the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will continue to be 4.06 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Indonesia*, 67 FR 55798 (August 30, 2002). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

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

These preliminary results are issued and in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3658 Filed 7–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

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

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

SUMMARY: In response to multiple requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on folding metal tables and chairs (FMTCs) from the People's Republic of China (PRC). The period of review (POR) is June 1, 2003, through May 31, 2004. Upon completion of this review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise that were exported by the companies under review and entered during the POR. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336 or Catherine Feig at (202) 482–3962, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2002, the Department published the antidumping duty order on certain FMTCs from the PRC (67 FR 43277). On June 1, 2004, the Department published a notice of opportunity to request an administrative review of this order (69 FR 30873). In accordance with 19 CFR 351.213(b)(1), the following requests were made: (1) on June 28, 2004, Cosco Home and Office Products (Cosco), a domestic interested party, requested that the Department conduct administrative reviews of Feili Furniture Development Ltd. Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively Feili), and New–Tec Integration (Xiamen) Co. Ltd. (New–Tec); (2) on June 28, 2004, Wok and Pan Industry Inc. (Wok and Pan), a Chinese producer and exporter of the merchandise under review, requested that the Department conduct an administrative review of Wok and Pan; (3) on June 29, 2004, Feili requested an administrative review of itself; (4) on June, 30, 2004, Meco Corporation (Meco), a domestic interested party, requested that the Department conduct administrative reviews of Feili, New–Tec, and Dongguan Shichang Metals Factory Ltd. (also known as Dongguang Shichang Metals Factory Co., Maxchief Investments Ltd.) (collectively Dongguan (Shichang)); (5) on June 30, 2004, Shichang and Lifetime, a Chinese exporter of the merchandise under review, requested that the Department conduct administrative reviews of Lifetime Hong Kong Ltd., and Lifetime (Xiamen) Plastic Producers Ltd. (collectively Lifetime), and Dongguan (Shichang).

On July 28, 2004, the Department published a notice of initiation of this administrative review (69 FR 45010) for Feili, New–Tec, Wok and Pan, Dongguan (Shichang), and Lifetime. On September 2, 2004, Lifetime withdrew its request for an administrative review, on September 7, 2004, Meco withdrew its request for an administrative review of Dongguan (Shichang), and on September 8, 2004, Dongguan (Shichang) withdrew its request for an administrative review. On February 15, 2005, the Department extended the due date for the preliminary results of this review to June 30, 2005 (70 FR 7718). On March 22, 2005, the Department published a notice rescinding the review with regard to Lifetime and Dongguan (Shichang) (70 FR 14444) . While Feili submitted timely responses to all of the Department's requests for information in this review, Wok and Pan and New–Tec did not. *See* ''Adverse Facts Available'' section, below.

Scope of the Order

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

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as ''TV trays'';
c. Side tables;
d. Child–sized tables;
e. Portable counter sets consisting of rectangular tables 36'' high and matching stools; and
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another,

and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0010, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Separate Rates Determination for Feili

The Department has treated the PRC as a non–market economy (NME) country in all past antidumping duty investigations and administrative reviews. *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China*, 69 FR 34130 (June 18, 2004). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C)(I) of the Tariff Act of 1930, as amended (the Act).

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate an absence of government control, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or the financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587, and *Sparklers*, 56 FR at 20589.

Based on a review of the responses, we have concluded that both Feili Group (Fujian) and Feili Furniture are owned by Hong Kong corporations and are registered and organized under the corporation and taxation laws of Hong Kong. Both companies operate freely in the PRC as foreign wholly–owned enterprises and, therefore, operate independently of control from central, provincial or local governments in the PRC. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for Feili.

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

Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(I) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these

conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2), 776(b) and 782(d) of the Act, the use of AFA is appropriate for the preliminary results for New–Tec, Wok and Pan, and the PRC–wide entity.

