

December 18, 2009

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

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2007-2008  
Administrative Review of Folding Metal Tables and Chairs from  
the People's Republic of China

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## 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, 2007, through May 31, 2008. 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 for Certain New-Tec Factors of Production
- Comment 3: Selection of Certain HTS Classifications for Certain Surrogate Values

## BACKGROUND

On July 7, 2009, the Department of Commerce ("Department") published its *Preliminary Results*.<sup>1</sup> On August 6 and 7, 2009, the Department received case briefs from New-Tec Integration (Xiamen) Co., Ltd. ("New-Tec"), a respondent, Cosco Home and Office Products ("Cosco"), a U.S. importer of subject merchandise, and Meco Corporation ("Meco"), a domestic producer of the like product. On August 11, 2009, the Department received rebuttal briefs from Meco, New-Tec, and Cosco. On September 9, 2009, the Department held a public hearing.

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<sup>1</sup>See *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32118 (July 7, 2009) ("*Preliminary Results*").

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*<sup>2</sup> the Department should not have used the financial statement of Maximaa System Ltd. (“Maximaa”) ending March 31, 2007, to calculate the surrogate financial ratios. According to Meco, Maximaa produces merchandise that is neither identical nor comparable to subject merchandise, and instead produces 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, 2007, because it produces a greater proportion of products comparable to FMTCs than any other surrogate company, and the Department has shown a preference for using financial statements of a producer of identical merchandise.<sup>3</sup>

Meco argues that if the Department does not use Infiniti’s financial statements alone, the Department should average the data derived from the financial statements of Infiniti, Godrej & Boyce Manufacturing Company Limited (“Godrej”), and Tube Investments of India, Ltd. (“Tube”) based on its previous practice. Meco states that Infiniti, Godrej and Tube all qualify as producers of comparable merchandise but, in terms of specificity, Infiniti represents the best choice. Meco notes that in past cases the Department has used financial statements from at least two producers in order to calculate more representative financial ratios. Meco contends that if the Department determines that it is preferable to use more than one set of financial statements, the Department should calculate an average for each surrogate ratio using the financial statements of Infiniti, Godrej, and Tube since all three of these surrogate companies manufacture merchandise more comparable to FMTCs than Maximaa.

New-Tec argues that the Department should not utilize Infiniti, Godrej, or Tube. New-Tec contends that Infiniti produced a smaller proportion of comparable merchandise than Maximaa and that Infiniti’s production process does not resemble that of New-Tec. New-Tec argues that Infiniti is merely engaged in the assembly operation of various products using pre-made components. Therefore, according to New-Tec, Infiniti’s production process is far different from New-Tec’s, which involves the integrated production of subject merchandise.

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<sup>2</sup>See *id.*

<sup>3</sup>See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1; see also *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; *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China*, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum at Comment 9F.

New-Tec also argues that Godrej's and Tube's financial statements should be rejected. New-Tec notes that neither Godrej's nor Tube's financial statements are contemporaneous with the POR, and that both Godrej and Tube were involved in the production of a smaller proportion of comparable merchandise than Maximaa. Additionally, the greater proportion of Godrej's production is security equipment, typewriters, locks, home appliances, and other industrial products that involve production equipment and skill levels not comparable to what is needed to produce subject merchandise.

New-Tec states that the Department should not use Tube's financial statements because Tube is not a producer of comparable merchandise. According to New-Tec, Tube engages in bicycle manufacturing and engineering, both of which require a higher end of production technology and equipment and the products are neither identical nor comparable to FMTCs.

New-Tec asserts that the Department should use Maximaa's financial statements ending March 31, 2008, because they are the only contemporaneous statements on the record of this review and Maximaa produced the highest proportion of comparable merchandise, using a more comparable production process.

Cosco asserts that Maximaa's financial statements are the most appropriate for calculating surrogate financial ratios because Maximaa's data are more contemporaneous and the products are similar to FMTCs. Based on a review of Infiniti's raw materials, Cosco further asserts that Infiniti is an assembly operation and not an integrated producer, whereas the respondent is an integrated producer of FMTCs. Cosco also points out that Infiniti produces predominantly non-metal, non-folding, high-end European design chairs<sup>4</sup> 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 respondent. According to Cosco, the Department should decline to consider the financial statements of Tube because it did not produce comparable merchandise.

