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January 10, 2011

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2007-2008 Deferred and
2008-2009 Administrative Reviews of Folding Metal Tables and
Chairs from the People's Republic of China

BACKGROUND

On July 14, 2010, the Department of Commerce ("Department") published *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 40788 (July 14, 2010) ("*Preliminary Results*") in the 2007-2008 deferred and 2008-2009 administrative reviews of the antidumping duty order on folding metal tables and chairs from the People's Republic of China, covering the periods June 1, 2007, through May 31, 2008, and June 1, 2008, through May 31, 2009, respectively. The Department received the following briefs:

- August 20, 2010, Meco Corporation ("Meco") case brief regarding the 2007-2008 deferred period of review ("POR");
- August 20, 2010, Meco case brief regarding the 2008-2009 POR;
- August 25, 2010, Cosco Home and Office Products ("Cosco") rebuttal brief regarding the 2007-2008 deferred POR;
- August 25, 2010, Cosco rebuttal brief regarding the 2008-2009;
- August 25, 2010, Feili Group (Fujian) Co., Ltd./Feili Furniture Development Limited Quanzhou City ("Feili") rebuttal brief regarding the 2007-2008 deferred POR;
- August 25, 2010, Feili rebuttal brief regarding the 2008-2009;
- August 25, 2010, New-Tec Integration (Xiamen) Co., Ltd. ("New-Tec") rebuttal brief regarding the 2008-2009.

On September 17, 2010, the Department rejected Meco's case brief covering the 2008-2009 POR for inclusion of untimely factual information. Meco resubmitted its case brief, without the untimely factual information, on September 20, 2010. On November 2, 2010, we rejected Feili and Cosco's rebuttal briefs covering 2007-2008 POR, also for inclusion of new factual

information and on November 3, 2010, Cosco and Feili resubmitted their respective rebuttal briefs, without the offending information.

We have analyzed the case and rebuttal briefs submitted by the interested parties. As a result of our analysis, we have made changes to the margin calculations in the preliminary results. We note that issues with respect to New-Tec refer to the 2008-2009 administrative review only, while issues regarding Feili cover both periods. 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: Selection of the Primary Surrogate Country

- A. Economic Comparability**
- B. Significant Production of Comparable Merchandise**
- C. Best Available Surrogate Value Information**

Comment 2: Surrogate Financial Statements

- A. General Comments**
- B. Receipt of Subsidies**
- C. Contemporaneity of Financial Statements**
- D. Selection of Financial Statements Based on Sales and Production**
- E. Selection of Financial Statements Based on Primary Business Activity**

Comment 3: Surrogate Financial Statements Contained on the Record

Comment 4: Whether it is Appropriate to Change the Primary Surrogate Country Between Issuance of the Preliminary and Final Results

LIST OF ABBREVIATIONS AND ACRONYMS

Act	Tariff Act of 1930, as amended
Adiguna	PT Adiguna Global Trans
Chitose	PT Chitose Indonesia
CIT	Court of International Trade
Cosco	Cosco Home and Office Products
Department	Department of Commerce
Feili	Feili Group (Fujian) Co., Ltd./Feili Furniture Development Limited Quanzhou City
FMTCs	Folding Metal Tables and Chairs
FOP	Factor of Production
GDP	Gross Domestic Product
GNI	Gross National Income
Godrej	Godrej & Boyce Manufacturing Company Limited
GTA	Global Trade Atlas
HTS	Harmonized Tariff Schedule
Indovickers	PT Indovickers Furnitama

Krakatau	PT Krakatau Steel
Lion	PT Lion Metal Works Tbk
Maximaa	Maximaa Systems Limited
Meco	Meco Corporation
MEP	Market-Economy Purchase
New-Tec	New-Tec Integration (Xiamen) Co., Ltd.
POR	Period of Review
PRC	People's Republic of China
PVC	Polyvinyl Chloride
Quadra	CV Quadra Adikarya
SV	Surrogate Value
Timur	PT Timur jaya Prestasi
Tube	Tube Investments of India Limited
UN Comtrade	United National Department of Economic and Social Affairs' Statistics Division.

ADMINISTRATIVE CASE DECISIONS

(Alphabetical by Short Cite)

Notice of Final Determination of Sales at Less Than Fair value: Certain Ball Bearings and Parts Thereof from the People's Republic of China, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decision Memorandum at Comment 11 (“3/6/2003 Ball Bearings”).

Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010) (“Carbon Steel from India”).

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Indonesia, 66 FR 49637 (September 28, 2001), and accompanying Issues and Decision Memorandum (“Carbon Steel from Indonesia”).

Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 70328 (November 20, 2008) (“11/20/08 Citric Acid Prelim”)

Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (“4/13/09 Citric Acid”)

Final Determination of Sales at Less Than Fair value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) (“10/25/07 Coated Paper”).

Certain Coated Paper Suitable for High Quality Print Graphics using Sheet-Fed Presses From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 24892 (May 6, 2010) (“5/6/10 Coated Paper Prelim”)

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decision Memorandum (“3/17/09 FFF from Vietnam”)

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010), and accompanying Issue and Decision Memorandum at Comment 2 (“3/17/10 FFF from Vietnam”)

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 (April 24, 2002), and accompanying Issues and Decision Memorandum at Comment 7 (“4/24/02 FMTCs”).

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) (“12/20/04 FMTCs”).

Folding Metal Tables and Chairs from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) (“1/18/06 FMTCs”).

Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 71509 (December 11, 2006) (“12/11/06 FMTCs”).

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) (“12/17/07 FMTCs”).

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) (“1/21/09 FMTCs”).

Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 68568 (December 28, 2009) (“12/28/09 FMTCs”).

Industrial Nitrocellulose From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667 (December 15, 1997) (“12/15/97 INC”).

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China, 72 FR 13239 (March 12, 2007), and accompanying Issues and Decision Memorandum at Comment 1 (“3/12/07 Ironing Tables”).

Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 14437 (March 18, 2008), and

accompanying Issues and Decision Memorandum at Comment 1 (“3/18/08 Ironing Tables”).

Certain Tow Behind Lawn Groomers and Certain Parts Thereof: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009) (“6/19/09 Lawn Groomers”).

Industrial Nitrocellulose from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65667 (December 15, 1997) (“12/15/97 Nitrocellulose”).

Natural Bristle Paint Brushes and Brush Heads From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 45753 (July 25, 2000) (“7/25/00 Paint Brushes”).

Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People’s Republic of China, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum at Comment 5 (“7/25/02 Pencils”).

Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (“12/5/03 Persulfates”).

Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand, 68 FR 65247 (November 19, 2003), and accompanying Issues and Decision Memorandum at Comment 14 (“Pineapple from Thailand”).

Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair value and Postponement of Final Determination, 73 FR 51788 (September 5, 2008) (“9/5/08 Pipe”).

Light-Walled Rectangular Pipe and Tube: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008) (“6/24/08 Pipe and Tube”).

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) (“7/7/09 Preliminary Results”).

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review, 73 FR 44220 (July 30, 2008) (“2008 Initiation”).

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review, 74 FR 37690 (July 29, 2009) (“2009 Initiation”).

Folding Metal Tables and Chairs from the People’s Republic of China: Preliminary Results of

Antidumping Duty Administrative Review, 75 FR 40788 (July 14, 2010) (“*Preliminary Results*”).

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2A (“*9/12/07 Shrimp*”).

First Administrative Review of Sodium Hexametaphosphate From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (“*10/10/10 Sodium Hex*”), and accompanying Issues and Decision Memorandum at Comment 4.

Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review, 71 FR 42802 (July 28, 2006), and accompanying Issues and Decision Memorandum at Comment 11 (“*SSB from Germany*”).

Stainless Steel Sheet and Strip in Coils from France: Final Results of Antidumping Administrative Review, 70 FR 7240 (February 11, 2005), and accompanying Issues and Decision Memorandum (“*SSS from France*”).

Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 70 FR 73729 (December 13, 2005), and accompanying Issues and Decision Memorandum (“*SSS from Mexico*”).

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia, 64 FR 73155 (December 29, 1999) (“*Steel Plate from Indonesia*”).

Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (“*Steel Nails from the PRC*”).

Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review, 73 FR 8273 (February 13, 2008) (“*2/13/08 WBF*”).

Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162, and accompanying Issues and Decision Memorandum at Comment 1.C (“*8/20/08 WBF*”).

Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14 (“*8/17/09 WBF*”).

Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 30 (“*8/18/10 WBF*”).

LITIGATION

(Alphabetical by Short Cite)

Allied Pacific Food (Dalian) Co. v. United States, 587 F. Supp. 2d 1330 (CIT 2008) (“*Allied Pacific*”).

Chinsung Indus Co., Ltd. v. United States, 705 F. Supp. 598 (CIT 1989) (“*Chinsung Indus*”).

Fuyao Glass Industry Group Co. v. United States, 29 C.I.T. 109 (CIT 2005) (“*Fuyao Glass*”).

Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166 (CIT 1997) (“*Kerr McGee*”).

Shikoku Chemicals Corporation v. United States, 795 F. Supp. 417 (CIT 1992) (“*Shikoku*”).

Tehnoimportexport and Peer Bearing Co. v. United States, 766 F. Supp. 1169 (CIT 1991). (“*Tehnoimportexport*”).

Tianjin Magnesium International Co., Ltd. v United States, Slip Op. 10-87 (CIT 2010) (“*TMI (2008)*”).

Timken Co. v. United States, 59 F.Supp.2d 1371 (CIT 1999) (“*Timken*”).

MISCELLANEOUS CITES

(In chronological order)

Import Administration Policy Bulletin No. 04.1 (April 5, 2005) (“*Policy Bulletin 04.1*”).

New-Tec’s Preliminary Surrogate Value Submission for 2008-2009 review, dated February 2, 2010 (“2/2/10 SV Submission”).

Letter to All Interested Parties Regarding Surrogate Country Selection, dated February 4, 2010 (“Surrogate Country Letter”).

Meco’s Preliminary Surrogate Value Submission for 2008-2009 review, dated March 5, 2010 (“3/5/10 SV Submission”).

Memorandum to the File, entitled “Preliminary Results of the 2007-2008 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: Surrogate Value Memorandum (July 7, 2010) and Memorandum to the File, entitled “Preliminary Results of the 2008-2009 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: Surrogate Value Memorandum (July 7, 2010) (“Prelim SV Memo”).

Meco’s Surrogate Value Submission for both reviews, dated August 3, 2010 (“8/3/10 SV Submission”).

New-Tec's Surrogate Value Rebuttal Comments for 2008-2009 review, dated August 13, 2010 ("8/13/10 SV Rebuttal").

New-Tec's Rebuttal Brief for 2008-2009 review, dated August 25, 2010 ("New-Tec's rebuttal Brief").

Meco's Revised Case Brief for 2007-2008 review, dated September 20, 2010 ("Meco's Case Brief").

DISCUSSION OF THE ISSUES

Comment 1: Selection of the Primary Surrogate Country

A. Economic Comparability

- Meco argues that Indonesia and India are at disparate levels of economic development and that the Department should select Indonesia as the primary surrogate country because its GNI is closer to the PRC's GNI than is India's. To support this argument, Meco cites to *Policy Bulletin 04.1* and Attachment I of the Surrogate Country Letter.
- Cosco and New-Tec assert that Indonesia may not be considered more similar to the PRC than India because the countries listed in the Surrogate Country Letter are equally comparable to each other in terms of economic development. To support this argument, Cosco, Feili, and New-Tec cite to 8/20/08 WBF, *Policy Bulletin 04.1*, Attachment II of the Surrogate Country Letter, and *Preliminary Results*.
- Feili, New-Tec, and Cosco maintain that in past cases, in general, and in prior segments of FMTCs proceeding, in particular, the Department used India as the primary surrogate country. To support this argument, Feili, New-Tec, and Cosco cite to 3/5/10 SV Submission, 8/3/10 SV Submission, 8/13/10 SV Rebuttal, 7/7/09 *Preliminary Results*, at 32120, 12/28/09 FMTCs, 4/24/02 FMTCs, 12/20/04 FMTCs, 1/18/06 FMTCs, 12/11/06 FMTCs, 12/17/07 FMTCs, 1/21/09 FMTCs, and 265 final results or determinations listed on pages 5-7 of Feili's November 5, 2010 revised rebuttal brief.

Department Position: As stated in the Department's *Preliminary Results* and described in *Policy Bulletin 04.1*, the Department's practice is not to rank-order countries' comparability according to how close their *per capita* GNI is to that of the NME country in question.¹ Rather, Import Administration's Office of Policy creates a list of countries which are to be treated as equally comparable for the purpose of evaluating their suitability for use as a surrogate country. The statute requires the Department to use a surrogate country that is at a level of economic development comparable to that of the NME country. See section 773(c)(4) of the Act. While 19 CFR 351.408 instructs the Department to consider *per capita* GDP when determining

¹ See, e.g., 8/20/08 WBF

economic comparability, neither the statute nor the Department's regulations define the term "economic comparability."² As such, the Department does not have a set range within which a country's GNI *per capita* should be considered economically comparable. Moreover, *Policy Bulletin 04.1* notes:

IA's current practice reflects in large part the fact that the statute does not require the Department to use a surrogate country that is at a level of economic development *most* comparable to the NME country.

