financial statements in every other segment covering FTMCs; and 3) the other financial statements on the record are either incomplete or illegible, reflect the financial data of companies that are not producers of comparable merchandise, or are distorted by significant tolling operations.

Feili and New-Tec contend that Godrej's are is the only usable financial statements on the record of this proceeding that reflect a producer of metal-fabricated consumer goods similar to the subject FMTCs. Feili and New-Tec argue that Godrej's financial statements indicate that the vast majority of the materials it consumes are the same inputs consumed to produce the subject merchandise. Feili and New-Tec assert that, although Godrej produces a wide range of products, as a producer of metal-fabricated consumer goods and furniture, its products and manufacturing processes are either identical or highly similar to those used for production of the subject merchandise. New-Tec points out that Godrej's largest product item is steel furniture, which accounts for one-quarter of the company's sales. Thus, Feili and New-Tec argue that the Department should continue, as it did in the *Preliminary Results*, to base its calculation of the surrogate financial ratios on the information provided in Godrej's audited financial statements alone.

Feili and New-Tec argue that Agew does not produce merchandise that is comparable to the subject merchandise. Feili contends that the Department's established practice for determining whether a product produced by a company in the surrogate country is comparable to the subject merchandise relies on a three-part test that examines product characteristics, end uses, and production processes.[14] Feili claims that the Department determined in the original investigation, and in each subsequent administrative review, that the products produced by Godrej are comparable to FMTCs. However, Feili and New-Tec argue that the record of this review does not contain, and Meco did not provide, any evidence which demonstrates that the doors and windows produced by Agew satisfy any of the elements of the Department's three-part test. Thus, Feili contends that Meco's claim that the production processes required to produce steel doors and steel windows are similar to the process used to produce the subject merchandise is not supported by record evidence.

Further, Feili claims that the financial statements and web site excerpts that Meco placed on the record indicate that Agew produces only windows, doors, door frames and related hardware. Feili further asserts that Agew's fire doors, which constitute Agew's largest single product line, are manufactured to meet Underwriters Laboratories' standards for fire safety. Feili notes that Agew also produces custom-made steel windows. Thus, Feili contends, the production costs and manufacturing practices required to produce fire-safety building materials and custom-made windows and door frames are not representative of the production costs and experience of

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[14] Feili cites *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States,* 318 F. Supp. 2d 1339, 1348 (CIT 2004) ("*Shanghai Foreign Trade Enterprises*"); and *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) ("*Pencils*") and accompanying Issues and Decision Memorandum, at Comment 5.

producers of the subject merchandise. As a result, Feili argues that the Department should disregard Agew's financial statements in the calculation of the surrogate financial ratios for the final results.

Feili argues that the Department should disregard Infiniti's financial statements for the final results. Feili claims that Infiniti produces various light industrial products including storage, work-surface and panel products, and thus does not produce merchandise comparable to the subject merchandise. Further, Feili contends that unlike Feili, Infiniti engages in tolling operations, and thus, Infiniti's financial statements do not reflect the expense of purchasing, storing and processing its own raw materials. As a result, Feili contends that Infiniti's financial statements are distorted by its tolling operations. Therefore, Feili maintains, given that the Department determined in the *Preliminary Results*, and in each previous segment of the proceeding, that Godrej produces comparable merchandise, the Department should base the surrogate financial ratios for the final results solely on Godrej's financial statements.

c. Single vs. Multiple Financial Statements

Meco argues that in *Wooden Bedroom Furniture,* 69 FR 67313,[15] the Department articulated a preference for using more than one surrogate company's audited financial statements to calculate surrogate financial ratios. Meco further notes that in *Mushrooms* NSR 00-01,[16] the Department stated that "no source of surrogate value data is perfect . . . {By using the ratios from more than one surrogate producer} we arrive at broader-based surrogate values that minimize the particular circumstances of any one producer. . . {and thus provide} a more comparable and reliable indication of the factory overhead, SG&A, and profit experience of the respondent." Therefore, for the final results, Meco argues that the Department base the surrogate financial ratios for overhead, SG&A and profit on the simple average of the surrogate financial ratios calculated for Infiniti and Agew.

However, because Agew experienced an operating loss in fiscal year 2005, Meco argues that the Department should follow its past practice and exclude Agew's negative profit from its average profit calculation as it did in *Ball Bearings,* 68 FR 10685, at Comment 1D and *Fish Fillets,* 72 FR 13242, at Comment 9a.[17]

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[15] *Final Determination in LTFV Investigation of Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) ("*Wooden Bedroom Furniture*") and accompanying Issues and Decision Memorandum, at Comment 3.

[16] *Certain Preserved Mushrooms from the People's Republic of China: Final Results of New Shipper Review*, 66 FR 45006 (August 27, 2001) ("*Mushrooms NSR 00-01*") and accompanying Issues and Decision Memorandum, at Comment 1.

[17] *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review,* 72 FR 13242 (March 21, 2007) ("*Fish Fillets*") and accompanying Issues and Decision Memorandum, at Comment 9a.

In the alternative, Meco contends that if the Department determines not to use Agew's financial statements, it should calculate the surrogate financial ratios using Infiniti's financial statements alone because: (1) Infiniti manufactures a range of products that are more similar than Godrej's to the subject merchandise; (2) Infiniti's financial statements are representative and accurate; and (3) Infiniti's financial statements are as contemporaneous as Godrej's with the POR.

In contrast, New-Tec contends, that if the Department determines to use Infiniti's financial statements for the final results, the Department should use both Godrej's and Infiniti's financial statements as the source of surrogate financial ratios. New-Tec contends that Godrej's and Infiniti's financial statements are similarly non-contemporaneous. Further, New-Tec contends that the record evidence does not support that Infiniti's products are more comparable than Godrej's.

Department's Position: Section 773(c)(1)(B) of the Act, requires the Department to value the factors of production ("FOPs") "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." Section 351.408(c)(4) of the Department's regulations further stipulates that the Department will value materials and overhead, general expenses, and profit using "nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

It is the Department's practice in NME proceedings to use whenever possible, surrogate-country producers of identical merchandise for surrogate-value data, provided that the surrogate data are not distorted or otherwise unreliable.[18] The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[19] The Department also has an established practice of rejecting financial statements of surrogate producers whose production process is not sufficiently comparable to the respondent's production process,[20] whose financial

[18] *See, e.g., Persulfates,* 70 FR 6836, at Comment 1; and *Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum, at Comment 3.

[19] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum, at Comment 9F.

[20] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22193 (May 3, 2001) ((unchanged in the final determination) *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China,* 66 FR 49632 (September 28, 2001)) (rejecting the surrogate financial statements of a producer because "its financial information would be less comparable to that of the respondents").

statements are incomplete,[21] and who are officially designated as "sick" by the Indian government.[22]

In light of these general principles for selecting financial statements for the calculation of surrogate financial ratios, we shall address the issues of reliability and completeness, comparability and contemporaneity, single vs. multiple financial statements, in turn.

a. Reliability and Completeness

All parties to the proceeding have acknowledged that Agew's financial statements did not contain a profit and loss statement and were rejected as incomplete in *Ironing Tables*, 72 FR 13239, at Comment 1. It has been our long-standing policy to reject financial statements that are incomplete.[23] Further, it has been our experience that the notes to the financial statements do not contain all of the information included on the profit and loss statement.[24] Consequently, any calculations derived solely from information contained in the notes to the financial statements would not reflect the information recorded in the profit and loss statement. As a result, we have rejected Agew's financial statements for the calculation of the surrogate financial ratios in this review.

Furthermore, all parties have acknowledged that Agew did not make a profit during its fiscal year. The Department's past practice regarding inclusion of companies with zero or negative profit has been inconsistent. However, in *Shrimp,* 72 FR 52052, at Comment 2B, we stated that "in this review and in future investigations and reviews, the Department intends to use the financial statements of companies that have earned a profit if they are available and meet the Department's

[21] *See, e.g., CLPP*, 71 FR 53079, at Comment 1; and *Rebar*, 66 FR 33528, at Comment 2.

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("*CTVs*") and accompanying Issues and Decision Memorandum, at Comment 14 ("*CTVs*").

[23] *See, e.g., CLPP,* 71 FR 53079, at Comment 1; *Rebar,* 66 FR 33528, at Comment 2; *CTL Plate,* 70 FR 12651, at Comment 10; *Silicomanganese, 67 FR 15535*, at Comment 3; and *Silicon Metal*, 68 FR 6885, at Comment 9.

