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January 12, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2006-2007 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, 2006, through May 31, 2007. As a result of our analysis, we have made changes to the margin calculations in the preliminary results. 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: Use of the Appropriate Financial Statements for Calculation of Surrogate Financial Ratios
Comment 2: Use of Market Economy Purchase Prices of New-Tec Certain Factors of Production
Comment 3A: Likelihood of Future Dumping as a Result of Raw Material Price Increases if the Order is Revoked, in Part
Comment 3B: Whether to Revoke Order in Part While Circumvention Inquiry is Pending

BACKGROUND

On July 14, 2008, the Department of Commerce ("Department") published its *Preliminary Results.*[1] On October 1 and 3, 2008, the Department received case briefs from Meco Corporation ("Meco"), a domestic producer of the like product, and New-Tec Integration (Xiamen) Co., Ltd. and New-Tec Integration Co., Ltd. (collectively "New-Tec"), a respondent, respectively. On October 6, 8, and 20, 2008, the Department received rebuttal briefs from Feili Furniture

[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part,* 73 FR 40285 (July 14, 2008) ("*Preliminary Results*").

Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively "Feili"), a respondent, Meco, New-Tec, and Cosco Home and Office Products ("Cosco"), a U.S. importer of subject merchandise, respectively. On November 6, 2008, the Department held a public hearing. On November 10, 2008, and December 17, 2008, the Department extended the time period for completion of the final results until January 12, 2009.[2]

Below is the complete list of the issues for which we received comments and rebuttal comments by parties:

DISCUSSION OF THE ISSUES

Comment 1: Use of the Appropriate Financial Statements for Calculation of Surrogate Financial Ratios

Meco argues that in the *Preliminary Results*[3] the Department used only the financial statement of Godrej & Boyce Manufacturing Company Limited ("Godrej") ending March 31, 2007, to calculate the surrogate financial ratios. According to Meco, Godrej produces both subject and non-subject merchandise, which includes a wide variety of products dissimilar to FMTCs. Meco contends that the Department should instead use Infiniti Modules PVT Ltd.'s ("Infiniti") financial statement for the year ending March 31, 2006, because it produces a greater proportion of products comparable to FMTCs than does Godrej. Additionally, Meco argues that Infiniti utilizes manufacturing processes identical or comparable to the manufacturing processes used for FMTCs. Meco further contends that the two-month gap between the end of Infiniti's financial statements and the beginning of the POR is insignificant in the circumstances of this case.

Meco argues that if the Department does not just use Infiniti's financial statement alone, the Department should average the data derived from the financial statements of Infiniti, Godrej, and Tube Investments of India, Ltd. ("Tube") based on its previous practice. Meco asserts that broader-based surrogate values minimize the particular circumstances of any one producer and provide a more comparable and reliable indication of the factory overhead, selling, general, and administrative ("SG&A"), and profit experience of the respondents.[4] Meco did not address the appropriateness of Maximaa System Ltd.'s ("Maximaa") and Zuari Industries Limited's ("Zuari") financial statements for deriving surrogate financial ratios.

[2]*See Folding Metal Tables and Chairs from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review*, 73 FR 76615 (December 17, 2008).

[3]*See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part*, 73 FR 40285 (July 14, 2008) ("*Preliminary Results*").

[4] *See* Meco's Case Brief, at 9 (October 1, 2008) (citing *Final Determination of Sales At Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum, at 68).

New-Tec argues that the Department should not utilize Infiniti's 2006 financial statement because it is not contemporaneous with the POR and should not use Tube's 2007 financial statement because Tube did not produce comparable merchandise. According to New-Tec, the data derived from Infiniti's 2006 financial statement would lead to distortions of the financial ratios due to the gap between the period it covers and the POR. Additionally, New-Tec asserts that no record evidence shows that Infiniti's products are more comparable than any other surrogate producer's products. New-Tec disagrees that the Department should use both Infiniti's 2006 and Godrej's 2006 financial statements because while in the previous review both statements were contemporaneous with the previous POR, neither are contemporaneous for this POR. Finally, New-Tec states that the Department should not use Tube's financial statements because Tube is not a producer of comparable merchandise.

