

Background

On April 2, 2005, the Government of Ukraine's Ministry of Economy and European Integration requested that the Department of Commerce conduct a review of Ukraine's status as a non-market economy ("NME") country within the context of a changed circumstances review of the antidumping duty order on carbon and certain alloy steel wire rod from Ukraine. In response to this request, the Department initiated a changed circumstances review in order to determine whether Ukraine should continue to be treated as an NME country for purposes of the antidumping law, pursuant to sections 751(b) and 771(18)(C)(ii) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 70 FR 21396 (April 26, 2005). In its notice of initiation, the Department invited public comment on Ukraine's ongoing economic reforms and received extensive initial and rebuttal comments on July 11, 2005, and August 31, 2005, respectively. These comments have been made available to the public at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>. In addition, the Department has compiled and analyzed information regarding Ukrainian economic reforms from independent third-party sources that it commonly cites for market economy status decisions.

Opportunity for Public Comment and Extension of Final Results

In order to consider any economic and institutional developments that occurred in Ukraine since the closure of the record in this review that may be of importance to the Department's decision, the Department is inviting further public comment on reforms in Ukraine. Specifically, the Department invites comment on such developments in relation to the factors listed in section 771(18)(B) of the Act, which the Department must take into account in making a market/non-market economy decision:

- (i) The extent to which the currency of the foreign country is convertible into the currency of other countries;
- (ii) The extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
- (iii) The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;

(iv) The extent of government ownership or control of the means of production;

(v) The extent of government control over allocation of resources and over price and output decisions of enterprises; and

(vi) Such other factors as the administering authority considers appropriate.

In order to provide opportunity to consider the comments, the Department is extending the deadline for the final results of this changed circumstance review by thirty days, making the new deadline February 16, 2006.

Comments—Deadline, Format, and Number of Copies

The deadline for submission of comments is January 25, 2006. The deadline for rebuttal comments is February 1, 2006. Each person submitting comments should include his or her name and address. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) Begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section "summary of comment"; (4) provide an index or table of contents; and (5) include the case number, A-823-812, in the top right hand corner of the submission.

Persons wishing to comment should file a signed original and six copies of each set of comments by the dates specified above. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic media, preferably in Portable Document Format (PDF), to accompany the required paper copies. Comments filed in electronic form should be submitted on CD-ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>.

Any questions concerning file formatting, document conversion,

access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail: webmaster-support@ita.doc.gov.

Dated: January 12, 2006.

David Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-868]

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

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

SUMMARY: On July 11, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2003 - 2004 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, to May 31, 2004. We have now completed the 2003 - 2004 administrative review of the order. Based on comments received, we have made changes in the dumping margin calculations. Therefore, the final results differ from the preliminary results. For details regarding these changes, see the section of this notice entitled "Changes Since the Preliminary Results." The final results are listed below in the "Final Results of Review" section.

EFFECTIVE DATE: January 18, 2006.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Catherine Feig, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2336 and (202) 482-3962, respectively.

SUPPLEMENTARY INFORMATION:

Background

The preliminary results in this administrative review were published on July 11, 2005. See *Folding Metal Tables and Chairs from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 39726

(July 11, 2005) (“*Preliminary Results*”). The POR is June 1, 2003, through May 31, 2004. The respondents in this case are Feili Furniture Development Ltd. Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively “Feili Group”), and New-Tec Integration (Xiamen) Co. Ltd. (“New-Tec”). The domestic interested parties are Meco Corporation (“Meco”) and Cosco Home and Office Products (“Cosco”).

As stated in the *Preliminary Results*, we issued an additional supplemental questionnaire to New-Tec on July 1, 2005. New-Tec responded on July 29, 2005. On August 18, 2005, the Department issued another supplemental questionnaire to New-Tec. On September 7, 2005, in response to New-Tec’s August 31, 2005, extension request, the Department granted an extension and also requested additional documentation related to the inventory reconciliation. On September 16, 2005, in response to the Department’s requests, New-Tec submitted its responses to both the August 18, 2005, supplemental questionnaire and the additional August 31, 2005, questions. In the *Preliminary Results* the Department applied total adverse facts available to New-Tec. However, on December 1, 2005, the Department issued a margin calculation for New-Tec applying partial adverse facts available. See Memorandum to Joseph A. Spetrini; Calculation of an Anti-Dumping Duty Margin of Review and Application of Partial Facts Available with an Adverse Inference for New-Tec Integration (Xiamen) Co., Ltd. (“New-Tec Memo”) (December 1, 2005), see also Memorandum to Wendy J. Frankel; Factors-of-Production Valuation for New-Tec Integration (Xiamen) Co., Ltd. Post-Preliminary Results (December 1, 2005) (“New-Tec FOP Memo”) and Memorandum to the File; Calculation Memorandum, New-Tec Integration (Xiamen) Co., Ltd. (“New-Tec Calculation Memo”) (December 1, 2005).

On December 8, 2005, we received case briefs from Meco and the respondents. On December 9, 2005, we received a case brief from Cosco.¹ We received rebuttal briefs from Meco and respondents on December 13, 2005, and from Cosco on December 14, 2005.² On December 27, 2005, the Department issued a letter to interested parties

soliciting comments on moving indirect employee benefit expenses (e.g., employees provident and other funds, employees gratuity trust fund, workman and staff welfare expense and voluntary retirement compensation) in the surrogate Indian financial statements from direct labor costs to manufacturing overhead costs. Feili Group, New-Tec, Cosco and Meco all responded on December 30, 2005.