In this case, consistent with Department practice, we find that India and Indonesia are equally comparable in their levels of economic development to that of the PRC because "surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability."³

Finally, we do not agree with Cosco that the *per capita* GNI data cited in Meco's case brief for the 2007-2008 deferred review are not on the record of that review and should be rejected as new factual information. All *per capita* GNI data discussed by Meco is based on the Surrogate Country Letter, at Attachment I and II, which is on the record of the 2007-2008 review. Therefore, we have not rejected Meco's case brief for the 2007-2008 review based on this allegation.

B. Significant Production of Comparable Merchandise

- Meco claims that the Department did not make factual findings in the preliminary results that India is a significant producer of comparable merchandise. Conversely, Meco asserts that the Department did make such a finding with regard to Indonesia when it determined to rely on export data in order to find Indonesia to be a significant producer for purposes of the surrogate labor ratio calculations (using export data as a proxy for production data). To support this argument, Meco cites to *5/6/10 Coated Paper Prelim*, at 24898, *8/20/08 WBF*, *Policy Bulletin 04.1*, Attachment II of the Surrogate Country Letter, Exhibits 1 and 13 of 8/3/10 SV Submission, and Attachment VII of the Prelim SV Memo. Feili counters that the Department made a very specific determination in the *Preliminary Results* that India is in fact a significant producer of comparable merchandise and used the financial statements of an Indian surrogate producer of comparable merchandise.
- New-Tec argues that Indonesia is just another producer of comparable merchandise, and that Meco agreed on the record of this review that India is a significant producer of comparable merchandise. New-Tec adds that the Department has consistently made such findings in prior segments of this proceeding.

² For further discussion of the Department's use of *per capita* GNI data as a proxy for *per capita* GDP as referenced in 19 C.F.R. 351.408, see Expected Wages of Selected Non-Market Economy Countries, <http://ia.ita.doc.gov/wages>.

³ See Attachment II of the Surrogate Country Letter.

- More specifically, Meco infers that Indonesia is a significant producer of both identical and comparable merchandise based on website information from five Indonesian producers of steel furniture. Further, according to Meco, one company's statements (Lion) indicate that its raw materials are identical to those reported by the respondents in this case, further supporting the conclusion that it produces comparable merchandise.
- Cosco and New-Tec argue that the Indonesian producers' website pages indicate only a capacity of furniture production and not actual production of comparable merchandise. Further, according to Cosco, the website does not reflect information during the POR. Finally, Cosco maintains that Lion's financial statements indicate that it did not produce FMTCs. To support their arguments, Cosco and New-Tec cite to Exhibit 1 of 8/3/10 SV Submission, page 2 of 3/5/10 SV submission, 4/24/02 FMTCs, 12/20/04 FMTCs, 1/18/06 FMTCs, 12/11/06 FMTCs, 12/17/07 FMTCs, 1/21/09 FMTCs, Prelim SV memo, and *Policy Bulletin 04.1*.
- Feili asserts that while Meco has provided website information to indicate that five Indonesian companies are producers of comparable merchandise (among other products), Meco has not provided the requisite financial data from these companies to calculate surrogate financial ratios. According to Feili, the existence of Indonesian producers whose products may or may not include comparable merchandise among an array of non-comparable products does not provide a compelling reason for the Department to move away from its consistent history of using India as the primary surrogate country.

Department Position: Record evidence demonstrates that both India and Indonesia are significant producers of comparable merchandise. Specifically, we find that the same GTA Export Statistics cited by Meco to support its argument that Indonesia is a significant producer also identify India as an exporter of comparable merchandise based on the exports reported under the relevant HTS categories.^{4,5}

With regard to other evidence of significant production, we agree with Meco that the record supports finding that Lion is a producer of comparable merchandise.⁶ However, we also agree with Cosco that the websites of the other Indonesian companies discussed above indicate a capacity to produce comparable merchandise rather than actual production, and reflect information current at the time the website information was posted, but not necessarily relevant to the PORs at issue in these administrative reviews. Therefore, we find the website information inconclusive with regard to production during the relevant PORs. With respect to the 2008-2009 review, we agree with New-Tec that Meco previously acknowledged on the record that India is a significant producer of comparable merchandise when it originally proposed that the Department use India as the surrogate country in this review, notwithstanding Meco's claim that the Department has made no such factual finding.⁷ Moreover, we disagree with Meco on this point. The Department did in fact state in the Preliminary Results that we found India to be a

⁴ See Attachment VII of the Prelim SV Memo.

⁵ GTA Export Statistics indicate that India exported \$15,739,065 worth of comparable merchandise.

⁶ See Exhibit 13 of 8/3/10 SV Submission.

⁷ See page 2 and Exhibit 8 of 3/5/10 SV Submission.

significant producer of comparable merchandise and no party to this proceeding has provided any evidence to make us reconsider that position.⁸

Based on the above analysis, we do not find that Indonesia is more preferable to India based on the “significant production” factor. The Department’s policy is unambiguous with respect to the weight assigned to either economic comparability or significant production of potential surrogate countries:

The statute does not require that the Department use a surrogate country that is at a level of economic development *most* comparable to the NME country and that is the *most* significant producer of comparable merchandise. The statute requires only that the Department use a surrogate market economy country that is at a level of economic development comparable to that of the NME country and that is a significant producer of comparable merchandise.⁹

Consequently, because we find that both India and Indonesia are significant producers of comparable merchandise, both are equally eligible for selection as a surrogate country and the decision as to which country to select as the primary surrogate country rests with a determination of which one provides better surrogate value data.¹⁰ See discussion below.