[24] *See, e.g.,* the financial statements considered and/or used in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 12762 (March 19, 2007), ("*PRCBs*") and accompanying Issues and Decision Memorandum, at Comments 1 - 3, placed on the record on March 24, 2006, July 26, 2006 and August 7, 2006, and October 3, 2006, for: Arvind Chemi Synthetics Pvt., Ltd. (''Arvind'') and Jain Raffia Industries, Ltd. (''Jain Raffia''), A.P. Polyplast Private Limited ("A.P. Polyplast"), Kuloday Technopack Pvt. Ltd. ("Kuloday"), Sangeeta Poly Pack Limited ("Sangeeta"), Smitabh Intercon Ltd. ("Smitabh"), Synthetic Packers Pvt. Ltd. ("Synthetic"), Tims Polymers Pvt. Ltd ("Tims") Nova Plast Industries Pvt. Ltd. ("Nova Plast"), Carry Print (i) Pvt. Ltd. ("Carry Print"), Priti Plastics Pvt. Ltd. ("Priti").

surrogate value selection criteria."[25] Therefore, consistent with this practice, we will not use Agew's financial statements for the final results.

b. Comparability and Contemporaneity

When selecting the financial statements of surrogate producers for the purpose of deriving surrogate financial ratios, the Department's preference is to use, where possible, the financial data of surrogate producers of identical merchandise, provided that the surrogate value data are not distorted or otherwise unreliable.[26] In the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producers' experience.[27] The Courts have held that the Department is neither required to "duplicate the exact production experience of the Chinese manufacturers,"[28] nor undergo "an item-by-item analysis in calculating factory overhead."[29]

Godrej and Infiniti each produces merchandise that is identical and/or comparable to the subject merchandise. Thus their financial statements are representative of the production experience and financial statements of Feili and New-Tec. As indicated above, both Godrej and Infiniti produce a wide range or products, unlike the respondents in this proceeding. Thus, neither company's production experience, though representative, is identical to the production experience of the two respondents. Consequently, based on product lines and production processes, there is no reason to either include or exclude Godrej or Infiniti at the expense of the other. As a result, we will include the financial statements of Godrej and Infiniti in the calculation of the surrogate financial ratios for the final results.

In past cases, we have declined to use the financial statements of surrogate producers, who, unlike respondents, had tolling operations.[30] However, consistent with the Department's treatment of income unrelated to the general operations of the company, and consistent with the Department's

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[25] *See, Frozen Warmwater Shrimp Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) ("*Shrimp*") and accompanying Issues and Decision Memorandum, at Comment 2B.

[26] *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) ("*Mushrooms 02-03*") and the accompanying Issues and Decision Memorandum, at Comment 8. *See also Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 47887, 47890 (August 6, 2004); *Persulfates,* 70 FR 6836 (unchanged in the final results); and, *Pencils,* 67 FR 48612, at Comment 5.

[27] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1250 (CIT 2002) ("*Rhodia").*

[28] *See Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

[29] *See Magnesium Corp. of America v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999) ("*Mag Corp.*").

[30] *See PRCBs*, 72 FR 12762, at Comment 2.

treatment of Infiniti in *Ironing Tables*, 72 FR 13239, at Comment 1, we excluded from the calculation of the surrogate financial ratios the revenue that Infiniti earned from tolling operations.

c. Single vs. Multiple Financial Statements

Section 773(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") requires the Department to value the FOPs "on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." We have determined that, while neither company is a perfect match, both Godrej and Infiniti produce merchandise that is identical and/or comparable to the subject merchandise, and that their financial statements are representative of the production experience and financial statements of Feili and New-Tec. In addition, we have found that their financial statements, while not contemporaneous with the POR, are equally contemporaneous with each other. Therefore, given the Department's preference for using multiple financial statements in order to determine surrogate financial ratios for overhead, SG&A and profit,[31] we have used the audited financial statements of Godrej and Infiniti to calculate surrogate financial ratios in the final results.

Comment 2: Potential Calculation Adjustments to Infiniti's Financial Statements

Should the Department determine to use Infiniti's financial statements in the final results, Feili contends that, with three exceptions, it should make the same adjustments to the figures reported for job work income, freight-in expenses, and short-term interest income, as it did in *Ironing Tables,* 72 FR 13239, at Comment 1. Otherwise, Feili maintains, any surrogate financial ratios calculated using Infiniti's financial statements would not reflect the production expenses and experience of the producers of the subject merchandise. Feili provided revised surrogate financial ratios based on the simple average of the surrogate financial ratios for Godrej and Infiniti, but Feili did not explain how it derived the ratios for Infiniti.

Feili claims that Infiniti generated significant job-work (tolling) income. Feili contends that because job-work processors do not own the raw materials they process, the expenses relating to raw materials consumed or processed are not reflected in their financial statements. Further, Feili argues that the SG&A and overhead expenses on Infiniti's financial statements reflect tolling, rather than manufacturing expenses. Consequently, Feili contends that any ratios calculated as a percentage of raw materials using Infiniti's financial statements would not correspond to the expenses of a company that both purchased and processed its own raw materials. Thus Feili claims that any such ratios would be distorted unless the Department offset overhead and SG&A with job-work income in order to back out both the income and expenses associated with job-work processing.

Feili contends that *Ironing Tables,* 72 FR 13239, at Comment 1, states that the Department excluded revenue earned from job-work income. As a result, Feili argues that the Department

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[31] *See, e.g., Wooden Bedroom Furniture*, 69 FR 67313, at Comment 3, page 68; and *Mushrooms NSR 00-01*, 66 FR 45006, at Comment 1.

agreed in principle that tolling operations should be excluded from the financial-ratio calculations. However, Feili maintains that the Department's calculations in *Ironing Tables,* 72 FR 13239, at Comment 1, did not fully remove the tolling aspects of Infiniti's operations from the surrogate financial ratios. Rather, Feili contends that the exclusion of job-work revenue from the Department's calculations had no impact on the surrogate financial ratios because revenue is not normally included in the surrogate financial ratios. Feili maintains that in order to remove the distortion cause by the tolling operations, the Department must adjust overhead, SG&A and/or profit, as proposed in Attachment 2 of Feili's rebuttal brief.

Further, Feili claims that the Department should include in the denominator of any surrogate financial ratios, the line-item for carriage inward, detailed in schedule 16 of Infiniti's financial statements, "Manufacturing & Other Expenses," because the Department has already accounted for the freight-in expenses in the calculation of Feili's COM in the determination of NV. Otherwise, Feili argues, the NV calculation will be inaccurate due to the disconnect between the denominator of the surrogate financial ratios and the value of COM to which the surrogate financial ratios are applied.

Feili argues that the Department's determination in *Ironing Tables,* 72 FR 13239, at Comment 1, to exclude carriage inward from the surrogate-financial-ratio calculations was inaccurate and inconsistent with the Department's practice. Feili maintains that carriage inward relates to freight-in expenses for materials, not on delivery or sales-related transportation expenses. Feili claims that sales-related transportation expenses are properly excluded from the financial-ratio calculations because the expenses are accounted for in the calculation of the net U.S. price.

Feili claims that the Department normally treats freight-in expenses as part of the cost of materials (which are included in the denominator of the surrogate financial ratios) in the determination of NV. Feili asserts that in *TRBs*, 63 FR 63842, at Comment 23,[32] the Department reasoned that it was appropriate to apply the surrogate financial ratios to the freight-in portion of NV because freight-in expenses of the surrogate company are included in the denominator of the surrogate financial ratios. Feili further asserts that in *Mushrooms 05-06*, 72 FR 44827,[33] the Department stated that the denominator of the surrogate financial ratios includes the cost of direct materials, direct labor, energy and freight costs for materials. Thus, Feili argues, that in the calculation of the surrogate financial ratios, freight-in expenses should similarly be included in the value of direct materials included in COM, over which overhead and SG&A are allocated. As a result, Feili argues that if the Department uses Infiniti's financial statements for the calculation of

[32] *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842, 63855-63856 (November 17, 1998) ("*TRBs*")

[33] *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827, 44829 (August 9, 2007) ("*Mushrooms 05-06*") and accompanying Issues and Decision Memorandum

surrogate financial ratios, it should adopt the treatment that Feili proposes in Attachment 2 of its rebuttal brief.

Feili claims that, in accord with decisions made in *PRCBs,* 72 FR 12762, at Comment 3g and *Persulfates,* 70 FR 6836, at Comment 5, the Department should offset SG&A with interest income, because all of the interest bearing accounts (*i.e.*, cash and balances, loans and advances) on Infiniti's balance sheet are classified as "Current Assets Loans & Advances." Feili contends that Attachment III of the factors valuation memorandum in *Ironing Tables,* 72 FR 13239, demonstrates that the Department offset SG&A expenses with the line-item for "Interest Remitted on Bank Deposits," but did not offset SG&A expenses with the short-term interest recorded in the line-item "Interest Remitted by IDC." Feili argues that since the interest remitted by IDC must be accounted for in either schedule 8 or schedule 9 of Infiniti's balance sheet, it must also be considered short-term income since it is regarded as a current asset on the balance sheet. Thus, Feili argues, if the Department uses Infiniti's financial statements for the calculation of surrogate financial ratios, it should adopt the treatment that Feili proposed in Attachment 2 of its rebuttal brief.