New–Tec

1. Background

The Department made several requests of New–Tec, asking for information on the samples that it gives to its customers. On August 9, 2004, the Department issued an NME questionnaire to New–Tec. In section C (II), New–Tec was instructed to ''. . . prepare a separate computer data file containing each sale made during the POR of the subject merchandise, including sales of further manufactured merchandise.'' On December 9, 2005, the Department issued a supplemental questionnaire requesting (question 45) New–Tec to further explain what its product codes represent. In response New–Tec stated that ''{n}ormally, New–Tec's customer designs a new product and sends the drawings to New–Tec for producing a sample. After making a sample, New–Tec delivers such sample to its customer for confirmation.''

On May 19, 2005, the Department issued a fourth supplemental[1] questionnaire to New–Tec, instructing New–Tec, at question two, to describe how it had accounted for its sample sales (*i.e.*, the samples of subject merchandise New–Tec sent to its customer) in both the U.S. sales and factors–of-production (FOP) databases. The Department also asked New–Tec to ''. . . please provide all documentation related to your POR sample sales and explain, in detail, how the documentation demonstrates that the sales were of samples.''

In its June 7, 2005, response New–Tec stated that it did not report its samples in the U.S. sales file because it pays for all expenses related to the samples and the ''delivery of samples is not recorded as sales as New–Tec does not invoice its customer'' and that it recorded the expenses related to its samples as selling expenses. It also reported that the material, labor, and energy costs related to the samples were captured in the FOP database. However, New–Tec failed to provide any documentation on these samples, as explicitly requested by the Department.

Despite New–Tec's claims that these samples were free and not recorded as ''sales,'' New–Tec provided no evidence to support this assertion. Therefore, on June 15, 2005, the Department issued a sixth supplemental.[2] Questions one and two again requested specific information about New–Tec's purported samples. The Department instructed New–Tec to provide the total quantity of its POR sample sales by product code and for New–Tec to:

> . . . please provide all documentation related to your POR sample sales and explain, in detail, how the documentation demonstrates that the sales were of samples. This would include, *but is not limited* {*to*}, general ledger entries, Chinese export forms, U.S. customs forms, and related invoices. Additionally, please state the disposition of the samples (*e.g.*, whether they were returned, destroyed, resold, tested etc.)

In response to the Department's first question, New–Tec refused to provide the total quantity of its POR sample sales. Instead it reiterated what it had stated in its previous response, that it ''did not account for samples provided to its customers as sales'' because they are free and New–Tec does not invoice the customer for the sales. Additionally, New–Tec stated that the sales are not booked into its revenue account. Despite the Department's requests, New–Tec did not place any evidence on the record to even indicate how many samples it provided during the POR or what products and quantities were provided in those samples.

In response to the Department's second question requesting documentation for the purported samples, New–Tec again failed to provide any of the requested documentation. Instead, New–Tec reiterated part of its answer to the first question, stating that the samples were treated as selling expenses. New–Tec also stated that it was unaware of the disposition of the samples but did not think that they were resold. Moreover, New–Tec claimed that the shipments were made by its ''shipper'' and that it was unaware of any Chinese export forms or U.S. customs forms associated with these shipments notwithstanding its March 25, 2005, response to the Department's second supplemental questionnaire, where New–Tec demonstrated specific knowledge of the documents required for export. In that response New–Tec stated, at page seven, that it was ''required to use Xiamen Municipal Invoice for export declaration purpose pursuant to local customs authority regulations.'' New–Tec has not demonstrated that it is unable to provide, for the shipment of the samples, the same documentation that it *was* able to provide for its sales for remuneration.

2. Application of Facts Available

As described above, New–Tec failed to respond to the Department's requests for information by the deadlines established or in the form required. The absence of this information has significantly impeded this review because the Department has been unable to determine how many sample sales were made (much less what the details of these sample sales were). New–Tec failed to properly respond to the Department's requests, pursuant to section 782(d) of the Act, when it refused to provide documentation related to its purported samples and failed to provide data on the quantity of its samples within the deadlines established in the questionnaires. New–

[1] On March 11, 2005, and April 20, 2005, the Department issued a second and third supplemental questionnaire. Neither of these had questions pertaining to samples.

[2] On May 27, 2005, the Department issued a fifth supplemental questionnaire which did not have questions pertaining to samples.

Tec's failure to provide the requested information prevented the Department from conducting the analysis necessary to determine the nature of these transactions and whether they should be excluded from the margin calculation.