C. Best Available Surrogate Value Information

- Meco argues that it is the Department’s practice to select as the primary surrogate country the country with the “best factors data” when two or more countries are at a comparable stage of economic development and are significant producers of comparable merchandise. Meco argues that financial ratios have a substantial impact on the calculation of normal value, and that selection of the surrogate producer should be the determinant of which surrogate country has the best and most accurate information available because, in this case, a significant portion of normal value is based on respondents’ MEPs rather than surrogate values. According to Meco, Indonesia provides the best SVs for Feili and New-Tec’s raw materials and other inputs with the exception of brokerage and handling and PVC sheet for the 2008-2009 review and brokerage and handling for Feili in the 2007-2008 review. Further, according to Meco, UN Comtrade data covering Indonesia for the 2008-2009 review are of equal quality to GTA data, have been used in the past, and can be corroborated in English. To support this argument, Meco cites to *Policy Bulletin 04.1*, *4/13/09 Citric Acid*, *11/28/08 Citric Acid Prelim*, at 70333, *3/17/10 FFF from Vietnam*, 19 U.S.C. 773(c)(1), *Allied Pacific*, *8/13/10 SV Rebuttal*, and Exhibits 2 and 4 of *8/3/10 SV Submission*. Accordingly, Meco concludes that notwithstanding that the Department might have to resort to a second country for a few surrogate values, Indonesia, in general, provides the best available surrogate value information.

⁸ See *Preliminary Results*, at 40790.

⁹ See *Policy Bulletin 04.1*. See also section 773(c)(4) of the Act.

¹⁰ See *Policy Bulletin 04.1* and *8/20/08 WBF*.

- New-Tec argues that adequate Indian data are available for all factor values and they are plentiful, accessible, and usable. According to Cosco, New-Tec, and Feili, the Indonesian data are inferior to Indian data for several reasons. First, Cosco, New-Tec and Feili each assert that the Indonesian SVs on the record do not cover all of New-Tec’s and Feili’s inputs.¹¹ Second, Cosco maintains that Indonesian values are based on six-digit HTS classifications, whereas Indian SVs are more specific because they are based on eight-digit categories. Third, Feili maintains that the UN Comtrade source contains mismatched data and cannot be corroborated by any publicly available English-language source, unlike the Indian data. Accordingly, New-Tec, Feili and Cosco contend the Department should reject Meco’s Indonesian SVs, which are all sourced from UN Comtrade.
- New-Tec contends that in the cases cited by Meco to support use of Indonesia as the primary surrogate country the Department selected Indonesia because there were either no Indian producers of identical or comparable merchandise or missing surrogate values for a few FOPS and, thus, these cases are not analogous to the instant proceeding. To support this argument, New-Tec cites *Paint Brushes and Refined Brown Aluminum and Citric Acid* (see page 7 of the brief).

Department Position: It is the Department’s practice to select, as the primary surrogate a country that meets the criteria set forth in section 773(c)(4) of the Act (*i.e.*, a country at a comparable level of economic development, which is also a significant producer of comparable merchandise), and has the best available information for valuing FOPs.¹² As the Department’s *Policy Bulletin 04.1* explains, after identification of economically comparable producers that are also significant exporters “...if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.” This decision is made on a case-by-case basis, in consideration of the surrogate country from which the Department can obtain surrogate values with which to value the factors of production of a given product.¹³

Accordingly, we agree with Meco that where the Department deems multiple countries to be at similar levels of economic development, the Department should select the country with the best SV data. In accordance with 19 CFR 351.408(c)(2), the Department normally will value all factors of production using a single surrogate country, where specific, reliable, contemporaneous, and publicly available data exist. However, we agree with Meco that the Department will rely on SV information from outside the primary surrogate country for certain SVs if the primary surrogate country lacks these data. For example, as cited by Meco, in 7/25/00 *Paint Brushes* and 12/15/97 *INC*, the Department relied on SVs from outside the primary surrogate country (*i.e.*, Indonesia) for certain factors because no reliable SV data were available for these inputs from the primary surrogate country (*i.e.*, India). With regard to Meco’s assertion that the Department relied on Indonesia as the primary surrogate in other cases, and so should do so here, we do not agree that selection of Indonesia as the primary surrogate country in one case

¹¹ In support, all three cite to Exhibit 4 of 8/3/10 SV Submission, Attachment 1 of the Prelim SV Memo, and *Chinsung Indus.*

¹² See *Policy Bulletin 04.1*, 8/20/08 WBF.

¹³ See *Policy Bulletin 04.1*, *e.g.*, 8/20/08 WBF

is controlling for different products with different factors of production. Specifically, in *4/13/09 Citric Acid*, the Department's decision to rely on Indonesia as the primary surrogate country was based on the determination that Indonesia best satisfied the requirements for surrogate country selection provided under section 773(c)(4) of the Act based upon the specific facts of that case. In other words, while the Department identified India, Indonesia, and Thailand as economically comparable to the PRC in *4/13/09 Citric Acid*, in that case, it selected Indonesia over India as the primary surrogate country because India was not a significant producer of comparable merchandise but Indonesia was a significant producer.¹⁴ Similarly, we do not find compelling Meco's argument that the Department should rely on Indonesia as the primary surrogate in the instant administrative reviews simply because the Department has relied on data from Indonesia to value certain factors where no surrogate data for those factors were available in the primary surrogate country in other cases. As stated above, the Department's decision to rely on specific factor data is made on a case-by-case basis, reflecting the facts specific to each case.

Moreover, in this case, we disagree with Meco that Indonesia is the surrogate country with the best available SV data, as discussed in detail below.

Meco's contention regarding Indonesia rests on its argument that 1) all raw-material inputs can be valued using Indonesian data; 2) the surrogate Indonesian financial statements on the record are superior to the Indian financial statements for purposes of calculating the surrogate financial ratios; 3) the Department should place more emphasis on surrogate financial statements when determining which country provides the best available SV information; and 4) the Department would only have to rely on a few surrogate values from a secondary country. According to Meco, the Department regularly relies on data from outside the primary surrogate country when the primary surrogate country does not provide the best available information for each required SV.

First, while we agree that there is some Indonesian surrogate value data on the record of these reviews for valuing respondents' raw materials, we do not find that they are the best available information on the record. Specifically, the Indian GTA data are based on eight-digit HTS categories as compared to the data from the Indonesian six-digit HTS categories available from UN Comtrade. The Department has a long-standing preference for eight-digit categories because they are more likely to be more specific to the respondent's FOPs and, thus, represent the best available information.¹⁵ Meco cites to *3/17/10 FFF from Vietnam* to support its claim that the Department has relied on UN Comtrade as a source for SVs. However, we note that in that case the Department selected Philippine UN Comtrade data because the only record information available in that proceeding was from the UN Comtrade source.¹⁶ Thus, based on the record evidence in *3/17/10 FFF from Vietnam*, the UN Comtrade data provided the best available information in that case. Conversely, based on the analysis above, we find that Indian GTA data provide the best available information for accurate valuation of New-Tec's and Feili's FOPs in

¹⁴ See *4/13/09 Citric Acid*. We further note, that this was another case where the Department also relied on several SVs from outside the primary surrogate country, because it could not find surrogate values for these items in Indonesia. See Comments 4 and 5E

¹⁵ See *Policy Bulletin 04.1*, 19 U.S.C. 773(c)(1), and *Allied Pacific*.