Department's Position: Feili requested that if the Department used Infiniti's financial statements to determine the surrogate financial ratios, it should make three adjustments to the information included on Infiniti's income statement: 1) eliminate the impact of Infiniti's tolling operations by offsetting overhead and SG&A with tolling revenue; 2) reclassify carriage inward as a direct material, thus including the freight-in expenses in the denominator of the surrogate financial ratios; and 3) offset interest expense with interest income for "Interest Remitted by IDC."

In using Infiniti's financial statements to derive the surrogate financial ratios for these final results, we allocated the line items of Infiniti's reported revenues and costs in accordance with the Department's established methodology. Consistent with our treatment of unrelated revenue, we excluded the revenue that Infiniti earned from job-work (tolling) operations from the calculation of the surrogate financial ratios. We did not consider Feili's proposed allocation of tolling income to overhead and SG&A because Feili did not explain the basis of the allocation provided in Attachment 2 of its case brief.

In addition, consistent with our standard practice of not adjusting the figures recorded on a surrogate producer's financial statements,[34] we classified carriage inward as a direct material expense, because, as Feili explained in its case and rebuttal briefs, companies are required to report the cost of materials inclusive of transportation. **[seeking a cite]**

Finally, it is the Department's practice to adjust interest expenses for interest income earned on short-term instruments.[35] We examined Infiniti's balance sheet and determined that none of its

[34] *See CTVs,* 69 FR 20594, at Comment 19.

[35] *See PRCBs,* 72 FR 12762, at Comment 3g, *Persulfates,* 70 FR 6836, at Comment 5, and *Wooden Bedroom Furniture,* 69 FR 67313, at Comment 3.

accounts contained interest-bearing long-term assets.[36] Further, we determined that all of the interest-bearing assets recorded in Infiniti's balance sheet are recorded in the line item "Loans and Advances" within the category of "Current Assets, Loans & Advances."[37] Consequently, any interest income earned constitutes short-term interest income. In *Wooden Bedroom Furniture,* 69 FR 67313 at Comment 3, and *PRCBs,* 72 FR 12762, at Comment 3g, we stated that it was our standard methodology to offset SG&A expenses with short-term interest income.[38] Thus, for the final results, we offset Infiniti's SG&A expense with the amount of bank interest recorded on its financial statements.

Comment 3: Allocation of Direct Labor Hours for Feili

Meco contends that the labor allocation methodology that Feili used in its questionnaire responses, and that the Department verified, under-allocates labor hours to: 1) folding metal chairs that contain raw material inputs other than steel and plastic parts, such as vinyl, fabric, fiberboard, and cushions; and 2) folding metal tables that contain fiberboard, some type of covering for the fiberboard, and/or cushioning.

Meco explains that Feili allocates its total number of labor hours to the subject merchandise by determining the total standard weight of steel consumed in the production of subject merchandise, then dividing the total labor hours consumed by the total standard weight of the steel consumed. Meco explains that to allocate the total labor hours per kilogram of steel to each specific product, Feili then multiplies the total quantity of steel consumed in the production of each product by the labor hours per kilogram of steel. Meco states that Feili uses the same methodology for plastic parts.

Meco claims that it does not object to this methodology but, rather, contends that Feili should have used the same methodology for the other key raw material inputs used in the production of subject merchandise: *i.e.,* fiberboard, polyethylene ("PE") plastic resin, polypropylene ("PP") plastic resin, polyvinylchloride ("PVC") sheet, vinyl sheet, polyester fabric, PE foam, and polyester fabric with down. Meco contends that all chairs with cushions and all tables contain some or all of these key inputs. Similarly, Meco asserts that all-metal chairs contain none of these inputs. As a result, Meco argues that Feili's allocation methodology over-allocates labor hours to those products which do not contain the additional materials and under-allocates labor hours to the products which include substantial amounts of these additional materials.

Meco argues that to arrive at the ratio of the labor hours per kilogram consumed in fabricating the subject merchandise, the Department should first calculate the total labor hours worked in the

[36] *See* Infiniti's balance sheet included in Meco's July 31, 2007, surrogate value submission "Folding Metal Tables and Chairs from the People's Republic of China" (July 31, 2007), at Exhibit 1.

[37] *Id.*

[38] *See also Persulfates*, 70 FR 6836, at Comment 5.

non-steel fabrication and non-plastic parts processing steps, then divide that amount by the total standard weight of the completed products provided in Exhibit D-5 of Feili's November 3, 2006, Section D response ("DQR"). Then, to determine the total labor hours for the non-steel fabrication and non-plastic parts processing steps, Meco asserts that the Department should multiply the resulting ratio by the weight of the additional materials used for each product as reported in Exhibit D-2 of its DQR for each product.

In addition, Meco contends that Feili used steel weight rather than total weight as the basis of allocating labor in the assembly step of the production process. Meco contends that for the final results, the Departments should revise this calculation to use total standard weight rather than steel weight to allocate labor hours.

Feili argues that for the final results, the Department should continue to rely upon Feili's labor allocation methodology and underlying data for fiberboard, PE foam, sheet, and fabric processing. Feili claims that: (1) its labor allocation methodology captures all direct labor hours worked during the POR, including those hours required for fiberboard, PE foam, sheet, and fabric processing; (2) it consistently allocates all direct labor hours over the total steel weight of all products produced during the POR; and (3) it consistently applies per-unit direct labor hours to each individual product by multiplying per-unit direct labor hours by the steel weight of each individual product.

Feili claims that the Department has verified that Feili cannot separately track the labor hours consumed at each stage of production for subject- and non-subject merchandise. Furthermore, Feili notes that its existing methodology is based on the assumption that products containing more steel weight require more labor time to produce.

Feili argues that the Department should continue to rely upon Feili's allocation methodology for assembly, without any of the adjustments that Meco proposes. Feili explains that it divides the total assembly labor hours worked during the POR by the total steel weight of all subject- and non-subject merchandise produced during the POR, and then multiplies the per-unit assembly labor hours required for each kilogram of finished product steel weight by the steel weight of each individual product. Feili claims that this methodology captures all assembly labor hours consumed during the POR and allocates assembly labor hours to individual products on a consistent basis.

Feili explained that it has relied upon, and the Department has both accepted and used, Feili's labor-allocation methodology in the *Preliminary Results*. Feili noted that the Department has verified Feili's labor allocation methodology and underlying data in this review. In addition, Feili asserts that because Meco did not challenge Feili's methodology until August 10, 2007, after the *Preliminary Results,* neither Feili nor the Department had an adequate opportunity to consider or implement an alternative allocation methodology. Finally, Feili claims that Meco has not provided proof that its proposed methodology is more accurate than Feili's.

Department's Position: It is the Department's longstanding practice to accept allocation methodologies that are reasonable and are based on the respondent's underlying books and records.[39] Feili's questionnaire responses state that it allocated all direct labor hours for the POR over the actual steel weight of all products.[40] At verification, the Department confirmed that the information contained in Feili's books and records supported the information on the record.[41] In addition, we also confirmed that all labor hours worked in producing subject and non-subject merchandise have been accounted for in Feili's DQR.[42] Further, Feili has used this same methodology in previous segments of this proceeding.

We agree in principle that an allocation methodology separately allocating the labor hours worked during each step of the production process to the weight of the material worked at each given step of the production process would more accurately assign labor hours to each individual CONNUM. However, the methodology that Meco proposed in its case brief did not adequately account for the many layers of the verified information that would have to be considered in revising Feili's labor allocation: Specifically, Meco's proposed methodology oversimplifies the required calculations and requires the Department to reconstruct the information provided in exhibits D-5 and D-9 of Feili's DQR, exhibit 6 of Feili's SQR and the computerized section D database. In addition, the process requires the Department to make assumptions that cannot be confirmed or verified at this stage in the review. As a result, we have determined that no adjustment to Feili's allocation of direct labor is warranted. Nevertheless, we will examine this issue further in the next review.

Comment 4: Allocation of Electricity for Feili

Meco argues that the Department should adjust Feili's allocation of electricity to account for the total weight of the subject merchandise, including the processing of plastic parts. Meco asserts that Feili calculated two consumption ratios for electricity: (1) one for plastic parts processing by dividing electricity consumption by standard production weight of plastic; and (2) one for all other processes by dividing total electricity consumption (excluding plastic parts processing) by total standard steel weight. According to Meco, Feili then multiplied the second consumption ratio by the standard weight of steel per piece or set. Thus, Meco contends, Feili's electricity allocation does not properly allocate electricity according to the production processes and inputs used for different products. Meco argues that for the final results, the Department should divide the total consumption of electricity (including an amount for plastic-parts processing) by total weight, then multiply the revised consumption ratio by the total weight of each product.

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[39] *See e.g., CLPP*, 71 FR 53079, at Comment 9.