### **Department's Position:**

For the final results of this review, we have relied only on Maximaa's year ending March 31, 2008, financial statements to derive surrogate financial ratios.<sup>5</sup> Maximaa's 2008 financial statements are contemporaneous with the POR, complete, and Maximaa is a producer of comparable merchandise (steel furniture).

We agree that Infiniti's 2007 financial statements are not contemporaneous with the POR. Meco's rationale, that a two-month gap between the beginning of the POR and the end of Infiniti's 2007 financial statements is a very minor difference, is not sufficient grounds for accepting non-contemporaneous financial statements when more contemporaneous statements, that also meet the Department's other criteria, are available on the record. Moreover, the fact

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<sup>4</sup> See Cosco's Surrogate Value Rebuttal, at Exhibit (August 6, 2009).

<sup>5</sup> See New-Tec's Surrogate Value Submission, at Attachment (July 27, 2009).

that we used Infiniti's financial statements in a previous review of FMTCs<sup>6</sup> and in the most recent administrative review of *Ironing Tables*,<sup>7</sup> does not require using Infiniti's financial statements in this review. The financial statements were contemporaneous with the PORs in those reviews, but are not contemporaneous with this POR, and represented the best available data in those reviews, which they do not here.

Meco is correct 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.<sup>8</sup> However, Meco argues that the products produced by Infiniti are identical to the subject merchandise while Maximaa is a producer of neither identical nor comparable products. The Department disagrees with Meco on both accounts. The Department has examined the web pages submitted by Meco,<sup>9</sup> but does not agree that Infiniti's product line can be classified as similar or identical to subject merchandise. Infiniti's products were predominantly non-metal, non-folding chairs and desks. A further examination also reveals that Infiniti describes its products as "trendy, international designs," which include more elaborate designs, such as chairs with "blow moulded, double walled polypropylene" seats and backs and include features such as glides. Thus it produces few, if any, folding tables and chairs that are comparable to subject merchandise.<sup>10</sup> Maximaa, while not a producer of identical merchandise, does produce metal (steel) furniture with similar inputs (*i.e.*, powder coating and cold-rolled steel). The Department agrees with New-Tec and Cosco that there is evidence on the record that Maximaa's product lines are highly concentrated on steel furniture, and that Maximaa's raw material consumption demonstrates that it manufactured steel furniture.<sup>11</sup>

Concerning the other financial statements put forward by Meco (*i.e.*, Godrej and Tube), we find that the merchandise produced by both companies is far less comparable to that of New-Tec, whose revenue primarily consists of FMTCs sales. The majority of Godrej's sales revenue is comprised of sales of merchandise not comparable to subject merchandise produced by New-Tec (*e.g.*, security equipment, typewriters, locks, home appliances, and other industrial products).<sup>12</sup> We do not rely on Tube's 2007 financial statements because it is partially an engineering firm and partially a producer of bicycles, which are not comparable because they require a higher precision production process.<sup>13</sup> Thus, Tube is not a producer of comparable merchandise.

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<sup>6</sup> See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007).

<sup>7</sup> See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Results of Antidumping Duty Administrative Review*, 74 FR 11085 (March 16, 2009) ("*Ironing Tables*").

<sup>8</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1; and 19 CFR 351.408(c)(4) (explaining 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.").

<sup>9</sup> See Meco's Surrogate Value Submission, at Exhibit 2 (July 27, 2009).

<sup>10</sup> See Cosco's Surrogate Value Data Rebuttal, at Exhibit 6, (August 6, 2009).

<sup>11</sup> See New-Tec's Surrogate Value Submission, at Attachment (July 27, 2009) at Maximaa's 2008 Financial Statement (H) Raw Material Consumed.

<sup>12</sup> See Meco's Surrogate Value Submission, at Exhibit 7 (January 21, 2009).

<sup>13</sup> *Id.*

It is the Department's practice to also consider the production process when choosing between producers of comparable merchandise.<sup>14</sup> Even when products appear to be identical, the Department also looks at the production process when choosing surrogate financial statements.<sup>15</sup> In this review the products produced by Maximaa show a production process that is most similar to New-Tec's. The racks and polymer pallets produced by Maximaa involve similar production processes as those of the respondent, such as steel cutting, tube making, frame forming, processing, and welding for metal parts, and plastic processing for the plastic parts. Because Godrej's and Tube's products are dissimilar to New-Tec's and appear to require greater skill levels in their production, it is unlikely that the production process of either company is comparable to New-Tec's. Infiniti's production process is also less comparable since it appears to be an assembler based on listed pre-made components (*e.g.*, ERW steel tubes, plastic components, and sheet metal components) and not an integrated producer, like New-Tec, whose production process involves processing coils of rolled steel.