New-Tec asserts that the Department should use Maximaa's financial statement ending March 31, 2007, because it is contemporaneous with the POR and contains the most comparable and reliable data on the record. New-Tec contends that although Godrej and Zuari have contemporaneous financial statements, they are producers of a diversified and wide range of products. Therefore, New-Tec maintains that the Department should only use Maximaa's financial statement for the final results. Alternatively, New-Tec also states that if the Department determines that Maximaa, Godrej, and Zuari are producers of equally comparable merchandise, then the Department should average the data of the three companies in the final results.

Cosco asserts that Godrej's financial statement is the most appropriate for calculating surrogate financial ratios. Cosco also argues that the Department should not use Infiniti's and Tube's financial statements. Cosco asserts that Meco elected not to provide an Infiniti financial statement that is contemporaneous with a POR. According to Cosco, since Infiniti is a private company with financial statements that are not publicly available, and Meco was able to place it on the record, Meco should have some direct access to Infiniti's financial statements. Cosco further argues that Meco did not place contemporaneous financial statements of Infiniti on the record because market conditions in India were unprofitable for Infiniti in the contemporaneous fiscal year. Therefore, according to Cosco, Infiniti's 2006 financial statement is not representative of Infiniti's financial experience in 2007.

Based on a review of its raw materials, Cosco further asserts that Infiniti is an assembly operation and not an integrated producer, whereas the respondents are integrated producers of FMTCs. Cosco also points out that Infiniti produces predominantly non-metal, non-folding, high-end European design chairs,[5] and therefore, Infiniti's tables and chairs are not comparable to FMTCs subject to this proceeding. Cosco also states that Infiniti's production of tables and chairs is negligible compared to that of the respondents. According to Cosco, the Department should decline to consider the financial statement of Tube because it did not produce comparable merchandise. Therefore, Cosco concludes that the 2007 financial statements of Godrej, Maximaa, and Zuari are the best available information on the record for calculating surrogate

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[5] *See* Cosco's Surrogate Value Rebuttal, at Exhibit (August 14, 2008).

financial ratios, because these companies are producers of comparable merchandise with contemporaneous and publicly available data.

Feili contends that the Department should continue to find Infiniti's 2006 financial statement to be non-contemporaneous with the POR. However, Feili states that if the Department uses Infiniti's financial statement for the final results, it should make certain changes to Meco's treatment of job work expense, miscellaneous income, and job work revenue. Specifically, Feili argues that the Department should treat job work expenses as direct labor expenses, and miscellaneous income and job work revenue as SG&A expenses. Feili did not comment on the use of the other financial statements on the record.

Department's Position:

For the final results of this review, we have relied only on Maximaa's year ending March 31, 2007, financial statement to derive surrogate financial ratios.[6] Cosco placed this financial statement on the record in a timely manner.[7] Maximaa's 2007 financial statement is contemporaneous with the POR, complete and reliable, and Maximaa is a producer of comparable merchandise (steel furniture).

We agree that Infiniti's 2006 financial statement is not contemporaneous with the POR. The Department rejected Infiniti's 2005 financial statement, Godrej's 2006 financial statement, as well as Infiniti's 2006 financial statement in the preliminary results because these financial statements are not contemporaneous with the POR. The Department also preliminarily rejected Infiniti's 2006 financial statements because the record lacked a profit and loss statement. By placing Infiniti's 2006 profit and loss statement on the record,[8] Meco argues that it has addressed the Department's prior concern that Infiniti's 2006 financial statement lacked a profit and loss statement. However, Meco's rationale that a two-month gap between the beginning of the POR and the end of Infiniti's 2006 financial statements is insignificant, is not sufficient grounds for accepting non-contemporaneous financial statements when a contemporaneous one, that also meets the Department's other criteria, is available on the record. Moreover, the fact that we used Infiniti's 2006 financial statement in the previous review and in *Ironing Tables*,[9]does not warrant using Infiniti's 2006 financial statement in this review. The financial statement was contemporaneous with the PORs in those reviews, but is not contemporaneous with this POR. Because we are not using Infiniti's 2006 financial statement, the discussion of the classification of Infiniti's individual line items is moot.