It is the Department, not the respondents, that makes the legal determination as to whether these transactions should be excluded from the database as samples. In order to do so, the Department must review the documentation pertaining to the samples, including documentation with respect to the quantities and values of the products classified as samples. Because New–Tec failed to provide any of this documentation, the Department has no reliable basis for reaching a decision as to the true transactional nature of the claimed samples. Typically, where the Department has found that there is insufficient evidence to prove that a transaction was a sample, it will include that sale in the sales database. *See, e.g., Antifriction Bearings and Parts Thereof, From France, Germany, Italy, Japan, Singapore and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 69 FR 55574, Issues and Decision Memorandum, at Comment 18 (September 15, 2004). However, by failing to provide even the quantity of its POR samples, New–Tec has given the Department no way to determine the volume of the purported sample transactions and their relevance to any margin calculations. As a result, New–Tec's entire U.S. sales database is unuseable for purposes of these preliminary results. Moreover, because there is no acceptable U.S. sales database to which we can compare New–Tec's FOP information, we are also unable to use that information. Therefore pursuant to section 782(e) of the Act, the Department must disregard all of New–Tec's U.S. sales and FOP data. Because we are basing New–Tec's margin on total facts available, we have also rejected New–Tec's information regarding separate rates, for purposes of the preliminary results, and thus we preliminarily find that separate rates treatment is not warranted.

Finally, we find that the application of section 782(e) of the Act does not overcome New–Tec's failure to respond. *See* sections 782(e)(1), (3), and (4) of the Act. Because the information that New–Tec failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to total facts otherwise available in determining the margin in its preliminary results, pursuant to sections 776(a)(2)(A)-(C) of the Act.

3. Use of Adverse Inferences

We also find that the application of an adverse inference in this review is appropriate, pursuant to section 776(b) of the Act. As discussed above, by refusing to provide any specific information about its purported samples, New–Tec has not acted to the best of its ability. Also, on June 7, 2005, New–Tec stated that it ''recorded'' expenses related to its samples as selling expenses. However, despite stating that such ''records'' exist, New–Tec did not provide them to the Department. Thus, New–Tec has failed to cooperate with the Department by not acting to the best of its ability to provide the requested information, and has hampered the Department's ability to evaluate whether or not the alleged sample transactions should be included in New–Tec's U.S. sales database, and if so what the corresponding data should be. Therefore, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 3; *see also Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February13, 2002), and accompanying Issues and Decision Memorandum at Comment 24. Because New–Tec failed to act to the best of its ability, we have made the adverse inference that New–Tec is part of the PRC–wide entity.

4. Request for Substantiating Documentation

It is the Department's practice to review all transactions in which samples are provided to U.S. customers. *See, e.g., Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 60980 (Oct. 14, 2004), and accompanying Issues and Decision Memorandum at Comment 5; and *Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004), and accompanying Issues and Decision Memorandum at Comment 2. Although the NME questionnaire indicated that parties were to report all sales, implying that the provisions of samples should also be included, it did not explicitly reference the reporting of samples. Therefore, the Department sent New–Tec two additional supplemental questionnaires specifically requesting information on New–Tec's sample sales. New–Tec continued to deny the existence of sample ''sales,'' arguing that its purported samples transactions were at zero value and, therefore, do not constitute sales.

Further, the Department recognizes that the reference to ''sample sales'' in our supplemental questionnaires in this case may have been a potential source of confusion because parties may have understood the term ''sales'' to refer only to transactions involving remuneration. Therefore, the Department will be amending its NME questionnaire to address this issue. In the future, the questionnaire will specifically request information on ''sample transactions'' to clarify that the Department requires information on any sample product provided to U.S. customers, regardless of whether the U.S. customer paid for that sample.