Meco maintains that Maximaa's trading activities also make it unsuitable as a surrogate company. However, the majority of Maximaa's business activities are steel furniture manufacturing and the Department is able to exclude trading activities from the calculation of overhead and include them in the other financial ratios, as appropriate.

In conclusion, Maximaa's 2008 financial statements satisfy the standard set by 19 CFR 351.408(c)(4) more adequately than the rest because a greater proportion of Maximaa's production appears to consist of comparable merchandise (*i.e.*, metal furniture), because it has a similar production process to that of the respondent, and it is contemporaneous. Therefore, Maximaa's 2008 financial statements are 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.<sup>16</sup>

## **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 prices for market economy purchases ("MEP") for valuing powder coating, polypropylene resin, fiberboard, polyvinyl chloride sheet, polyester fabric, polyurethane foam, and acrylonitrile butadiene styrene resin. 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.<sup>17</sup> New-Tec argues that the Department's finding on the supplier location for the inputs at issue is erroneous

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<sup>14</sup> See, *e.g.*, *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>15</sup> See, *e.g.*, *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.

<sup>16</sup> See Final Results of the 2007-2008 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum (December 18, 2009) ("Final Surrogate Value Memo").

<sup>17</sup> See Analysis for the Preliminary Results of the 2007-2008 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 (June 30, 2009) ("New-Tec Preliminary Analysis Memo").

because New-Tec reported other countries as the supplier location, even though they were sold to New-Tec by a trading company located in South Korea. New-Tec further notes that it is the Department's practice to use MEPs for valuing the entire input when the total volume of the input purchased from market-economy sources during the review period exceeds 33 percent of the total volume of the input purchased from all sources during the period, and that the volume of MEPs in this review exceed that threshold. Moreover, New-Tec argues that while the Department excludes inputs sourced from countries that grant generally available export subsidies, this is not a factor in this proceeding because the record does not demonstrate that the prices of the inputs at issue were distorted by generally available export subsidies or dumping in the reported country of origin. According to New-Tec, it is the Department's practice to base its analysis on the location where a particular input is produced (*i.e.*, the country of origin), in order to determine whether the MEP price of an input should be disregarded.<sup>18</sup> New-Tec asserts that it reported market-economy countries as the countries of origin for these inputs. According to New-Tec, South Korea is the location of the trading company. New-Tec contends that the inputs were produced in market-economy countries other than South Korea, 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.

Finally, New-Tec differentiates the facts of this review from the last review by pointing to record evidence indicating that the Korean supplier did not use Korea's Export Import Bank's ("KEXIM") Trade Bill Rediscounting Program ("TBR Program"). New-Tec cites to its Supplemental C and D responses where it submitted invoices for the purchase of its market-economy inputs, and that these submitted invoices confirm that New-Tec's terms of payment for the inputs were that payment was made on a telegraphic transfer basis.<sup>19</sup> Therefore, because there is no commercial paper, such as a letter of credit or documents of acceptance, the Korean supplier could not have used the Korean government program described by the Department in the 2006-2007 review determination.<sup>20</sup>

Meco argues that the Department correctly rejected New-Tec's reported MEP prices for powder coating, polypropylene resin, fiberboard, polyvinyl chloride sheet, polyester fabric, polyurethane foam, and acrylonitrile butadiene styrene resin in calculating the normal value. Meco argues that the invoices cited by New-Tec identify the location from which the product was shipped, but not the actual country of manufacture, nor do they provide the identity of the manufacturer. Meco argues that this does not provide the evidentiary basis for the Department to determine the country of manufacture for any of these inputs. Meco asserts that Congress has directed that the Department avoid using prices which it has reason to believe or suspect may be dumped or

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<sup>18</sup> See, e.g., *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.

<sup>19</sup> See New-Tec's Supplemental Section C and D Response, at Exhibit 2 (February 24, 2009).