Meco further argues that the Department has a preference to use the most specific data and prefers producers of identical merchandise to those of similar or comparable merchandise. Meco

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[6] *See* Cosco's Surrogate Value Submission, at Exhibit 1 (August 4, 2008).

[7] *See id.*

[8] *See* Meco's Surrogate Value Submission, at Exhibits 1 and 3 (August 4, 2008).

[9] *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 13239, 13241 (March 21, 2007) ("*Ironing Tables*").

maintains that steel furniture accounts for only 19 percent of Godrej's 2007 revenues, whereas Infiniti's 2006 financial statement shows two-thirds of its revenues resulting from sales of FMTCs. We find that comparable merchandise is a small portion of Godrej's revenue, unlike respondents whose revenue primarily consists of FMTCs sales. It is the Department's practice to use, whenever possible, surrogate-country producers of identical merchandise for surrogate value data provided that the surrogate value data is not distorted or otherwise unreliable.[10] Godrej produces a large proportion of merchandise that is not comparable to FMTCs, *e.g.*, industrial and construction equipment.[11] Since the issuance of the preliminary results, parties to this proceeding provided additional financial statements for consideration in the final results. Maximaa's 2007 financial statements satisfy the standard set by 19 CFR 351.408(c)(4) more adequately than Godrej's 2007 financial statement, because 100 percent of Maximaa's production appears to consist of comparable merchandise, *i.e.*, metal furniture. In other words, Godrej's proportion of comparable merchandise is considerably less than the proportion of comparable merchandise produced by Maximaa. Therefore, in the final results of this review, consistent with our practice, we have excluded Godrej's 2007 financial statements for deriving surrogate financial ratios.[12]

Based on the same reasoning articulated above with respect to Godrej, for these final results, we continue to not to rely on Tube's 2007 financial statement because it is partially an engineering firm and partially a producer of bicycles. Thus, Tube is not a producer of comparable merchandise. For the same reason, we also did not rely on Zuari's 2007 financial statement because it is a fertilizer producer and its subsidiary furniture producing branch accounts for an insignificant portion of its total consolidated sales revenue. Therefore, Maximaa's 2007 financial statement is the best available information for calculating the surrogate financial ratios, pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.408(c)(4) of the Department's regulations.

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[10] *See, e.g., Persulfates from the People's Republic of China: Final Results Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1; *Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1; and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007) and accompanying Issues and Decision Memorandum at Comment 12; and 19 CFR 351.408(c)(4), which explains that the Department will normally value surrogate financial ratios using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country."

[11] *See* Meco's Surrogate Value Submission, at Exhibit 7.D (March 10, 2008), at schedule T of Godrej's 2007 Financial Statement.

[12] *See* Final Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum, January 12, 2009 ("Final Surrogate Value Memo").

Comment 2: Use of Market Economy Purchase Prices for Certain New-Tec Factors of Production