[40] *See* Feili's November 3, 2006 DQR at D-13 and Feili's January 10, 2007, supplemental A, C, and D questionnaire responses ("SQR"), "Folding Metal Tables and Chairs form the People's Republic of China," at 5-6.

[41] *See* "Verification of the Sales and Factors Response of Feili in the Antidumping Review of Folding Metal Tables and Chairs from the People``s Republic of China" (June 29, 2007) ("Feili Verification Report"), at 26.

[42] *Id.*

Feili argues that the Department should continue to use Feili's allocation methodology for electricity. Feili claims that the Department has verified that Feili separately tracks the electricity consumed in its plastic-parts and main processing workshops, respectively. Feili explains that it first allocated total kilowatt hours consumed during the POR over the total weight of plastic parts produced for electricity consumed in the plastic-parts workshop, and over total weight of steel consumed for electric consumption in the main processing workshop. Feili explains that it next multiplied the per-unit kilowatt hours required for each kilogram of plastic parts produced and steel weight consumed by the respective plastic and steel weight of each individual product. Feili claims that its methodology captures all kilowatt hours consumed during the POR and properly allocates electricity consumption to individual products on a consistent basis. Lastly, Feili argues that Meco's proposed revision to Feili's calculation would have no effect on Feili's dumping margin.

Department's Position: As explained in Comment 3 above, it is the Department's longstanding practice to accept allocation methodologies that are reasonable and are based on the respondent's underlying books and records.[43] The Department verified that Feili separately tracks the electricity consumed in its plastic-parts and main processing workshops, respectively, but does not track it to specific production processes.[44]

At verification, we examined documents for electricity, including meter reading documents, invoices from the electric company, vouchers for accounts payable, proof of payment, vouchers for factory overhead, COP sub-ledgers, and finished goods sub-ledgers, and did not observe discrepancies with information Feili previously placed on the record.[45] Further, Feili has used this same allocation methodology in previous segments of this proceeding.

We agree in principle that an allocation methodology separately allocating the consumption of electricity at each stage of the production process to the weight of the material worked at that process would more accurately assign labor hours to each individual CONNUM. However, the methodology that Meco proposed in its case brief did not adequately account for the many layers of the verified information on the record, nor is it clear from the information on the record that it is possible to allocate electricity consumption so narrowly, given the metering system in Feili's workshops. As a result, any attempt to reallocate Feili's consumption of electricity would require the Department to make assumptions and/or to assemble Feili's data in such a manner that cannot be confirmed or verified at this stage in the review. As a result, we have determined that no adjustment to Feili's allocation of electricity is warranted. Nevertheless, we will examine this issue further in the next review.

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[43] *See, e.g., CLPP*, 71 FR 53079, at Comment 9.

[44] *See,* Feili Verification Report, at 23.

[45] *Id.*

Comment 5: Suspension of Liquidation of Tables with Legs Connected by a Cross-Bar

On October 31, 2005, Meco submitted an anti-circumvention request to the Department with respect to folding metal tables with legs that are affixed with cross bars so that two legs fold as a set ("common-leg tables"). The Department initiated an anti-circumvention inquiry on June 1, 2006.

Meco argues that its October 31, 2005 submission demonstrates, but for the minor alteration of the cross bars, common-leg tables clearly fall within the scope of the order. Meco further asserts that the Department has not yet determined that these tables are not included in the scope of the order. As a result, Meco contends that the Department should continue to suspend the liquidation of common-leg tables entered during the POR until it has issued both its final ruling in the anti-circumvention inquiry and the final results of this review.

Feili argues that the common-leg tables are not subject to the order on FMTCs and thus have never been subject to suspension of liquidation. Feili argues that because the Department's anti-circumvention inquiry was not initiated until after the POR,[46] none of the common-leg tables entered during the instant POR would be subject to suspension of liquidation regardless of the Department's ultimate determination in the anti-circumvention inquiry.

Department's Position: The Department initiated an anti-circumvention inquiry based on 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." Specifically, the Department stated in its June 1, 2006, initiation of the 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 Meco 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

[46] Feili cites *Final Results of the Administrative Review: Folding Metal Tables and Chairs from the PRC*, 71 FR 71509 (December 11, 2006) ("*FMTCs 04-05*") and accompanying Issues and Decision Memorandum, at Comment 3.

> folding metal tables and chairs from the PRC, pursuant to section 781(c) of the Act.[47]

Based on Meco's request, the Department initiated an anti-circumvention inquiry, which has a separate record. As a result, the evidence and legal argument Meco placed on the record in its October 31, 2005, request for an anti-circumvention ruling is not on the record of this review. We have not made a determination in the anti-circumvention inquiry. Even if we find that the common-leg tables are covered by the order, June 1, 2006, the date of the initiation of the anti-circumvention inquiry, falls 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.

Comment 6: Revocation of the Order

Feili contends that section 351.222(b) of the Department's regulations requires the Department to revoke the antidumping duty order with respect to an exporter whenever the Department calculates a *de minimis* or zero antidumping margin for that exporter or producer for three consecutive years, unless there is positive evidence on the record indicating the continued necessity of the antidumping order to offset dumping:

> (2)(i) In determining whether to revoke an antidumping duty order in part, the Secretary will consider:
>
> (A) Whether one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;
>
> (B) Whether, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and
>
> (C) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.
>
> (ii) If the Secretary determines, based upon the criteria in paragraphs (b)(2)(i)(A) through (C) of this section, that the antidumping duty order as to those producers or exporters is no longer warranted, the Secretary will revoke the order as to those producers or exporters.

Section 351.222(b) of the Department's regulations.

Feili contends that if its margin in the final results is *de minimis*, it will have satisfied all of the requirements of section 351.222(b)(2)(i) of the Department's regulations. Feili maintains that it

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[47] *See* Memorandum to Wendy Frankel, Director, AD/CVD Operations, Office 8, "Folding Metal Tables and Chairs from the People's Republic of China: Initiation of Anti-Circumvention Inquiry" (June 1, 2006).

will have demonstrated over three consecutive years that it is not selling the subject merchandise at less than normal value, thereby satisfying the requirements of section 351.222(b)(2)(i)(A) of the Department's regulations. Second, Feili argues that its written statement, filed on the record of the next administrative review, agreeing to the immediate reinstatement of the order if the Secretary concludes that Feili, subsequent to the revocation, sold the subject merchandise at less than NV, fulfills the requirements of section 351.222(b)(2)(i)(B) of the Department's regulations. Finally, Feili contends that the record does not contain any positive evidence indicating that the continued application of the antidumping duty order is otherwise necessary to offset dumping by Feili, thus satisfying the requirements of section 351.222(b)(2)(i)(C) of the Department's regulations.

According to Feili, once the absence of dumping is determined for three consecutive years, the petitioner carries the burden to present positive evidence indicating that the continued application of the antidumping duty order is otherwise necessary to offset dumping.[48] Further, the Department's initiation notice for this administrative review stated that it "received timely requests to revoke in part the antidumping duty order on FMTCs from the PRC," thus providing notice that it would consider revocation of the order covering FMTCs with respect to Feili.[49]

Feili claims that despite the notice provided in the Department's initiation notice, no parties submitted information indicating that the continued application of the antidumping duty order is necessary to offset dumping. Therefore, Feili argues that the Department should revoke the order with respect to Feili because the Department "can only retain an antidumping or countervailing duty order if there is positive evidence on the record indicating the continued necessity of such order to offset dumping. . . ."[50]

Further, in addition to satisfying the substantive requirements for revocation detailed in section 351.222(b)(2) of the Department's regulations, Feili claims that it has satisfied the procedural requirements for requesting revocation as described in section 351.222(e)(1) of the Department's regulations. Feili claims that it submitted a written request for revocation in the fifth administrative review, and in accordance with section 351.222(e)(1)(i)-(iii) of the Department's regulations, included the relevant certifications and agreements covering the first four administrative review periods.[51]

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[48]*See Final Rule, Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236, 51238 (September 22, 1999) ("*Final Rule - Revocation*").

[49]*See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006).

[50]*See Final Rule - Revocation*, 64 FR 51236, 51239.

[51]*See* Feili's letter "Folding Metal Tables and Chairs from the People's Republic of China" (June 29, 2007), at 2, placed on the record of the review covering the period June 1, 2006, through May 31, 2007.

Meco asserts that Feili is not entitled to revocation of the antidumping duty order at the conclusion of this review. Meco claims that section 351.222 of the Department's regulations requires an exporter or producer to request revocation of an order during the anniversary month of the order, which in this case, was June 2006. Meco notes that Feili did not request a revocation in its June 13, 2006, request for review. Thus, Meco argues that Feili did not satisfy all of the requirements for revocation specified in section 351.222 of the Department's regulations.