¹⁶ See *3/17/10 FFF from Vietnam*.

both the 2007-2008 deferred and 2008-2009 antidumping duty administrative reviews because it provides information based on eight-digit HTS categories.¹⁷ Therefore, we find that the Indonesian UN Comtrade data submitted by Mecos in both the 2007-2008 deferred and 2008-2009 reviews are not the best available data for valuing the respondents' factors in these proceedings.

Second, contrary to Mecos' assertions, we find that the Indonesian financial statements do not constitute the best available information for calculating surrogate financial ratios in these reviews. Rather, we find that the Indian financial statements for Maxima constitute the best available information for this purpose. For a detailed discussion of this analysis, please see the Department Position to Comment 3, below.

Third, we disagree with Mecos' contention that the Department should place more weight on financial ratios compared to other FOPs for purposes of selecting the primary surrogate country because a substantial portion of the respondents' inputs were valued using MEPs. On the other hand, we also disagree with Feili that manufacturing overhead, SG&A, and profit are not relevant to the surrogate country selection because they are not FOPs. Financial ratios do not represent the direct material inputs. However, they do represent a significant portion of the normal value calculations and, thus, are integral to the determination regarding selection of a primary surrogate country. In selecting a surrogate country, we do not give more importance to financial ratios than to surrogate values for raw materials, but instead equally consider all surrogate data in selecting a surrogate country.

Fourth, with regard to Mecos' assertions that if we select Indonesia as the primary country we would only have to look outside that country for two SVs, we find this argument inapposite. As discussed above, we agree with Mecos that it is the Department's practice to find SV outside the primary surrogate country when it does not find reliable and otherwise appropriate SV information for every single input in the primary surrogate country. However, here the issue is whether the Department should choose India or Indonesia as the primary surrogate country. In this case, we have chosen India because we have specific, reliable, contemporaneous, tax-exclusive, and publicly available surrogate values for all FOPs as well as publicly available, contemporaneous financial data that reflect production of comparable merchandise. Reliance on India as the primary surrogate country complies with the Department's preference to value all FOPs in a single country.¹⁸ While Mecos may be correct that we would have to look outside Indonesia for only two SVs, utilizing India as our primary surrogate country results in all FOPs being valued in the same surrogate country.

With regard to Mecos' argument that the significant amount of MEPs included in normal value should factor into the surrogate country selection, we agree with New-Tec that MEPs are not relevant to the consideration of surrogate country selection because they are not being impacted by surrogate values. Thus, consistent with the Department practice, we evaluated data considerations for the purposes of surrogate country selection as a whole, including availability

¹⁷ See Attachment I of Prelim SV Memo.

¹⁸ 19 CFR 351.408(c)(2).

of surrogate financial ratio data and availability of surrogate values for direct material inputs and other FOPS, rather than dissecting the elements. In this case, as discussed above, we determined that the surrogate value data for FOPs from India represent the best available information because they are reliable, contemporaneous, tax exclusive, publicly available and more specific to the inputs in question than are the Indonesian data. Additionally, we determined that the surrogate financial data from India also represented the best available information for calculating surrogate financial ratios as the data are contemporaneous, complete, reflect production of comparable merchandise and are not otherwise distorted. See below for a full discussion regarding our analysis of surrogate financial data on the record of these reviews.

Comment 2: Surrogate Financial Statements

A. General Comments

- For both the 2007-2008 and 2008-2009 reviews, Meco argues that even if the Department continues to find that India is the most appropriate primary surrogate country, the Department should calculate surrogate financial ratios using the financial statements for the Indonesian producer Lion. Citing *12/15/97 Nitrocellulose*, Meco argues this would be consistent with other cases where the Department utilized surrogate financial statements from outside the primary surrogate country.
- Conversely, Feili, Cosco and New-Tec argue against the use of Lion's financial statements for purposes of calculating the surrogate financial ratios.
- New-Tec argues that the Department has a preference for using more than one financial statement to calculate financial ratios and that the two Indian financial statements, Maximaa and Godrej, should be used in this case. To support this argument, New-Tec cites *12/17/07 FMTCs*. New-Tec also notes that the Department has previously found Maximaa's and Godrej's financial statements to be useable in prior segments of this review. To support this argument, New-Tec cites to *7/14/10 Preliminary Results*, *12/17/07 FMTCs*, and *4/24/02 FMTCs*.
- Meco asserts that the Department should consider overall representativeness and accuracy in selecting financial data, rather than only considering contemporaneity, claiming that the difference in fiscal years is not important. To support this argument, Meco cites *3/6/2003 Ball Bearings*.

Department Position: As an initial matter and in accordance with 19 CFR 351.408(c)(2), the Department normally values all factors from a single surrogate country, and will resort to a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable. Consistent with this practice, in valuing FOPs from an NME country, the Department's preference is to use financial data gathered from the primary surrogate country,

provided the data are accurate, complete, contemporaneous, representative, and are not distorted or otherwise unreliable, as addressed below.¹⁹ Accordingly, in this case, where we have on the record of both administrative reviews reliable, accurate, complete, contemporaneous surrogate financial statements from the primary surrogate country that are representative of the overall experience of the respondents, Meco has not provided a compelling reason for the Department to ignore this preference and use Indonesian financial data rather than the reliable Indian data available from the primary surrogate country, as discussed in detail below. Therefore, we disagree with Meco's contention that Lion's financial statements are the best available data for calculating surrogate financial ratios in the 2007-2008 deferred and 2008-2009 reviews. Nevertheless, because the parties raised miscellaneous arguments regarding the reliability of the Indian surrogate financial statements of Maximaa in comparison to the Indonesian statements of Lion, we addressed these arguments in Comment 2, below.

New-Tec is correct in its assertions that the Department previously found the Maximaa and Godrej statements to represent the best available data on the record of prior segments of this proceeding. However, while that might inform the decision here, the record in each segment of a proceeding stands on its own and, therefore, information must be evaluated in comparison to the other information on that same record. In this case, we have evaluated the record fully and find that Godrej is primarily a producer of non-comparable merchandise as the majority of Godrej's sales revenue is comprised of sales of merchandise (*e.g.*, security equipment, typewriters, locks, home appliances, forklifts and other industrial products) not comparable to subject merchandise produced by Feili and New-Tec.²⁰ Therefore, we continue to find that the Maximaa statements represent the best information available for purposes of calculating surrogate financial ratios for these final results of review.