New-Tec argues that for the final results, the Department should rely on its market economy purchase ("MEP") prices for valuing powder coating, polypropylene resin, fiberboard, polyvinyl chloride sheet, and polyurethane foam. New-Tec states that the Department did not use New-Tec's MEP prices in the preliminary results because New-Tec listed South Korea as a supplier location for these inputs.[13] New-Tec argues that while the Department normally excludes inputs sourced from countries that grant generally available export subsidies, this is not a factor in this proceeding because the market-economy countries where New-Tec's inputs were produced do not have generally available export subsidies. According to New-Tec, it is the Department's practice to base its analysis on the location where a particular input is produced, in order to determine whether the MEP price of an input should be disregarded.[14] New-Tec asserts that it reported market economy countries as the countries of origin of these inputs. According to New-Tec, South Korea is the location of the trading company. New-Tec argues that it followed the Department's instructions in completing the MEP spreadsheet for factors that were produced in a market-economy country, regardless of where the headquarters or sales office of the producing company was located.[15] New-Tec contends that the inputs were produced in market-economy countries, and that it paid for the inputs in a market-economy currency, even though they were sold to New-Tec by a trading company located in South Korea. New-Tec cites to its Section D responses to support its argument that it consistently reported these factors as inputs produced in market-economy countries, and paid for in market-economy currency, and that South Korea was merely the physical location of its supplier.[16]

Meco stated that it does not object to New-Tec's argument.

Department's Position:

The Department's decision in the preliminary results to reject certain market-economy input prices for powder coating, fiberboard, polyurethane foam, polypropylene resin, and polyvinyl chloride sheet was based on record evidence indicating that those prices may be subsidized. Consistent with the Department's practice of rejecting market-economy input prices where there is reason to believe or suspect these prices may be subsidized, the Department continues to

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[13] *See* Analysis for the Preliminary Results of the 2006-2007 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New-Tec Integration (Xiamen) Co. Ltd. ("New-Tec"), at 5-6, June 30, 2008 ("New-Tec Preliminary Analysis Memo").

[14] *See Folding Metal Tables and Chairs From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 69 FR 75913 (December 20, 2004), and accompanying Issues and Decision Memorandum, at Comment 1.

[15] *See* Department's Original Questionnaire, at Section D.V. (August 7, 2007).

[16] *See* New-Tec's Section D Questionnaire Response, at 33 and Exhibits 8 and 9 (September 27, 2007) ("DQR"); and New-Tec's Supplemental Section D Response, at Exhibits 19-21(December 18, 2007) ("SDQR").

determine that the prices in question should not be used in the dumping margin calculation.[17] Record evidence indicates that New-Tec sourced its aforementioned inputs from market-economy countries, but that the inputs were purchased from a trading company located in South Korea. We recognize that there is no record evidence that the market-economy countries that were the origin of the inputs subsidize the specific MEPs. However, the issue here is that the exporter of record of these inputs is located in South Korea, a country which the Department has previously found to provide non-industry-specific export subsidies. While these facts alone would not be a sufficient basis to reject the prices of inputs imported from South Korea, additional record evidence indicates that the non-industry-specific export subsidy programs maintained by South Korea include at least one program that may benefit a trading company, such as the one New-Tec relied on to ship its inputs to China.

Specifically, the commercial invoices provided by New-Tec confirm the fact that the Korean trading company could use the Export Loans by Commercial Banks under the Korea Export Import Bank's (KEXIM) Trade Bill Rediscounting Program (TBR Program). This program was found to be a countervailable export subsidy in a number of the Department's countervailing duty proceedings, most recently in coated free sheet paper from Korea.[18] KEXIM's TBR Program involves the discounting of trade bills, either through documents of acceptance (D/A) or export letters of credit (L/C). In this case, the commercial invoices between the Korean trading company and New-Tec show that payment is to be made by letters of credit. These are export transactions and use export L/Cs, which are eligible for the KEXIM TBR Program. For these reasons, the Department's preliminary decision to reject the MEP prices was appropriate, because it had a reason to believe or suspect that the prices may be subsidized by virtue of having benefitted from a Korean government non-industry specific subsidy.