Further, Meco contends that in accordance with section 351.222 of the Department's regulations, only an exporter or producer may request revocation of the order with respect to itself. Meco notes that in June 2006, Cosco Home and Office Products, an importer of the subject merchandise and an interested party in this proceeding, requested revocation of the order with respect to Feili and New-Tec. Meco claims that Cosco's request for revocation was ineffective under section 351.222(e)(1) of the Department's regulations because Cosco's request for revocation stated that it was an importer, rather than a producer or exporter of the subject merchandise. Meco asserts that the Department's *Preliminary Results* acknowledged that it did not receive a timely request for revocation of the order, and that the Department did not take any further steps to determine if there was a reasonable basis to believe that the requirements for revocation or termination are met.

Meco further disagrees with Feili's claim that its June 29, 2007 request for revocation, placed on the record of the fifth administrative review, constitutes a timely request for revocation in the instant administrative review. Thus, Meco argues that, because Feili failed to request revocation in the anniversary month preceding this review, it failed to meet the procedural requirements of section 351.222(e)(1) of the Department's regulations and, therefore, cannot be granted revocation of the order.

Department's Position: Section 351.222(e) of the Department's regulations states:

> Request for revocation or termination.
> (1) Antidumping proceeding. During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:
> (i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in Section 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;
> (ii) the person's certification that, during each of the consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and
> (iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

Feili did not request revocation during the anniversary month of this review, nor did it file any of the certifications which must accompany such a request. Therefore, Feili did not satisfy the requirements for revocation in accordance with section 351.222 of the Department's regulations. In the *Preliminary Results*, the Department stated: "Although Cosco requested revocation on behalf of Feili and New-Tec, section 351.222(e) of the Department's regulations only permits an exporter or a producer to request revocation. Thus, Cosco cannot request revocation because it is not an exporter or a producer."[52] Furthermore, the request for revocation and accompanying certification and agreements, which Feili requests the Department to consider, are not part of the administrative record of this review. As a result, we have not considered Feili's request for revocation of this review.

Comment 7: Market-Economy Price for Rivets

Feili contends that in the *Preliminary Results*, the Department intended to calculate the weighted-average price for Feili's rivets using the quantity and value of rivets purchased on five separate invoices.[53] However, Feili contends that the Department inadvertently included the quantity and value of powder coating purchases in the calculation of the quantity and value subtotal of rivet purchases.[54] Thus, Feili argues that the Department should correct this ministerial error for the final results.

Meco agrees that the Department should correct the errors that Feili describes concerning the calculation of the weighted-average price of rivets.

Department's Position: We agree that we inadvertently included the quantity and value of powder coating purchases in the calculation of the quantity and value subtotal of rivet purchases in the *Preliminary Results*. We have corrected this error for the final results.

Comment 8: Fiberboard Consumption

Feili contends that in the *Preliminary Results*, the Department double-counted the quantity of fiberboard Feili consumed in the production of subject merchandise. Feili argues that the Department calculated the fiberboard component of the direct materials ("FIBERBOARD_IN") by multiplying Feili's fiberboard consumption ("FIBERBOARD") by the surrogate value for fiberboard ("FIBERBOARD_SV"). In addition, Feili maintains that the Department calculated a fiberboard component of packing ("FIBERBOARD_PACK_IN") by multiplying the value of fiberboard consumption that Feili reported as a direct material by the surrogate value for

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[52]*See Preliminary Results*, at 72 FR 37703, 37704.

[53]*See* Memorandum to the File, "Analysis for the Preliminary Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, 'Feili')" (July 2, 2007) ("Feili Preliminary Analysis Memorandum"), at Attachment III.

[54]*Id.*

fiberboard. However, Feili argues that it did not report using fiberboard as a packing material in in this review. Thus, Feili argues that the Department's double-counting of Feili's reported fiberboard consumption must be an inadvertent error that should be corrected for the final results.

Meco agrees that the Department should correct the errors that Feili describes concerning the double-counting of fiberboard consumption.

Department's Position: We agree that Feili did not report using fiberboard as a packing material during the course of this review. Therefore, we have corrected the calculation of NV to eliminate fiberboard as a packing material in the final results.

Comment 9: Packing Labor

Feili contends that in the *Preliminary Results*, the Department inadvertently failed to include packing labor in the packing component of NV but, rather, included it in COM. As a result, Feili contends that the Department overstated the value of COM to which it applied the surrogate financial ratios. Feili contends that it is the Department's practice to add all packing-related costs to NV after the application of the surrogate financial ratios indicated by notations in the SAS program: 1) "** Sum of labor inputs except packing labor. **."; and 2) "** Sum of packing inputs including packing labor. **." Accordingly, Feili argues that for the final results, the Department should remove the calculated cost for packing labor ("PACKING_IN") from the labor component of NV and include it in the packing component of NV.

Meco agrees that the Department should correct the errors that Feili describes concerning the inclusion of packing labor in the cost of manufacturing.

Department's Position: We agree that we inadvertently included packing labor in the calculation of COM rather than in packing labor, and thus overstated the value of COM to which the surrogate financial ratios were applied. Therefore, we have revised our calculation of manufacturing and packing labor for the final results.

Comment 10: Zero-Priced Transactions

Feili contends that the Department included zero-priced transactions in the margin calculations for the *Preliminary Results*, claiming that Feili made a significant number of zero-priced transactions after it had already sold the same merchandise to the same customers in commercial quantities. Feili argues further that the Department claims that its decision to include Feili's zero-priced transactions in the margin calculations is consistent with its decisions in the two most recently completed administrative reviews.

Feili acknowledges that respondents in antidumping proceedings can "game the system" or otherwise avoid antidumping duties by shipping subject merchandise in commercial quantities to the United States in the guise of free or low-priced product samples. Feili maintains that the low volume and costly manner in which it shipped zero-priced transactions to customers in the United

States during the POR prove that its zero-priced transactions were product samples provided to customers for legitimate promotional and marketing purposes, and that there was no effort on the part of Feili or its importers to “game the system.”

Feili argues that the Department should not include in the margin calculation any product samples that Feili shipped to its U.S. customers during the POR because: (1) the total volume of the zero-priced product samples that Feili shipped during the POR is insignificant; (2) unlike the rest of the subject merchandise that Feili exported to the United States during the POR, the zero-priced transactions were product samples that Feili shipped to the United States via express air freight in very small quantities; (3) Feili’s zero-priced transactions were provided solely for promotional and marketing purposes, were not shipped under normal commercial terms and, thus, were not for resale; and (4) the Department misinterpreted the Court of Appeals of the Federal Circuit (“CAFC”) decision in *NSK Ltd. v. United States*, 115 F.3d 965 (Fed. Cir. 1997) (“*NSK I*”) and, thus, the Department’s decision is not supported by legal precedent.

Feili asserts that in *FMTCs 04-05*, 71 FR 71509, at Comment 4, it made similar arguments which the Department rejected. Nevertheless, Feili maintains that the Department’s decision was not supported by substantial evidence and is not in accordance with law. Accordingly, Feili contends that the Department should not include Feili’s zero-priced transactions in the calculation of Feili’s antidumping duty margin.

Meco disagrees with Feili’s contention that its reported zero-priced transactions represent samples because they were made in small quantities and were delivered by express air freight, not oceangoing container, and because Feili delivered these product model numbers after selling identical merchandise in commercial quantities to the same customer.

Meco contends that Attachment I of the Feili Preliminary Analysis Memorandum establishes that Feili delivered “samples” to U.S. customers after it had made commercial sales to the same customers. Meco alleges that Feili failed to explain why it was necessary to deliver samples to a customer after it had shipped the same merchandise in commercial quantities. Thus, Meco maintains that Feili’s failure to provide a clear explanation, with evidence, for the reason it provided sample merchandise to a customer after selling the same models in commercial quantities to that customer, amounts to a concession that it cannot prove that it was providing sample merchandise rather than free merchandise for resale.

Meco notes that the facts of this review are no different from the facts provided in the two previous reviews. Meco further asserts that the burden rests with the respondent to demonstrate that its zero-priced transactions qualify for exclusion from the U.S. sales database.

Department’s Position: Our analysis of the Section C database reveals that Feili made a significant number of zero-priced transactions after it had already sold the same products to the same customers in commercial quantities.[55] In the previous review, the Department included

[55]*See Preliminary Results,* 72 FR 37703, 37708; *See also,* Feili Preliminary Analysis Memorandum.

Feili's zero-priced transactions in the margin calculations,[56] and in this review, Feili has not argued that the facts differ from the facts reported in the previous review.

The Department is not required by statute or regulation to exclude zero-priced or *de minimis* sales from its analysis.[57] Unlike the definition of NV, 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."[58] As a result, the Department only excludes zero-priced transactions if they are properly considered not to be "sales."

The CIT has defined a sale as requiring "both a transfer of ownership to an unrelated party and consideration."[59] Feili has not claimed that it 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 bears the burden of demonstrating that there was no monetary or non-monetary consideration.[60] Feili failed to demonstrate that these transactions lacked any consideration in this review since it provided no evidence that no non-monetary consideration was given. Simply labeling these sales as samples and stating that it received no consideration is insufficient to demonstrate that no consideration was provided for these sales.[61]

In *NSK II,* 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."[62] 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."[63] Feili has not provided any arguments that would cause us to reconsider the relevance of these decisions with respect to their sales.