B. Receipt of Subsidies

- Meco argues that the alleged subsidies received by Lion's supplier, Krakatau, are not cause for the Department to reject Lion's financial data, and that Maximaa's suppliers received similar subsidies. To support this argument, Meco cites *12/5/03 Persulfates, Carbon Steel from India, Carbon Steel from Indonesia*, and Maximaa's Financial Statement, at Schedule C.
- Feili, New-Tec, and Cosco claim that Lion benefitted from Indonesian government subsidies through steel purchases from Krakatau, its supplier of raw materials, and accordingly, should not be relied on in this review. To support these arguments, Feili and Cosco cite to the 8/3/10 SV Submission at Exhibit 14, *Carbon Steel from Indonesia, Steel Plate from Indonesia, 6/24/08 Pipe and Tube, 6/19/09 Lawn Groomers, 4/24/02 FMTCs, and 12/29/99 Steel Plate*, Feili additionally cites to Lion's financial statement, at note 17, and *7/25/02 Pencils*, and New-Tec cites to 8/13/10 SV Rebuttal.

Department Position: We do not agree with Feili, New-Tec, and Cosco that Lion should be

¹⁹ See section 351.408(c)(4) of the Department's Regulations; see also *7/25/02 Pencils*, at Comment 5 and *3/6/03 Ball Bearings*.

²⁰ See Meco's 3/5/10 SV Submission, at Exhibit 8.

disqualified as a surrogate producer because its steel supplier (Krakatau) may have received subsidies from the Indonesian government.²¹ Cosco claims these steel purchases could understate raw material values, and overstate overhead, SG&A, and profit ratios.²² However, it is not clear from the record whether Lion did in fact benefit from a subsidy through its raw material supplier and more importantly, there is no evidence that Lion itself received a subsidy. As the Department stated in *3/17/09 FFF from Vietnam*, "...where there is a mere statement in a financial statement that a subsidy was received, and for which there is not additional information as to the nature of such as a potential subsidy, the Department would determine that there was insufficient evidence to support a finding that there is a reasonable basis to believe or suspect that the company has received a subsidy."²³ Consistent with the Department's policy and the fact that it was not Lion, but rather its supplier of raw materials that may have received the subsidies, we do not find sufficient evidence to support a finding that there is a reasonable basis to believe or suspect that Lion received a subsidy. Accordingly, we have not based our decision not to rely on Lion's financial statement on the potential that it may have benefitted from subsidies its supplier is alleged to have received.

C. Contemporaneity of Financial Statements

- Meco states that Lion's financial statements from fiscal years 2007 and 2008 overlap with the POR for the 2007-2008 review and the 2008-2009 review, respectively, for seven months, and thus meet the Department's requirement of contemporaneity. To support this argument, Meco cites *9/5/08 Pipe* and *10/25/07 Coated Paper*.
- Feili argues that Meco is incorrect in stating that the different fiscal years used by Maximaa and Lion are not important. Feili, New-Tec, and Cosco contend that Maximaa's financial statements are more contemporaneous with the POR than Lion's financial statements, making Maximaa's statements a better choice for surrogate data. To support this argument, New-Tec cites *8/20/08 WBF*.
- Cosco argues that the Department's practice is to select the most contemporaneous financial statements over other available less contemporaneous financial statements, when the statements also meet the Department's other criteria, and that the Department should, therefore, select Maximaa's financial statement. To support this argument, Cosco cites *12/28/09 FMTCs, Issues and Decision Memorandum*, at 3.

Department Position: In accordance with 19 CFR 351.408(c)(4), the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." In complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country when it deems those financial statements to be also

²¹ See *9/28/01 Carbon Steel*.

²² See 8/13/10 SV submission, at Exhibit 14, pages 22-23.

²³ *3/17/09 FFF from Vietnam*, at *Comment 1B*, page 7.

representative of the industry under review and to contain accurate and complete data.²⁴ When considering contemporaneity, however, the Department does not select one set of financial statements over another simply because the overlap with the POR is larger. Rather the Department finds that as long as the potential surrogate statement covers a portion of the POR, it is deemed contemporaneous and appropriate for use if it meets the remaining criteria. Thus, we find both Lion and Maximaa's statements on the record of this review to be contemporaneous to the POR. Specifically, the 2007 and 2008 Lion financial statements overlap the 2007-2008 and 2008-2009 PORs by seven months, respectively, and the two Maximaa statements overlap these same two PORs by 10 months, respectively.

D. Selection of Financial Statements Based on Sales and Production

- Meco contends that Lion's production operations are larger than Maximaa's operations, and are, therefore, more similar in size to Feili's and New-Tec's operations. Meco states that it is the Department's policy to select surrogate values based on producers which utilize similar technology and have similar production output as the producer being reviewed. To support this argument, Meco cites *Policy Bulletin 04.1*. Meco contends that, since it submitted evidence of Lion's comparable product lines, raw material inputs, and production processes, and that these are similar to those of Feili and New-Tec, Lion is documented to have comparable operations.
- Meco further argues that the record for these proceedings does not show Maximaa to be a significant producer of subject merchandise. More specifically, Meco claims that the records for the instant reviews do not contain information regarding products produced by Maximaa, Maximaa's raw material usage, or its manufacturing processes. According to Meco, the only reference to Maximaa's products is one sentence contained in its Annual Reports for 2007-2008 and 2008-2009, which Meco argues is not enough to determine that Maximaa produces comparable merchandise, consumes similar raw materials, or uses similar production processes to those of Feili and New-Tec.
- Feili claims that Meco has already admitted that Maximaa is a significant producer of comparable merchandise because Meco publicly stated in its briefs that the record in the completed 2007-2008 administrative review contained illustrations of Maximaa's product lines, and that the Department relied on these product illustrations to determine Maximaa to be a significant producer of comparable merchandise in that review.
- Feili further contends that Lion's only comparable line of merchandise does not account for a predominant portion of its operations. Feili, New-Tec, and Cosco each assert that Lion's merchandise includes various product lines that are dissimilar to FMTCs, and that Lion manufactures and sells only comparable and not identical merchandise.
- New-Tec argues that Maximaa produces and sells comparable merchandise, and that Maximaa's financial statement is superior to both Lion and Godrej. New-Tec further

²⁴ See 3/6/03 *Ball Bearings*.

argues that the Indian data are of high quality, detailed, and undistorted and, thus, there is no reason to depart from use of financial data from the primary surrogate country, India.