Comment 3A: Likelihood of Future Dumping as a Result of Raw Material Price Increases if the Order is Revoked, in Part

Meco argues that, because steel prices rose significantly since the end of this POR, Feili is likely to be dumping, especially because market conditions do not permit Feili to raise prices sufficiently to pass these cost increases through to its customers. Therefore, Meco argues that, given the increased price of steel, Feili cannot currently sell FMTCs at fair value and will not be able to do so in the foreseeable future. Meco claims that the Department must consider current market conditions, including an increase in the value of steel inputs, to assess the likelihood of future dumping. However, because this requirement for revocation cannot currently be satisfied, the Department should not revoke the order as to Feili. In support of this argument, Meco cites

[17] *See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 7; *Notice of 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), and accompanying Issues and Decisions Memorandum at Comment 8; and *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Requests for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) ("*AD Methodologies*").

[18] *See Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and accompanying Issues and Decision Memorandum at VIII.H "Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program," at 15.

Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea, 62 FR 39809 (July 24, 1997) ("*DRAMs 1997*"). Alternatively, Meco argues that at a minimum, due to the recent increase in the price of steel, the Department should either: (1) initiate and conduct the sixth review as to Feili and examine Feili's data to determine whether Feili has continued to sell without dumping; or (2) reopen the record for this administrative review to request and review the issue of likely dumping by Feili in recent periods.

Feili and Cosco argue that there is no evidence on the record of this review to support Meco's speculative conclusions about Feili's future behavior. Feili argues that it must increase prices when raw material prices go up in order to earn a profit. Feili also notes that it submitted a certification to the Department in which it agreed that: (a) it will not dump in the future; and (b) the Department can reinstate the antidumping order as to Feili if the Department concludes in the future that Feili is dumping in the United States. Thus, Feili argues, the Department should revoke the order as to Feili because the Department can reinstate the order with respect to it if the Department concludes that Feili is dumping in the future.

Cosco notes that the evidence in this case demonstrates that Feili has been selling at fair value in commercial quantities for the three prior administrative reviews, as well as this administrative review. Furthermore, Cosco argues that there is no evidence on the record to demonstrate that Feili could not increase its own prices if, as Meco claims without any record evidence, direct materials prices increased after the POR. Citing *Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part*, 63 FR 26147, 26148 (May 12, 1998), Cosco argues that, absent the existence of contrary evidence, the Department has recognized that the lack of dumping over the course of three years is generally predictive of future behavior. Accordingly, Cosco argues that the Department should reject Meco's argument and instead determine that Feili's non-dumping behavior is likely to continue in the future.

Department Position:

As Cosco correctly notes, the threshold requirement for revocation continues to be that respondents not sell at less than normal value for at least three consecutive years and that, during each of those years, respondents exported subject merchandise to the United States in commercial quantities, in which case the Department will ordinarily presume that an antidumping duty order is not necessary to offset dumping.[19] However, the Department further explained that even where respondents demonstrate that they have not sold at less than normal value for at least three consecutive years, "it is not conclusive in all cases. Evidence relating to the likelihood of future dumping will still be considered . . . because such evidence relates to the necessity of the order."[20]

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[19] *See* 19 CFR 351.222(b) and (e); *see also, Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236, 51238 (September 22, 1999) ("*Amended Revocation Regulation*").

[20] *See id.* at 51239.

In this case, Meco attempted to submit new information regarding current steel prices in its case brief to rebut the presumption that an antidumping duty order is not necessary to offset dumping. This was after the deadline for submission of new factual information, and the Department rejected this new information as untimely on September 29, 2008.[21] Consequently, there is no information on the record of this proceeding to support Meco's contention that steel prices have increased at all, much less significantly, since the current POR.

Furthermore, even assuming *arguendo* that steel prices have increased, there is no information on the record of this proceeding to support Meco's contention that Feili would not be able to increase prices to offset such increased steel prices. The mere fact that input prices may have increased does not mean that dumping will resume.[22] As Feili and Cosco note, Feili could increase its sales prices to account for the higher input costs. Therefore, the Department has determined that it will not consider Meco's unsupported assertions in reaching the decision of whether to revoke the order as to Feili.