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[56]*See FMTCs 04-05,* 71 FR 71509, at Comment 4.

[57]*See, e.g.*, *FAG U.K. Ltd. v. United States*, 20 CIT 1277, 1281 (CIT 1996) ("*FAG U.K.*"); and *FMTCs 04-05,* 71 FR 71509, at Comment 4.

[58]*See FAG U.K. Ltd.*, 20 CIT, at 1281*; FMTCs 04-05,* 71 FR 71509, at comment 4.

[59]*See NSK Ltd. v. United States*, 26 CIT 650, 671-672 (CIT 2002) ("*NSK II*")

[60]*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").

[61]*See, e.g., NTN Bearing Corp. of America v. United States*, 248 F. Supp. 2d 1256, 1286 (CIT 2003); and *FMTCs 04-05*, 71 FR 71509, at Comment 4.

[62]*See NSK II,* 26 CIT, at 671-672.

[63]*See NSK II,* 26 CIT, at 672.

Although Feili argues that the low volume included in each zero-priced transaction and its use of airfreight "confirm" that its zero-priced transactions were samples, the Department agrees with Meco that the mode of shipment is not sufficient evidence to demonstrate that Feili received no consideration for the zero-priced merchandise it provided to its customers.

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) 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.

Comment 11: Zero-Priced Transactions not Previously Sold in Commercial Quantities

During the POR, Feili maintains that it provided certain product samples to its U.S. customers that were not previously sold in commercial quantities during the POR, whereas in the *Preliminary Results*, the Department stated that Feili made a significant number of zero-priced transactions after already selling the same products to the same customers in commercial quantities. Feili contends that the Department's analysis of whether Feili had previously sold for value the same products shipped free-of-charge was not explained fully and may contain errors. For example, Feili claims that page 15 of the SAS output for the sample interspersion check included in Attachment II of the Feili Preliminary Analysis Memorandum indicates that the total value of sales to one of Feili's customers was not correct. Feili contends further that it cannot be certain what error generated the aberrational results in the Department's analysis. However, Feili argues that this error alone demonstrates that the computer program for the sample interspersion check did not analyze Feili's data in the manner intended by the Department.

Feili contends that, notwithstanding the Department's sample interspersion check, sorting the U.S. sales database by customer code ("CUSCODU"), model ("PRODCODU2") and shipment date ("SHIPDTU") demonstrates that most of the pieces shipped as samples were not previously sold to the same customer for value.

Feili acknowledges that if the Department is going to include zero-priced transactions in the margin calculation, the Department's practice to include only those transactions where the same model was previously sold for consideration in commercial quantities is reasonable considering the underlying rationale for including samples as expressed in *FMTCs 04-05,* 71 FR 71509, at Comment 4, citing *NSK II* (wherein the court reasoned that there is little reason for a seller to supply and re-supply the same product within a reasonably short period of time to the same customer in order to solicit sales). Thus, Feili argues that according to the Department's reasoning in *FMTCs 04-05*, 71 FR 71509, at Comment 4, and *NSK II*, Feili's zero-priced transactions that were not previously sold in commercial quantities constitute samples and should be excluded from the final margin calculation.

Meco argues that the Department should reject Feili's arguments for excluding zero-priced transactions. Meco contends that there are factual inaccuracies in Feili's analysis of the results of the Department's sample interspersion check. As one example, Meco argues that the Department's *Preliminary Results* show that two commercial shipments of the product identified in OBSU 10 preceded the zero-priced transaction, and five additional commercial transactions followed the zero-priced transaction in the same month. Meco claims that Feili made additional errors in its analysis, but did not specify the nature of any such additional errors.

Meco also contends that even if zero-priced transactions preceded commercial sales, Feili still bears the burden of demonstrating that these transactions represent sample merchandise. As a result, Meco argues that Feili cannot meet its burden by relying on a chronology of events, method of delivery, or claim that it did not receive cash consideration from its customers. Rather, Meco asserts that Feili is required to demonstrate that it received no consideration of any kind in accord with precedents set by the Department. As an example, Meco claims that Feili could have asked its customer to provide proof that Feili had delivered samples, but it failed to do so. Thus, Meco argues, Feili failed to meet its evidentiary burden, and is not entitled to exclude any zero-priced transactions from its U.S. database.

Department's Position: The facts in this review with respect to zero-priced transactions are no different from the facts in the previous review. As we stated in the *Preliminary Results*, an analysis of the Section C database indicates that Feili made a significant number of zero-priced transactions with customers that had previously purchased the same merchandise in commercial quantities. Therefore, we included such zero-priced transactions in our margin analysis. In addition, we excluded any zero-priced transactions of any models that had not previously been purchased in commercial quantities by the same customer.

We disagree with Feili that our analysis in the *Preliminary Results* was not explained. Feili received both a computer program and an explanation in the Feili Preliminary Analysis Memorandum detailing the basis by which sales were omitted from and/or included in the universe of sales used to calculate the dumping margin. Feili was entitled to a disclosure conference to clarify any parts of the Department's calculations that it did not understand. However, Feili did not make its concerns known until its remarks in the case brief.

Nevertheless, we agree with Feili that there were errors in the Department's sample interspersion check. Specifically, the Department erroneously calculated the total value of sales as Feili alleged. This calculation, however, was provided for informational purposes and had no impact on our decision to include or exclude sales from the margin calculation. However, in re-evaluating the computer program for the sample interspersion check in light of Feili's comments, we discovered that the sample interspersion check used in the *Preliminary Results* inadvertently excluded from our margin calculations any zero-priced transactions made during the first month that Feili sold a model to a given customer. A close examination of Feili's section C database reveals that Feili sometimes sold a specific model for monetary consideration and made zero-priced transactions to the same customer. In certain of those months, sales for monetary consideration preceded the zero-priced transaction, but the sample interspersion check used in the

Preliminary Results failed to identify them because the sample interspersion check used in the *Preliminary Results* was sorted by per-unit price and month for each model and customer. Consequently, certain zero-priced transactions that were made after commercial transactions for monetary consideration were erroneously excluded from our margin calculations. As a result, we revised the sample interspersion check to sort the sales based on the date of sale ("SALEDTU") rather than on the month and year of sale.

In its case brief, Feili proposed that the Department conduct the sample interspersion check by simply sorting the U.S. sales database by customer code ("CUSCODU"), model ("PRODCODU2") and shipment date ("SHIPDTU"). We disagree that PRODCODU2 and SHIPDTU are the appropriate variables to use in the sample interspersion check. PRODCODU2, which Feili uses to represent product model, represents Feili's own product model nomenclature and has not been reported in accord with the Department's requirements for physical characteristics. In addition, Feili proposes that we use SHIPDTU as a means of measuring the date of sale ("SALEDTU"). In this review, Feili used the invoice date as the date of sale, and to the extent that SHIPDTU and SALEDTU differ, the results of any calculations using SHIPDTU would be inaccurate and inconsistent with the Department's margin calculations. Consequently, for the final results, we revised the computer program for the sample interspersion check by sorting the database by CUSCODU, control number ("CONNUMU"), SALEDTU and gross unit price ("GRSUPRU"). As a result, we excluded more than half of Feili's zero-priced transactions from our margin calculations in the final results.

Comment 12: Shipping Costs for Zero-Priced Transactions

Feili argues that, in the event that the Department includes Feili's zero-priced transactions in the calculation of the antidumping duty margin, the Department should treat the associated shipping costs as indirect selling expenses ("ISE"), which are captured in the surrogate financial ratio for SG&A expenses in NV, rather than movement expenses for U.S. sales. Feili notes that the Department rejected this argument in *FMTCs 04-05*, 71 FR 71509, at Comment 5a. Nevertheless, Feili maintains that the Department's decision is not supported by substantial evidence and is not in accordance with law. Accordingly, Feili argues that the Department should not treat the shipping costs associated with its zero-priced transactions as movement expenses in the calculation of the antidumping duty margin for the final results.

Meco contends that the Department should reject Feili's claim that shipping costs associated with zero-priced transactions should be treated as indirect selling expenses. Meco argues that this contention intentionally overlooks the fact that the Department has correctly treated those transactions as sales. Meco claims that expenses associated with delivery are properly treated as movement expenses, as the Department did in the final results of the previous review. Meco contends that Feili failed to provide any new information or argument in the current review. As a result, Meco argues that the Department should reject Feili's arguments in this review as well.

Department's Position: We have determined that Feili did not demonstrate that it received no consideration for its zero-priced transactions. Thus, we have included them in our margin analysis. In the past two administrative review, we have determined that air-freight expenses represent movement expenses, not indirect selling expenses.[64] Feili has not presented any information that would cause us to re-evaluate our decision. Therefore, for the final results of review, we have continued to treat air freight expenses as movement expenses in accordance with section 772(c)(2)(A) of the Act.