Because New–Tec has responded to the rest of the Department's requests for information, and in view of the Department's concern regarding potential for confusion based on the terminology used in our questionnaires, the Department is providing New–Tec with a final opportunity to substantiate its claim that these are in fact sample transactions at zero value by: 1) providing the total POR quantity of samples transactions for each product code and; 2) providing *all* documentation related to its POR sample transactions. Such documentation would include, *but is not limited to*, general ledger entries, records from the workshop providing the samples, Chinese export forms, U.S. customs forms, and related invoices. In addition, New–Tec must explain, in detail, how the documentation demonstrates that the transactions involved samples for which no payment was required, not sales transactions, and why they should not be included in the sales database. Finally, the Department is asking New–Tec to explain why it was able to provide the Xiamen Municipal Invoice for export declaration purposes for its reported sales, but has claimed it is unable to do so for its sample transactions. Due to the unique circumstances of this case, the Department is allowing New–Tec to provide this information to the Department no later than 14 days after receipt of our questionnaire, and will consider New–Tec's response in reaching the final determination.

Wok and Pan

1. Background

Wok and Pan failed to respond to any of the following: the initial questionnaire (August 9, 2004); a letter from the Department to Wok and Pan, specifically requesting a response to the Department's questionnaire (September, 15, 2004); and the Department's request

for information to be considered when valuing the FOPs (September, 30, 2004).

2. Application of Facts Available

After requesting a review, Wok and Pan failed to respond to the Department's questionnaire. Because Wok and Pan has not responded to any of our requests for information, including information regarding separate rates, we preliminarily find that separate rates treatment is not warranted. Consequently, consistent with the statement in our notice of initiation, we find that, because Wok and Pan does not qualify for a separate rate, it is deemed to be part of the PRC–wide entity.

PRC–Wide Entity

1. Application of Facts Available

Because some companies which are part of the PRC–wide entity were reviewed in this segment of the proceeding, the Department determines that the PRC–wide entity has also been reviewed with respect to this POR. Because some companies which are part of the PRC–wide entity failed to respond to one or more of our requests for information, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC–wide entity (including New–Tec and Wok and Pan).

2. Use of Adverse Inferences

In addition, because the PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with our requests for information, it is appropriate, pursuant to section 776(b) of the Act, to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, companies that are part of the PRC–wide entity (including New–Tec and Wok and Pan) will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

The Department has assigned the highest rate from any segment of the proceeding as total AFA because the PRC–wide entity (including New–Tec and Wok and Pan) failed to cooperate to the best of its ability. This is in accord with the Department's practice where respondents refuse to cooperate to the best of their ability. *See, e.g., Stainless Steel Wire Rods from India, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29923, 29924 (May 26, 2004).

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1992).

The Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) *(Rhone Poulenc); See also NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (Ct. Int'l Trade 2004)(upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less–than-fair–value (LTFV) investigation); *See also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05–22 (February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 890. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F. 2d at 1190.

Where we must base the entire dumping margin for a respondent in an administrative review on facts available because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to New–Tec's and Wok and Pan's failure to cooperate, we have preliminarily assigned the PRC–wide entity, of which they are deemed to be a part, an AFA rate of 70.71 percent, the PRC–wide rate calculated in the investigation. *See Amended Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the PRC, (FMTC Investigation)* 67 FR 34898, (May 16, 2002).

The Department preliminarily determines that this information is the most appropriate, from the available sources, to effectuate the purposes of AFA. The Department's reliance on secondary information to determine an AFA rate is subject to the requirement to corroborate. See section 776(c) of the Act and the ''Corroboration of Secondary Information'' section below.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. The

Department has determined that to have probative value information must be reliable and relevant. *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and, *Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined in the first administrative review of this case. *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results and Partial Rescission of the First Antidumping Duty Administrative Review*, 69 FR 75913, (December 20, 2004). The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. *See e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41307–41308 (July 11, 2003). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information contained in the LTFV investigation is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997), which ruled that the Department will not use a margin that has been judicially invalidated.

To assess the relevancy of the rate used, the Department compared the margin calculations of Feili in this administrative review with PRC–wide entity margin from the LTFV investigation and used in the first administrative review of this case. The Department found that the margin of 70.71 percent was within the range of the highest margins calculated on the record of this administrative review. *See* memorandum to the file from Marin Weaver and Cathy Feig, International Trade Compliance Analysts, through Charles Riggle, Program Manager, Folding Metal Tables and Chairs from the PRC: Corroboration of the PRC–wide Adverse Facts–Available Rate, dated June 30, 2005. Because the record of this administrative review contains margins within the range of 70.71 percent, we determine that the rate from LTFV investigation continues to be relevant for use in this administrative review.