<sup>20</sup> See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3560 (January 21, 2009).

subsidized, and that the Department must review all aspects of the transactions to ensure that the market-economy prices may be used in its analysis.<sup>21</sup> Therefore, Meco argues that the Department correctly considered in its preliminary results whether potential subsidies may have benefited a third-country reseller, and in the case of Korea, the Department has determined that broadly available, non-industry specific export subsidies that benefit all exporters render purchase prices from Korean exporters unusable in its analysis. Additionally, Meco argues that the Department did not find, or need to find, that record evidence demonstrated actual receipt of the types of subsidies in question. Meco, also argues that the sample invoices do not provide an adequate evidentiary basis for the Department to conclude that the Korean trading company could not avail itself of KEXIM's TRB Program on other transactions with New-Tec. Finally, Meco asserts that the Department has found that KEXIM supplies two types of short-term loans for exporting companies, and that New-Tec has neither acknowledged the existence of the comprehensive export financing loans, nor demonstrated that the Korean trading companies did not benefit from subsidies provided under this program.

### **Department's Position:**

In accordance with the Department's practice, as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>22</sup> where at least 33 percent of an input was sourced from market-economy suppliers and purchased in a market-economy currency, the Department will use actual weighted-average purchase prices to value these inputs. Where the quantity of the input purchased from market-economy suppliers during the period was below 33 percent of its total volume of purchases of the input during the period, the Department will weight-average the weighted average market-economy purchase price with an appropriate surrogate value.

For the final results of this review, the Department has accepted New-Tec's MEP prices. In the preliminary results, the Department did not rely on New-Tec's MEP prices from a market-economy producer because New-Tec reported certain inputs as being sold to New-Tec by a trading company located in Korea which we believed at the time could have availed itself of the KEXIM trade financing program. However, the producers of New-Tec's raw material inputs are located in countries outside of Korea and those suppliers merely sold the inputs through a Korean trading company. Further, based on the information placed on the record by New-Tec, there is no reason to believe or suspect that in the instant review either New-Tec's suppliers or the Korean trading company through which the inputs were sold, was eligible for the KEXIM trade financing program, or any other Korean government export subsidy programs. Therefore, the Department will accept the reported MEP for powder coating, polypropylene resin, fiberboard, polyvinyl chloride sheet, polyester fabric, polyurethane foam, and acrylonitrile butadiene styrene resin.

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<sup>21</sup> Conference Report to the 1988 Omnibus Trade and Competitiveness Act, H.R. Conf. Rep. No. 100-576, at 590 (1988).

<sup>22</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

### **Comment 3: Selection of Certain HTS Classifications for Certain Surrogate Values**

Meco argues that the Department erred in the HTS classifications used to value silane agent and PVC sheet. Meco argues that silane agents are used in primer coats and that the Department should have used Harmonized Tariff Schedule (“HTS”) subheading 2942.00.00 instead of the HTS subheading 3208.90.90, which the Department used in its preliminary results. Also, Meco notes that the Department used HTS subheading 3904.10 to value PVC sheet; however, Meco argues that the correct classification is 3920.43. Therefore, Meco contends that the Department should modify its surrogate value calculations for these two inputs in the Final Results.

No other party commented on this issue.

#### **Department Position:**

The Department examined the raw material input descriptions and accompanying narrative provided in New-Tec’s questionnaire responses<sup>23</sup> and found the HTS classifications used to value silane agent and PVC sheet in the *Preliminary Results* were not in error.<sup>24</sup> New-Tec reported silane agent as an input and the Department requested further description of this product in a supplemental questionnaire on June 5, 2009. Based on the response provided,<sup>25</sup> the Department agreed with New-Tec that its suggested HTS classification of 3208.90.90, described as Other Paint Varnish, was the HTS classification that more closely resembled the actual input and its use by New-Tec as a primer than the HTS classification suggested by Meco, which is less specific and described broadly as Other Organic Compounds.

For PVC sheet, as addressed in the above comment, the Department has accepted New-Tec’s MEP prices, therefore the petitioner’s argument that the Department should use another HTS subheading is moot.

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<sup>23</sup> See, e.g., New-Tec’s Supplemental Section D Response, at Exhibit 5 (May 19, 2009), and New-Tec’s Supplemental Section D Response (June 9, 2009).

<sup>24</sup> See Preliminary Results of the 2007-2008 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: Surrogate Value Memorandum (June 30, 2009).

<sup>25</sup> See New-Tec’s Supplemental Section D Response (June 9, 2009).

## 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  
Deputy Assistant Secretary  
for Import Administration

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Date