Comment 13: Negative Values for Importer-Specific Assessment Rates

Feili argues that the Department should not include negative values in the denominator of the importer-specific assessment rates. Feili contends that unlike the overall margin calculated for cash deposit purposes, the Department calculates 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" in accordance with section 351.212(b) of the Department's regulations. Feili claims that because it did not import the subject merchandise to the United States, it does not know the entered value reported to U.S. Customs and Border Protection ("CBP"). However, Feili maintains that the entered value cannot be below zero since there is no provision of U.S. customs law that permits an importer to report negative entered values for imported merchandise. Therefore, Feili contends that if the Department is going to calculate unit margins on the zero-priced transactions, the negative values calculated in computing the entered value cannot be included in the calculation of the importer-specific assessment rates because entered value cannot be below zero.

Feili states that the Department rejected this argument in *FMTCs 04-05*, 71 FR 71509, at Comment 5e. Feili claims that the Department failed to address the fact that its method of calculating the importer-specific assessment rates is in conflict with the requirements of section 351.212(b) of the Department's regulations. According to Feili, the Department claimed that it was following its own practice without addressing the fact that the Department's regulations require the assessment rates to be calculated by dividing the dumping margin by the entered value. Further, Feili argues that the Department cannot ignore its own regulations.[65] Thus, Feili argues that the Department's decision to impute negative entered values is not supported by substantial evidence and is not in accordance with law.

Meco contends that the Department should follow the precedent of the previous review and reject Feili's arguments that section 351.212(b) of the Department's regulations prohibits the Department from using an entered value of less than zero to calculation importer-specific assessment rates. Meco disagrees with Feili's contention that the Department has not previously

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[64] *See, FMTCs, 04-05*, 71 FR 71509, at Comment 5a, and *see also*, *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) ("*FMTCs 03-04*") and accompanying Issues and Decision Memorandum, at Comment 4).

[65] *Citing, e.g., Torrington Co. v. United States*, 82 F.3d 1039, 1049 (Fed.Cir.1996) ("Commerce, like other agencies, must follow its own regulations."); citing *Fort Stewart Schools v. Federal Labor Relations Auth.*, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L. Ed.2d 659 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations.")

addressed the fact that its method of calculating the assessment rates is in conflict with the requirements of section 351.212(b) of the Department's regulations. Rather, Meco contends that the Department addressed Feili's argument in the previous review when it explained that there is nothing in the statue or regulations that would allow it to mitigate the effect on the margin of highly dumped sales with negative net U.S. prices. Thus, Meco contends that the Department has previously considered and rejected Feili's arguments. Meco further asserts that Feili has not introduced any new grounds for overturning the Department's established method of calculating importer-specific assessment rates. Consequently, Meco argues that the Department should make no changes for the final results.

Department's Position: The Department disagrees with Feili's contention that we should allocate the total value of antidumping duties due ("TOTPUDD") only over the value of subject merchandise with a value greater than zero in the margin calculation. We have previously addressed the issue of negative net per-unit sales prices by explaining that we calculate margins by deducting the selling expenses applicable to the reviewed sales in accordance with section 772(c) of the Act.[66] In those cases, we determined that negative net per-unit 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.[67] In *Wire Rod*, 72 FR 3822, at Comment 7, 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. We calculated the U.S. net price for all sales in this review in accordance 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 accordance 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*, 65 FR 77852, at Comment 26, and *Wire Rod*, 71 FR 3822, at Comment 7, we have made no changes to our calculation methodology for the final results of review.

Comment 14: The Treatment of ORC and AMS

Feili claims that in the *Preliminary Results*, the Department incorrectly determined for the third consecutive administrative review, that the addition of Feili's reported billing adjustments to U.S. price for ORC and AMS was not warranted. Feili explains that, in the Department's estimation, these charges represents additional movement expenses which Feili paid for in Chinese non-market economy currency (*renminbi* ("RMB")) and sought reimbursement in U.S. dollars

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[66] *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000) ("*Pasta*") and accompanying Issues and Decision Memorandum, at Comment 26; *see also*, *Notice of 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.

[67] *See Pasta,* 65 FR 77852, at Comment 26; and *Wire Rod*, 71 FR 3822, at Comment 7.

from its customers in separate invoices. As a result, Feili maintains, the Department did not view these charges to be included or reported in its reported gross unit price.

During the current POR, Feili notes that it paid for all foreign inland freight and brokerage expenses, including certain ORC and AMS charges, in RMB. Feili claims that it must consider additional ORC and AMS charges when negotiating its U.S. sales price. As a result, during the current review, Feili maintains that, to the extent that it incurred ORC and AMS expenses in RMB, it added these charges as separate line-items on the invoices to its customers.

Feili claims that in the *Preliminary Results*, the Department did not add these charges, reported as billing adjustments ("BILLADJU"), in its calculation of net price. Feili contends that the Department determined, as it did in *FMTCs 04-05*, 71 FR 71509, at Comment 7, that the customer was merely repaying Feili for an expense that Feili incurred.

Feili argues that the final results should reflect the fact that revenue earned in U.S. dollars cannot be used to "directly reimburse" RMB-incurred expenses and, accordingly, the Department should reexamine its approach and add to Feili's reported U.S. sales prices the amounts of payments received for ORC and AMS and reported in BILLADJU to Feili's reported U.S. sales prices.

Feili notes that in the previous administrative review, the Department rejected similar arguments in *FMTCs 04-05*, 71 FR 71509, at Comment 7. Nevertheless, Feili maintains that the Department's decision not to add the BILLADJU to Feili's gross unit price is not supported by substantial evidence, in accordance with law, or in accordance with the Department's own practice. Therefore, Feili argues that the Department should add the amounts recorded in BILLADJU to gross unit price for the final results.

Meco contends that the Department should not make any changes in its final results of review with respect to its treatment of the ORC and AMS charges which Feili billed to its U.S. customers. Meco asserts that the Department has considered and rejected Feili's arguments in the two previous reviews. Further, Meco contends that Feili has not advanced any new arguments or different facts in this review that would cause the Department to reconsider its position with respect to this claim. Meco contends that Feili offers no support for its claim that the Department's non-market economy rules do not allow for U.S. dollar payments to offset RMB expenses that are incurred in the PRC and paid for in RMB.

Department's Position: Consistent with information placed on the record,[68] our findings in the *Preliminary Results* and in prior reviews,[69] we continue to find that the charges that Feili invoiced its customers for ORC and AMS represent movement expenses that were not otherwise included

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[68] *See* Feili's November 3, 2006, Section C response ("CQR"), at 14-15; *see also* Feili's January 10, 2007, 1st Supplemental Section A, C, and D Questionnaire Response, at 3-4; and Feili's March 30, 2007, 2nd Supplemental Questionnaire, at 4.

[69] S*ee FMTCs 04-05,* 71 FR 71509, at Comment 7; *see also*, *FMTCs 03-04*, at Comment 9.

in the invoice price reported to the Department or accounted for in the Department's calculations.[70] At verification, Feili explained that when it pays ORC and AMS fees, it invoices the customer separately from the associated sale.[71] Our review of documents related to ORC and AMS charges, showed that Feili books the charges as administrative expenses, and payments from the customer as "other revenue."[72] According to Feili, payments from the customer are not always equivalent to the ORC and AMS charges that Feili pays, but are negotiated between Feili and its customer.[73] As a result, were we to add these additional charges to the invoice 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 the PRC 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 15: Adjustments for Materials That Were Provided Free-of-Charge

Feili claims that in the *Preliminary Results*, the Department determined the margin for those sales for which Feili received polyester fabric free-of-charge from its U.S. customers by first assigning Indian surrogate values to the polyester fabric consumed in the production of the relevant merchandise, then adding the calculated value of the free polyester fabric to U.S. price.

Feili contends that, although the Department's calculation in the *Preliminary Results* offsets somewhat the inclusion of its free-of-charge inputs in the calculation of NV, there is a difference between the value of the free polyester applied to the calculation of NV and the value added to the U.S. price. Feili maintains that because the Department included the value of the free polyester fabric in direct materials prior to the calculation of the overhead, SG&A, and profit, the NV calculation was increased by both the value of the free polyester and a relative amount for overhead, SG&A, and profit. However, Feili contends that the Department added the value of the free polyester fabric to U.S. prices with no corresponding increase for the surrogate financial ratio.

Feili acknowledges that although it may have possibly incurred handling and storage costs for the polyester fabric received free-of-charge from its U.S. customers, and additional overhead and SG&A costs in assembling and delivering the final products that included the polyester fabric,

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[70] *See* Feili Verification Report, at 18.