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 New-Tec

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 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*

¹ This case brief was timely because one copy was originally filed on December 8, 2005 as “bracketing not final.”

² This rebuttal brief was timely because one copy was originally filed on December 13, 2005 as “bracketing not final.”

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.

New-Tec is a joint venture owned by New-Tec International Inc., a South Korean company, and Xiamen Integration Co., Ltd. New-Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law. Other than limiting New-Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control. See, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004). We have no information in this segment of the proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for New Tec.

With regard to *de facto* control, New-Tec 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 Chamber of Commerce does not coordinate the export activities of New-Tec; (4) New-Tec's general manager has the authority to contractually bind the company to sell subject merchandise; (5) the board of directors appointed the general manager; (6) there is no restriction on its use of export revenues; and (7) New-Tec's management decides how to dispose of the profits and New-Tec has not had a loss in the last two years. Additionally, New-Tec's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of New-Tec's questionnaire responses reveals no other information indicating government control of export activities. Therefore, based on the information provided, we determine that there is an absence of *de facto* government control over New-Tec's export functions.

For the final results of this administrative review, we find an absence of government control, both in law and in fact, with respect to New-Tec's export activities according to the criteria identified in *Sparklers* and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. Therefore, we have assigned New-Tec a separate rate.

Corroboration of Facts Available

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information 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 Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316 at 870 (1994); see also 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no

independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses, as partial adverse facts available ("AFA"), a calculated margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. The AFA rate used in this review, 70.71 percent, is the current PRC-wide rate originally calculated in the less-than-fair-value investigation and corroborated in the first administrative review. This rate has not been judicially invalidated. Therefore, we consider this rate to be reliable. 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 ("FMTCS AR1 Final"); see also *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090, 20091 (April 24, 2002) (*FMTCS Final Determination*).

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. Nothing in the record of this review calls into question the relevance of the margin we have selected as AFA. Moreover, the selected margin is the current PRC-wide rate and is currently applicable to exporters who do not have a separate rate. Further, the selected rate of 70.71 percent was the PRC-wide rate for every prior segment of this proceeding. See *FMTCS AR1 Final*; see also *FMTCS Final Determination*. Thus, it is appropriate to use the selected rate as AFA in this review.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 9, 2006, which is hereby adopted by this notice. A list of the issues that parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Department of Commerce building. In addition, the Decision

Memorandum can be accessed directly on Import Administration's Web site at <http://ia.ita.doc.gov>. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the margin calculations for New-Tec and Feili Group. The specific calculation changes can be found in our calculation memoranda dated January 9, 2006. These changes are listed below.

New-Tec

For the final results the Department has revised its calculation of international movement expenses so that "QTYU" field is not included and a per-unit international movement expenses calculated. *See* Decision Memorandum at Comment 6. Additionally, as we stated in the New-Tec FOP Memo, we have updated our U.S. deflator for the final results and, therefore, we adjusted our international air freight surrogate values to reflect this change.

Feili Group

For the final results, the Department has revised its surrogate value for wooden pallets using a HTS category for lumber since Feili Group has claimed it makes its pallets. *See* Decision Memorandum at Comment 8. We also changed our surrogate value labor rate to the rate issued by the Department in November 2005, consistent with the wage rate we applied to New-Tec.

New-Tec and Feili Group

We made several changes to the surrogate financial ratios. *See* Decision Memorandum at Comment 1. For the final results we use the revised financial ratios in our margin calculations.

PRC-Wide Entity

Other than finding that New-Tec is no longer part of the PRC-wide entity, we received no comments on and made no changes to our treatment of the PRC-wide entity (including Wok and Pan).

Final Results of Review

We determine that the following weighted-average, *ad valorem*, percentage margins exist for the period June 1, 2003, through May 31, 2004:

Exporter/Manufacturer	Margin (percent)
New-Tec	0.00
Feili Group	0.00
PRC Wide-Rate	70.71

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of the final results of administrative review for all shipments of FMTCs from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above except where the margin is *de minimis*, no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 70.71 percent; and (4) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and Customs and Border Protection ("CBP") will assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. For the companies subject to this review, we calculated customer-specific assessment rates because there is no information on the record that identifies the importers of record. Specifically, for New-Tec and Feili Group we calculated duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. 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 doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 C.F.R. 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: January 9, 2006.

David M. Spooner,
Assistant Secretary for Import
Administration.

Appendix Issues in Decision Memorandum

List of Comments

I. ISSUES RELATED TO BOTH RESPONDENTS

- Comment 1: Financial Ratios
- Comment 2: Use of Market-Economy Purchase Prices
- Comment 3: Surrogate Labor Rate

II. ISSUES SPECIFIC TO NEW-TEC

- Comment 4: Treatment of Zero-Priced Transactions

- Comment 5: Application of Total Adverse Facts Available

- Comment 6: International Freight Surrogate Value

- Comment 7: Application of the International Freight Surrogate Value

III. ISSUES SPECIFIC TO FEILI GROUP

- Comment 8: Wood/Pallet Surrogate Value

- Comment 9: Billing Adjustments to U.S. Prices

- Comment 10: Exclusion of Certain Market-Economy Purchases

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