- Cosco states that the Department has previously found Maximaa to be a manufacturer of comparable merchandise. To support this argument, Cosco cites *12/28/09 FMTCs*, Issues and Decision Memorandum, at 4, and *1/21/09 FMTCs*, Issues and Decision Memorandum, at 4.

Department Position: As Meco asserts, the Department has stated a preference for choosing surrogate financial data that “better reflects the overall experience of producers of comparable merchandise in a surrogate country.”²⁵ Consistent with the preference for using a single surrogate country, this practice refers to selecting the best data in the primary surrogate country when such data are reliable, complete, contemporaneous, and reflect the overall experience of the respondents.²⁶ In this case, the record contains the financial statements of Maximaa, an Indian producer of comparable merchandise. These statements have also been determined to be reliable, complete, and contemporaneous with the respective periods of review. Thus, we find that the record contains surrogate financial data from the primary surrogate country that fully meet the Department’s stated criteria. Accordingly, we find that it should not be necessary to address Meco’s arguments that the Lion financial statements better reflect the respondents’ experiences. However, because we do not agree with Meco’s characterization of the financial statements at issue in these reviews, we have addressed its assertions below. In this case, we find that the record evidence does not indicate that Lion better reflects the experience of Feili and New-Tec than does that of Maximaa. Rather, we continue to find that Maximaa’s financial statements better reflect the experience of the respondents, as we have found in previous reviews of FMTCs.²⁷

As Feili, New-Tec, and Cosco assert, while Lion’s production lines include some comparable merchandise, they also include products that are substantially dissimilar to FMTCs, as discussed above. We further agree with Feili and New-Tec that Lion’s only line of merchandise that is comparable to FMTCs does not represent a significant part of its operations, and that the majority of Lion’s products use dissimilar production methods than FMTCs. Specifically, based on a review of the Lion financial statements it appears that Lion’s production of comparable merchandise comprises only eight percent of its total production/sales revenue during the 2007 fiscal year, and five percent during the 2008 fiscal year. Conversely, we have previously found that Maximaa manufactures comparable products using comparable raw materials.²⁸ Moreover, notwithstanding Meco’s claims, record evidence demonstrates in the current reviews that Maximaa continues to be a producer of comparable merchandise. Specifically and as we found previously, 55 percent of Maximaa’s 2007-2008 fiscal year production and 49 percent of

²⁵ See *2/13/08 WBF*, at 8278.

²⁶ See 19 CFR 351.408(c)(2).

²⁷ See, e.g., *12/28/09 FMTCs*, Issues and Decision Memorandum at Comment 1; see also *1/21/09 FMTCs*, Issues and Decision Memorandum at Comment 1; *12/17/07 FMTCs*, Issues and Decision Memorandum at Comment 1; *4/24/02 FMTCs*, Issues and Decision Memorandum at Comment 9.

²⁸ See, e.g., *12/28/09 FMTCs*, Issues and Decision Memorandum at Comment 1; see also *1/21/09 FMTCs*, Issues and Decision Memorandum at Comment 1.

Maximaa's 2008-2009 fiscal year production reflected production of comparable merchandise, i.e., that is metal (steel) furniture, and utilizes the same production inputs as the respondents in these reviews.²⁹

With regard to Mecco's arguments that because Lion had higher net sales and cost of goods sold than Maximaa for the relevant periods,³⁰ Lion's production level is more similar to the respondents than Maximaa's, we do not agree. Notwithstanding whether Lion's overall production levels are more similar to the respondents' than is Maximaa's, if Lion's production reflects merchandise that is primarily dissimilar to that of the respondents, there would be no basis to conclude that its production experience is more comparable to that of respondents than a surrogate company whose production is smaller but more comparable regarding the scope of the merchandise produced.

Policy Bulletin 04.1 explains the Department's practice that it "should seek to use, if possible, data (in the surrogate market economy country) that reflect levels of technology and production volumes that are similar to the producers under investigation." While we will consider the size of the producer in selecting a surrogate financial statement, we also consider levels of technology and the production process. Size, alone, is not a controlling factor in the selection of surrogate financial statements. Consistent with the Department's decision in *Certain Steel Nails from the PRC*, the mere fact that Lion's cost of goods sold for produced merchandise is higher than Maximaa's does not mean Maximaa's financial statements are not representative of a producer of comparable merchandise.³¹ Similarly, Maximaa's lower levels of production do not necessarily indicate that Maximaa's financial statements are unsuitable for calculating surrogate financial ratios. Rather, the record demonstrates that the Maximaa statements reflect levels of technology and production volumes that are substantially similar to those of the PRC producers of the subject merchandise. Conversely, the Lion statements reflect that the comparable merchandise produced reflects only a small portion of its overall production and that the majority of its products are not comparable to FMTCs.

E. Selection of Financial Statements Based on Primary Business Activity

- Mecco argues that no distortions exist in Lion's data from sales to affiliated parties or other business transactions that would render Lion's financial statements unusable. To support its arguments, Feili cites to Lion's 2008 Annual Report, and Lion's 2008 Financial Statement. Both Feili and New-Tec claim Lion's financial statement is unusable due to distortions from other business transactions. To support this argument, Feili and New-Tec cite to 7/25/02 *Pencils*, 8/3/10 SV Submission, at Exhibit 14, 8/14/01 *Persulfates*, and New-Tec further cites to *SSS from France*, *SSS from Mexico*.

²⁹ See Maximaa's 2007-2008 and 2008-2009 Annual Reports.

³⁰ Mecco's brief, at 11.

³¹ See *Steel Nails from the PRC* at Comment 11 ("We disagree with Petitioners' contention that, because Nasco's and Bandishar's respective production of nails accounts for relatively small percentages of their overall production, their financial ratios are not representative of a producer of nails.").

- Meco claims that approximately half of Maximaa’s cost of goods sold is attributed to cost of goods purchased for resale, according to Maximaa’s financial statement, at Schedule 13. Meco cites the Prelim SV Memo for the Department’s practice for calculating SG&A and profit ratios, and claims that the 2007-2008 and 2008-2009 record do not provide a basis for assuming Maximaa’s SG&A is incurred, or its profit earned, at the same rate for produced goods as resold goods, and that this will cause distortions in the ratios. Meco argues that Lion is a more suitable choice because it produces all of the merchandise it sells, does not purchase any goods for resale and, therefore, is not as likely to produce distorted financial ratios. Second, Meco argues that Maximaa appears to aggregate revenues from produced goods and traded goods. Third, Meco claims that Maximaa’s statements do not list the types of products purchased for resale, and that its 2007-2008 and 2008-2009 Annual Reports only refer to the traded goods as “ready made domestic and imported furniture,” not specifically “steel furniture.” Finally, Meco argues that Maximaa does not provide details in its financial statements “regarding the purpose or disposition of purchased goods.” To support these arguments, Meco cites *3/18/08 Ironing Tables* and *3/12/07 Ironing Tables*.
- Cosco states that Meco acknowledged that the trading of goods does not preclude a company from being used for surrogate data, citing Meco’s Case Brief, at 14. Cosco argues that the Department accounts for traded goods by including them in the calculations for SG&A and profit ratios, while excluding them from overhead. Cosco claims that there is no evidence that the furniture traded by Maximaa is not steel furniture, and that the trading activities should not disqualify Maximaa as a surrogate.