Regarding Meco's claim that the Department must initiate and conduct the sixth administrative review in order to determine whether Feili is able to sell without dumping in light of the purported increases in steel prices, we note that on June 30, 2008, Feili requested that the Department defer the sixth administrative review. Meco had the opportunity to object to Feili's request for deferral, but failed to do so in a timely manner pursuant to 19 CFR 351.213(c)(2). Therefore, on July 30, 2008, the Department granted Feili's request for deferral.[23] Accordingly, the sixth administrative review will not be initiated or completed prior to the issuance of these final results and is not relevant thereto. With respect to Meco's request to reopen the record to "review the issue of dumping by Feili in recent periods,"[24] we note that the Department is not required to perform a dumping analysis of later periods when reaching a revocation determination. *See* 19 CFR 351.222. The Department will, however, consider other factors supported by record evidence when determining the necessity of maintaining the order, as is explained below.

Comment 3B: Whether to Revoke Order in Part While the Circumvention Inquiry is Pending

Citing *Carbon Steel from Canada*, Meco argues that the Department must fully consider the anti-circumvention inquiry on folding metal tables with legs connected by cross-bars in reaching its

[21] *See* Letter from Wendy J. Frankel, Director, AD/CVD Operations, Office 8, to Warren Connelly of Akin Gump Strauss Hauer & Feld (September 29, 2008).

[22] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998-1999 Administrative Review and Determination To Revoke Order in Part*, 66 FR 111562 (February 26, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

[23] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220, 44221 (July 30, 2008).

[24] *See* Meco's Case Brief, at 14.

determination in this review of whether to revoke the order as to Feili.[25] Meco argues that Feili has not satisfied all three regulatory requirements for revocation until the Department has calculated a margin for Feili including sales of folding metal tables with legs connected by cross-bars, which the Department has preliminarily found to be within the class or kind of merchandise subject to this antidumping duty order. Meco argues that revoking the order as to Feili without calculating margins including folding metal tables connected by cross-bars effectively terminates the anti-circumvention inquiry as to Feili without a formal resolution, and is, accordingly, in violation of the Department's regulations. Relying on *Samsung Electronics Co., Ltd. v. United States*, 946 F.Supp. 5 (CIT 1996), and *Hyundai Electronics Co. v. United States*, 53 F. Supp. 2d 1334 (CIT 1999), Meco argues that the Department has substantial discretion to determine whether Feili has satisfied the criteria for revocation. Furthermore, Meco argues that, because folding metal tables connected by cross-bars are within the scope, the Department must suspend liquidation and then calculate margins on all entries since the date of initiation of the anti-circumvention inquiry.[26]

Feili and New-Tec argue that the Department should not include folding metal tables with legs connected by cross-bars in the calculation of the antidumping margin in the final results of this review because such tables have not been treated as subject merchandise for this administrative review. Moreover, Feili and Cosco argue that Meco should not be permitted to forestall revocation as to Feili, which is otherwise warranted, simply by raising the claim that circumvention is occurring without any record evidence that Feili is dumping. Feili and Cosco note that Feili submitted a certification to the Department in which Feili agreed that: (a) it will not dump in the future; and (b) the Department can reinstate the antidumping order as to Feili if the Department concludes in the future that Feili is dumping in the United States. Thus, Feili and Cosco argue that the Department should revoke the order as to Feili because the Department can reinstate the order as to Feili if the Department concludes that Feili is dumping in the future.

Cosco argues that Feili has satisfied the requirements for revocation and, thus, the Department's preliminary decision to revoke the order as to Feili should be sustained. Specifically, Cosco argues that nothing in the statute or regulatory provisions requires the Department to complete its revocation analysis based on a pending circumvention inquiry, scope inquiry, appeal, or any proceeding in another segment of the proceeding. Cosco also argues that if the Department adopted the policy Meco supports, revocation would never occur, because parties opposing revocation could allege circumvention or file a scope inquiry to delay revocation for an exporter otherwise meeting the criteria. Cosco argues that a finding of circumvention is not warranted in this case because the table identified by Meco as allegedly circumventing the antidumping duty order has already been specifically excluded from the scope of the of the dumping order, and

[25] *See* Meco's November 24, 2008, Submission at 3, citing *Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada*, 66 FR 3543 (January 16, 2001) ("*Carbon Steel from Canada*") and accompanying Issues and Decision Memorandum at Comment 1 for Gerdau MRM Steel Co.