[71] *Id.*

[72] *Id.*

[73] *Id.*

there is no record evidence to suggest that Feili earned any profit by incorporating into its finished products the free-of-charge polyester fabric. Thus, Feili argues that the Department should not make such an unsubstantiated assumption in its calculations. Therefore, for the final results, Feili contends that, for those transactions for which Feili's received polyester fabric on a free-of-charge basis, the Department should increase U.S. price by the surrogate value for the free polyester fabric plus an additional amount corresponding to the increase in NV resulting from the calculation of profit in the build-up of NV. Feili claims that the Department should revise the margin calculation for Feili as follows:

Original: GUPADJU = FREE_POLY_ADJ;
Revised: GUPADJU = FREE_POLY_ADJ * (1 + PROFT_SV));

By revising the margin calculation in this way, Feili contends that the Department would ensure that Feili's dumping margin for the final results is not distorted by an imputed profit that Feili did not earn on polyester fabric that it received free-of-charge from its customers.

Feili notes that it made similar arguments in the previous administrative review which were rejected by the Department in *FMTCs 04-05,* 71 FR 71509, at Comment 6. Nevertheless, Feili maintains that the Department's decision is not supported by substantial evidence and is not in accordance with law.

Meco contends that the Department should reject Feili's claim that it is entitled to an upward adjustment to U.S. price to reflect profit on polyester fabric that its U.S. customers supplied to it for free. Meco argues that the Department rejected the same arguments in the previous review, and should thus follow its consistent practice of adjusting both NV and U.S. price by the appropriate amounts. Meco contends that Feili has not advanced any new facts or arguments that should cause the Department to change its position.

Department's Position: We added to direct materials in the NV calculation the surrogate value for the materials provided free-of-charge, in accordance with section 773(c)(1) of the Act. Consistent with the Department's practice in this regard, we adjusted the U.S. price by adding the same per-unit value as calculated in the NV build-up for the customer-provided factors at issue.[74] This was done to ensure: 1) that we followed the statute by including this FOP in the NV; 2) that we properly accounted for the U.S. price's non-inclusion of the customer-provided inputs; and 3) that we added the same amount to both the NV and U.S. price. We note that Feili argues that we should ensure that we make a parallel adjustment to both NV and U.S. price by revising our methodology and adding the cost of the polyester fabric not to direct materials, but directly to NV 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

[74] *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) ("*Mushrooms 03-04*") and accompanying Issues and Decision Memorandum, at Comment 13.

derived from a surrogate company's financial statements. We have not changed the ratios or our normal methodology.

Comment 16: Offsetting Dumped Sales with "Non-Dumped" Sales ("Zeroing")

Feili contends that in the final results, the Department should recalculate Feili's margin to comply with the World Trade Organization's ("WTO's") decision regarding "zeroing" negative dumping margins. Feili explains that "zeroing" refers to the practice of ignoring -- by reducing to zero -- any transaction-specific or product-specific negative dumping margins when calculating the weighted-average dumping margin for the subject merchandise. Feili contends that although neither the Act nor the Department's regulations explicitly provide for zeroing, it has become the Department's practice in administrative reviews.

Feili contends that a recent WTO Appellate Body held that the United States acts inconsistently with Articles 2.4 and 9.3 of the Anti-Dumping Agreement and Article VI: 2 of the GATT 1994 by maintaining zeroing procedures in periodic reviews.[75] Feili argues that the Department has previously interpreted the definition of "dumping margin" under section 771(35)(A) of the Act to mean that a dumping margin exists only when NV is greater than export price or constructed export price. Thus, Feili explains that because no dumping margins exist with respect to sales where NV is equal to or less than export price, the Department has not allowed non-dumped sales to offset dumping found on other sales. However, Feili contends that the statute does not preclude the Department from reconsidering its zeroing practice. Thus, Feili contends that the Department should give due consideration to the WTO Appellate Body decision in the final results.

Feili argues that the CAFC has held that where the Department has the authority to interpret the statute, the Department may occasionally reassess its policies, and apply a new policy to a pending case.[76] Feili contends that the Department has previously adopted a change in statutory interpretation that applied to all segments pending as of the date of the change.[77] In addition, Feili contends that a change in methodology would be consistent with the principle that U.S. law, whenever possible, should be construed in a manner consistent with the international obligations of the United States. Further, Feili maintains that the CAFC has repeatedly held that the Department's treatment of non-dumped sales is not required by statute, but instead is a result of

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[75]Feili cites *Report of the Appellate body on the Complaint of Japan Concerning the United States – Measures Related to Zeroing and Sunset Reviews*, at p.190(c), WT/DS322/AB/R (January 9, 2007).

[76]Feili cites *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029-30 (Fed. Cir. 2001).

[77]Feili cites, *e.g., Basis for Normal Value When Foreign Market Sales Are Below Cost*, Policy Bulletin 98.1 (February 23, 1998); and *Treatment of Inventory Carrying Cost in Constructed Value*, Policy Bulletin 94.1 (March 25, 1994); *Alexander Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch.) 64, 118 (1804); *Luigi Bormioli Corp. v. United States*, 304 F.3d 1362, 1368 (Fed. Cir. 2002) (statutes must be interpreted to be consistent with GATT obligations, absent contrary indications in the statutory language or its legislative history).

the Department's interpretation of the statute.[78] Feili claims that the CAFC also has repeatedly held that the Department may reasonably change its interpretation of the statute at any time, so long as it provides an explanation for that change.[79] Therefore, Feili argues that the Department should provide an offset for non-dumped sales when calculating Feili's margin in the final results.

Meco argues that, despite Feili's claims that the Department should eliminate the zeroing of negative antidumping margins in order to conform to recent WTO Appellate Body decisions, it is undisputed that U.S. law authorizes the Department to zero negative margins. Meco contends that the Department has consistently followed this practice except in those few instances in which a successful WTO challenge has been brought to the use of zeroing in a specific investigation or review. Meco asserts that no such challenge has been brought with respect to this review. Thus, Meco argues that the Department should make no changes for the final results.

Department's Position: Section 771(35)(A) of the Tariff Act defines "dumping margin" as the "amount by which the normal value ***exceeds*** the export price or constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute.[80] We note we have taken action with respect to two WTO dispute settlement reports which found the denial of offsets to be inconsistent with the Antidumping Agreement: *U.S. - Zeroing (EC)*,[81] and *U.S. - Zeroing (Japan)*.[82]

With respect to *US - Zeroing (EC)*, the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping

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[78]Feili cites, *e.g., Corus Staal BV v. Department of Commerce*, 395 F.3d. 1343, 1347 (Fed. Cir 2005); and *Timken Co. v. United States*, 354 F.3d 1334, 1341-42 (Fed. Cir. 2004) ("*Timken*").

[79]Feili cites *NTN Bearing Corp of America v. United States*, 295 F.3d 1263, 1269 (Fed. Cir. 2002); and *British Steel, PLC v. United States*, 127 F.3d 1471, 1475 (Fed. Cir. 1997).

[80]See *Timken, Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004), and *Corus Staal BV v. Department of Commerce*, 395 F. 3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023,163 L. Ed. 2d 853 (January 9, 2006) ("*Corus Staal 2005*").

[81]*Report of the Appellate Body on the Complaint of the European Union Communities Concerning United States - Laws, Regulations, and Methodology for Calculating Dumping Margins,* WT/DS294/AB/R (May 9, 2006) ("*U.S.-Zeroing (EC)*").

[82]*Report of the Appellate Body on the Complaint of Japan Concerning the United States - Measures Related to Zeroing and Sunset Reviews*, WT/DS322/AB/R, (January 23, 2007) ("*U.S.- Zeroing (Japan)*").

investigations.[83] In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.[84] With respect to the specific administrative reviews at issue in that dispute, the United States did not apply any change in its calculation methodology in those administrative reviews to render those determinations consistent with the findings contained in the WTO report.

As such, the Appellate Body's reports in *U.S. - Zeroing (EC)* have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law.[85] Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value. With respect to *US - Zeroing (Japan)*, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports.[86] As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute.[87] Because no change has been made with respect to the issue of zeroing in administrative reviews, the Department will continue with its current approach to calculating and assessing antidumping duties in this administrative review.[88] For the reasons set forth above, we have not changed the methodology employed in calculating the weighted-average dumping margins for these final results.

[83] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722, 77725 (December 27, 2006) ("*DOC Zeroing*").

[84] *See DOC Zeroing* at 77724.

[85] *See Corus Staal 2005*, at 1347-49; *Timken Co. v. United States*, 354 F. 3d 1334, 1342 (Fed. Cir. 2004), *cert. denied* 543 U.S. 976 (2004).

[86] *See* 19 U.S.C. § 3538.

[87] *See* 19 U.S.C. § 3538(b)(4): (implementation of WTO reports is discretionary); *see also* the Statement of Administrative Action on the Uruguay Round Agreements Act ("SAA") at 354: ("{a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is not inconsistent with the panel or Appellate Body recommendations. . .").

[88] *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 72 FR 28676, 28678 (May 22, 2007).