As the LTFV investigation margin is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the LTFV investigation margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity (including New–Tec and Wok and Pan), as AFA. Accordingly, we determine that the highest rate from any segment of this administrative proceeding, 70.71 percent, meets the corroboration criteria established in section 776(c) of the Act that secondary information have probative value.

Because these are the preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC–wide entity. *See Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000).

Export Price

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

We calculated export price based on the FOB price to unaffiliated purchasers for Feili. From this price, we deducted amounts for foreign inland freight and brokerage and handling pursuant to section 772(c)(2)(A) of the Act. We valued these deductions using surrogate values. We selected India as the primary surrogate country for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value (NV) using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home–market prices, third–country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country FOP prices to determine NV, section 773(c)(4) of the Act requires that the Department use values from a market–economy (surrogate) country that is at a level of economic development comparable to that of the PRC and is a significant producer of comparable merchandise. We have determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are market–economy countries at a comparable level of economic development to that of the PRC. (For a further discussion of our surrogate selection, see the September 28, 2004, memorandum entitled Request for a List of Surrogate Countries, which is available in the Department's Central Records Unit (CRU), room B099 of the main Commerce building). In addition, looking at United Nations export statistics, we found that India exported 4,551,694 kilograms of comparable merchandise (*i.e.*, FMTCs based on HTS numbers 9401.71, 9401.79, 9403.20, 9403.70) valued at USD 6,731,202. *See http://unstats.un.org/unsd/comtrade*. Therefore, India is a significant producer of comparable merchandise. Additionally, we are able to access Indian data that are contemporaneous

with this POR. As in the investigation and the previous review of this order, we have chosen India as the primary surrogate country and are using Indian prices to value the FOP.

We selected, where possible, publicly available values from India that were average non–export values, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. Also, where we have relied upon import values, we have excluded imports from NME countries as well as from South Korea, Thailand, and Indonesia. The Department has found that South Korea, Thailand, and Indonesia maintain broadly available, non–industry-specific export subsidies. The existence of these subsidies provides sufficient reason to believe or suspect that export prices from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (Feb. 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Our practice of excluding subsidized prices has been upheld in *China National Machinery Import and Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1136 (CIT 2003).

Material Inputs

- To value hydrochloric acid used in the production of FMTCs, we used per–kilogram import values obtained from *Chemical Weekly*. We adjusted this value for taxes and to account for freight costs incurred between the supplier and each respondent, respectively.
- Where Feili had usable market–economy purchases that represented a meaningful portion of total purchases of each respective input (*e.g.*, cold–rolled steel, polypropylene plastic resin, powder coating, and cartons), we valued these inputs with their respective per–kilogram purchase prices. Where applicable we also adjusted these values to account for freight costs incurred between the supplier and respondent.
- To value all other material inputs and carbon dioxide used in the production of FMTCs, we used per–kilogram import values obtained from the *Monthly Statistics of the Foreign Trade of India* (MSFTI), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and available from *World Trade Atlas* (WTA).[3] We also adjusted these values to account for freight costs incurred between the supplier and respondent.
- To value diesel oil, we used a per–kilogram value obtained from Bharat Petroleum for December 2003. *See* Memorandum to File: Factor Values Used for the Preliminary Results of the 2003–2004 Administrative Review'' (Factors Memorandum) (June 30, 2005). We also made adjustments to account for freight costs incurred between the supplier and respondent.
- To value electricity, we used the 2000 electricity price data from *International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2003)*, available at http://www.eia.doe.gov/emeu/international/elecprii.html.
- To value water, we used the Revised Maharashtra Industrial Development Corporation (MIDC) water rates for June 1, 2003, available at http://www.midcindia.com/water__supply.
- For labor, we used the regression–based wage rate for the PRC in ''Expected Wages of Selected NME Countries,'' available at *http://ia.ita.doc.gov/wages/index.html*.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd (2003–2004). From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.
- For packing materials, we used the per–kilogram values obtained from the MSFTI and made adjustments to account for freight costs incurred between the PRC supplier and respondent.
- To value foreign brokerage and handling, we used information reported in the *Final Determination of Sales at Less Than Fair Value; Certain Hot–Rolled Carbon Steel Flat Products from India*, 67 FR 50406 (Oct. 3, 2001).
- To value truck freight, we used the freight rates published by Indian Freight Exchange available at http://www.infreight.com.