[26] *See* Meco Case Brief at 18, citing *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006) ("*Candles Anticircumvention*").

under *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1371 (Fed. Cir. 1998) ("*Wheatland Tube*"), such tables cannot be brought back into the order through a circumvention inquiry. However, Cosco argues, even if the Department were to make an affirmative circumvention finding, there is no record evidence that such tables would be likely to be dumped in the future. Instead, Cosco argues the record reveals that Feili has demonstrated that it sold its products at fair value in the past three administrative reviews, and this past behavior is indicative of Feili's future behavior of sales of other merchandise (such as folding metal tables with legs connected with cross-bars).

<u>Department Position</u>:

The issue of whether Feili is engaged in circumventing the antidumping duty order is relevant to whether Feili has satisfied the criteria for revocation under 19 CFR 351.222. In light of the Department's pending anti-circumvention investigation, we find that Feili has not satisfied the requirements for revocation given that the Department has not determined if Feili has been dumping circumventing merchandise (folding metal tables with legs connected by cross-bars). Accordingly, we are not revoking the antidumping order as to Feili.

The Department did not include folding metal tables with legs connected by cross-bars that Feili sold in the United States during the POR in the margin calculations for this administrative review because the Department had not yet determined that such tables were within the scope of the order. However, on October 27, 2008, the Department made an affirmative preliminary determination of circumvention and has directed U.S. Customs and Border Protection to suspend liquidation on entries of folding metal tables with legs connected by cross-bars from the PRC since the date of the initiation of the anti-circumvention.[27]

The controlling facts of this case are analogous to the facts of *Carbon Steel from Canada*, where the Department declined to revoke the order in light of a pending circumvention inquiry.[28] In that case, the Department determined that while the anti-circumvention investigation was a separate segment under the cut-to-length order, both the anti-circumvention investigation and the administrative review attempt to determine whether merchandise falling within the scope of the cut-to-length order was being sold in the United States at less than normal value.[29] Accordingly, if the Department makes an affirmative final determination of circumvention, until the Department calculates Feili's margin including entries of circumventing merchandise in a future administrative review, it is not possible for the Department to determine that Feili would likely not sell such merchandise at less than fair value in the future. Likewise, the Department is not in a position to determine whether circumventing merchandise has been sold at less than normal value during this POR.

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

[28] *See Carbon Steel from Canada*, 66 FR 3543 (January 16, 2001) and accompanying Issues and Decision Memorandum at Comment 1 for Gerdau MRM Steel Co.

[29] *See id.*

The Department has recognized that, absent contrary evidence, the lack of dumping over the course of three years is generally "predictive of future behavior,"[30] as well as that when a respondent has demonstrated the absence of dumping for three consecutive years, and has shipped in commercial quantities, *without evidence to the contrary*, the Department will presume that an antidumping duty order is not necessary to offset dumping. *See, e.g., Amended Revocation Regulation*, 64 FR at 51238. However, the Department will consider a variety of information, such as the preliminary determination of circumvention, when determining whether to revoke an order.[31] Furthermore, we note that the U.S. Court of International Trade has also confirmed that 19 CFR 351.222(b)(2) permits the Department to revoke the order in part if the three-part revocation test is satisfied, but it does not mandate revocation.[32] If the Department determines that Feili has been circumventing the order, the Department might reasonably conclude that Feili's successive periods of *de miminis* margins are not truly indicative of its behavior towards to the U.S. market.[33] Thus, if the Department makes an affirmative final determination of circumvention, until the Department can be satisfied that Feili's sales of circumventing merchandise are not dumped, we cannot determine whether Feili has satisfied two of the three requirements for revocation, *i.e.*, that Feili has not dumped for at least three consecutive years and that the continued application of the antidumping duty order is not otherwise necessary to offset dumping.

We disagree with Cosco's argument that the folding metal table identified by Meco as allegedly circumventing the antidumping duty order has already been specifically excluded from the scope of the dumping order. In our preliminary affirmative determination of circumvention, we preliminarily determined that folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on folding metal tables and chairs.[34] In *Wheatland Tube*, the U.S. Court of Appeals for the Federal Circuit held that the Department could not, through an anti-circumvention proceeding, include a product that had been expressly excluded from the scope of an order.[35] However, the Department preliminarily determined that

[30] *See, e.g., Pure Magnesium From Canada; Preliminary Results of Antidumping Administrative Review and Notice of Intent Not To Revoke Order in Part*, 63 FR 26147 (May 12, 1998) unchanged in *Pure Magnesium from Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, (March 16, 1999).

[31] *See, e.g., Amended Revocation Regulation*, 64 FR at 51238.

[32] *See Hyundai Electronics Co.*, 53 F. Supp. 2d at 1340.

[33] *See, e.g., Carbon Steel from Canada*, 66 FR 3543 (January 16, 2001) and accompanying Issues and Decision Memorandum, at Comment 1 for Gerdau MRM Steel Co.

[34] *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 73 FR 63684 (October 27, 2008).

[35] *Wheatland Tube*, 161 F.3d at 1371.

the folding metal tables with cross-bars at issue in the circumvention inquiry are not expressly excluded from the order.[36] Therefore, *Wheatland Tube* is inapposite.

We also disagree with Cosco's argument that 19 CFR 351.225(l)(4) provides that the Department will only examine the sales data for entries that are the subject of a scope/circumvention ruling in the context of an ongoing administrative review if the final scope/circumvention decision is made within 90 days of the initiation of that administrative review. Contrary to Cosco's assertion, 19 CFR 351.225(l)(4) of the Department's regulations states that where the Department issues a final ruling after 90 days of the initiation of a review, the Department "may consider sales of the product for purposes of the review on the basis of non-adverse facts available." It does not, however, prohibit the Department from factoring the ongoing circumvention determination into our revocation analysis.

Cosco's argument that Feili's sales of subject merchandise at not less than normal value in the past three administrative reviews also indicates that Feili is not likely to dump folding metal tables with cross-bars is unsubstantiated by any record evidence. The Department calculates dumping margins by comparing U.S. price to normal value. There is no record information regarding Feili's U.S. prices or its factors of production for folding metal tables with legs connected by cross-bars. As such, there is no information on the record that the Department can use to determine whether Feili has, in fact, sold such tables at not less than normal value for the past three administrative reviews. Furthermore, we are unable to extend the deadline for the final results of this administrative review to request Feili's relevant sales and factor data for folding metal tables with legs connected by cross-bars. Pursuant to the Department's statutory deadline, there is insufficient time to: (1) request the relevant data from Feili; (2) verify the data; (3) calculate a new margin for Feili; (4) issue amended preliminary results; and (5) provide parties an opportunity to comment on the amended preliminary results.

Finally, Cosco's concern that if the Department refuses to revoke the order as to Feili because of the pending anti-circumvention investigation, parties opposing revocation would always allege circumvention, file scope inquiries, *etc.*, merely to delay revocation is not at issue in this proceeding. Meco filed its anti-circumvention request on October 31, 2005, well before the initiation of this review on July 26, 2007. Moreover, we note that the Department has preliminarily determined that there has been circumvention of the order. In order for Feili to satisfy all three regulatory prerequisites for revocation, the Department must determine that Feili has met these prerequisites as to all in-scope merchandise. Given the specific facts of this case, the Department is currently unable to determine that Feili has satisfied all three requirements for revocation.

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[36] *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China*, 73 FR 63684 (October 27, 2008).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

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Agree

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Disagree

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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Date