Where necessary, we adjusted the surrogate values to reflect inflation/deflation using the Indian Wholesale Price Index (WPI) as published on the Reserve Bank of India (RBI) website, available at www.rbi.org.in. For a complete description of the factor values we used, *see* the Factors Memorandum, a public version of which is available in the Public File of the CRU.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Feili	7.02
PRC–Wide (including New–Tec and Wok and Pan)	70.71

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities. Further, we would appreciate it if parties submitting written comments would provide an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. We have calculated each importer's duty–assessment rate based on the ratio of the total amount of antidumping duties calculated for the

[3] *Available* at http://www.gtis.com/wta.htm.

examined sales to the total quantity of sales examined. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results for all shipments of FMTCs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for Feili, which has a separate rate, the cash deposit rate will be the company–specific rate established in the final results of the review; (2) the cash deposit rates for any other companies, that have separate rates established in the investigation or first administrative review of this case, but were not reviewed in this proceeding, will not change; (3) for all other PRC exporters, the cash deposit rate will be the PRC rate, 70.71 percent, which is the ''All Other PRC Manufacturers, Producers and Exporters'' rate from the *Notice of Final Determination of Sales of Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (Apr. 24, 2002); and (4) for non–PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3653 Filed 7–8–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews

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

EFFECTIVE DATE: July 11, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that three requests for new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), received in May 2005, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') of these new shipper reviews is November 1, 2004, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Ryan A. Douglas or Brian Ledgerwood at (202) 482–1277 and (202) 482–3836, respectively, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. On May 17, May 26, and May 31, 2005, we received requests for new shipper reviews from Shandong Chengshun Farm Produce Trading Company, Ltd. (''Shandong Chengshun''); Xi'an XiongLi Foodstuff Co., Ltd. (''Xian XiongLi''); and Shenzhen Fanhui Import and Export Co., Ltd. (''Fanhui''), respectively.

Fanhui certified that it grew and exported the garlic on which it based its request for a new shipper review. Shandong Chengshun and Xian XiongLi certified that they exported, but did not grow, the fresh garlic on which they based their requests for a new shipper review. Specifically, Shandong Chengshun certified that Jinxiang Chengsen Agricultural Trade Company, Ltd. (''CATC'') grew the fresh garlic it exported and Xian XiongLi certified that Jinxiang Tianshan Foodstuff Co., Ltd. (''JTFC'') grew the fresh garlic it exported.

Initiation of New Shipper Reviews.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Shandong Chengshun, Fanhui, and Xian XiongLi certified that they did not export fresh garlic to the United States during the period of investigation (''POI''). In addition, pursuant to 19 CFR 351.214(b)(2)(ii)(B), CATC and JTFC, the growers of the garlic exported by Shandong Chengshun and Xian XiongLi, respectively, provided certification that they did not export fresh garlic to the United States during the POI. Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), each of the three exporters, Shandong Chengshun, Fanhui, and Xian XiongLi, certified that, since the initiation of the investigation, they have never been affiliated with any exporter or grower who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), each of the above–mentioned companies also certified that their export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the exporters submitted documentation establishing the following: (1) the date on which they first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment and the volume of subsequent shipments; and (3) the date of their first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating three new shipper reviews for shipments of fresh garlic from the PRC:

1) grown by CATC and exported by Shandong Chengshun;
2) grown and exported by Fanhui; and
3) grown by JTFC and exported by Xian XiongLi.

The POR is November 1, 2004, through April 30, 2005. See 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Because Fanhui has certified that it grew and exported the fresh garlic on which it based its request for a new shipper review, we will instruct U.S. Customs and Border Protection (CBP) to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of fresh garlic both grown and exported by Fanhui until the completion of the new shipper reviews, pursuant to section 751(a)(2)(B)(iii) of the Act. With respect