Department Position: We disagree with Meco that Maximaa’s trading of goods makes it an unsuitable producer for calculating surrogate financial ratios. Rather, as discussed below, we find that our practice for calculating overhead, SG&A, and profit ratios corrects for possible distortions to the extent possible.³² Moreover, even in recognizing the high percentage of traded goods evidenced in Maximaa’s financials, we continue to find that Maximaa’s financial statements are the best available information from which to calculate surrogate financial ratios in this segment of the proceeding.

Meco argues that Maximaa’s financial ratios may be distorted by traded goods, since the record does not show that produced goods incur SG&A or earn profit at the same rate as traded goods. Meco claims that the inclusion of expenses and profit from resold goods will distort two of the three financial ratios. Despite Meco’s claims, we do not automatically disqualify financial data that meet our other criteria solely because the financial statements report both traded and produced goods.³³ Our methodology for accounting for traded goods properly allocates, to the extent possible, the overhead to manufacturing and the general expense and profit proportionally between produced and traded goods, and Meco admits that this methodology is appropriate for cases where a more comparable company’s data are not available. Here, Maximaa’s statements meet our other criteria for selection of financial data and the record demonstrates that its

³² See Prelim SV Memo, at Attachment VIII.

³³ See, e.g., *Fuyao Glass*, at 1379 and *Timken*, at 131.

production is more comparable to that of the respondents than the other potential surrogate companies. While we acknowledge that Maximaa's financial statements indicate significant trading in purchased goods, nevertheless, we find that Maximaa's financial statements are the best available information on the record of both reviews. As we discussed in Comment 2.D above, we find that Maximaa's production represents primarily production of comparable merchandise, as opposed to Lion's production which predominantly represents production of non-comparable merchandise. While it is the Department's preference not to rely on statements where a preponderance of the revenue is based on traded goods, where other, reliable statements that otherwise meet the Department's criteria are available, in this case no such other statements are available on the record of the instant reviews. Therefore, while roughly 50 percent of Maximaa's revenue reflects the sale of traded goods, the fact that the bulk of its production reflects comparable merchandise, in comparison to the small portion of Lion's production that reflects comparable merchandise weighs heavily in our decision. Further, the manufacturing overhead ratio is not distorted by the revenue from traded goods because we have excluded, to the extent possible, the resale of traded foods from the cost of manufacturing ratios. This treatment is consistent with the Department's treatment of traded goods in the surrogate financial statements.³⁴

Despite Mecos' comparison of Maximaa to Delite Kom, a potential surrogate financial ratio company in *3/18/08 Ironing Tables*, the present case is distinguishable from *3/18/08 Ironing Tables* since Delite Kom was rejected not only because it had traded goods, but also due to the detail of the traded goods listed on a largely illegible and untitled page in its financial statements that indicated the traded goods reflected non-comparable merchandise.³⁵ In this case, record evidence indicates that Maximaa continues to be a producer and trader of comparable merchandise, and we continue to find that Maximaa's financial statements provide a sufficient level of detail concerning its traded goods for us to accurately calculate financial ratios.³⁶ Specifically, Maximaa's annual report states that its core business is steel furniture and that it manufactures and trades domestic and imported furniture.³⁷ This fact indicates that that both Maximaa's traded goods and manufactured goods are comparable merchandise. Moreover, Maximaa's 2007-2008 annual report provides additional detail of the schedules forming the balance sheet about the traded goods indicating that they are comparable items such as furniture, office chairs, and table tops.³⁸ Additionally, unlike the scenario in *3/18/08 Ironing Tables*, there is no evidence in Maximaa's Annual Reports in this review indicating that the traded furniture is not comparable merchandise.

Comment 3: Surrogate Financial Statements Contained on the Record

- Mecos argues that the 2007-2008 deferred administrative review, the 2008-2009 administrative review, and the completed 2007-2008 administrative review are all

³⁴ See *10/10/10 Sodium Hex*.

³⁵ See *3/18/08 Ironing Tables*, at Comment 1.

³⁶ See, e.g., *12/28/09 FMTCs*, Issues and Decision Memorandum at Comment 1; see also *1/21/09 FMTCs*, Issues and Decision Memorandum at Comment 1.

³⁷ See page 3 Maximaa's 2007-2008 annual report and page 1 of Maximaa's 2008-2009 annual report.

³⁸ See Attachment VIII of Prelim SV Memo.

separate proceedings, with separate records. Meco further asserts that the Department's practice dictates that respondents cannot rely on information from across segments, citing *SSB from Germany* and *Pineapple from Thailand*. Therefore, Meco argues that the only surrogate producer data on the record for the 2007-2008 deferred review consists of Maximaa's 2007-2008 financial statements, included in the Prelim SV Memo, and Lion's 2007 financial statement (from Meco's 8/3/10 SV Submission). Similarly, Meco argues that the only surrogate producer data on the record for the 2008-2009 review consists of the 2007-2008 financial statements of Tube and Godrej (from Meco's 3/5/10 SV Submission) Maximaa's 2008-2009 financial statements (from New-Tec's 2/2/10 SV Submission), and Lion's 2008 financial statements (from Meco's 8/3/10 SV Submission). Meco additionally claims that the 2008-2009 Maximaa statements are incomplete.

- Feili contends that Meco is incorrect in arguing that the Department may only consider the financial statements included in the SV Submissions. Feili argues that for the final results of review, the Department may statutorily rely on whatever information it finds appropriate to value FOPs.
- Cosco argues that the 2007-2008 deferred review of Feili does not represent a separate review from the completed 2007-2008 review of New-Tec. Cosco claims that the Department did not issue separate surrogate value information, the Department found the 2007-2008 financial statement data from Maximaa to be useable, and the Department cited to information from the "New-Tec record" in its preliminary results of its review of Feili's sales. To support this argument, Cosco cites to the Prelim SV Memo and *Preliminary Results*. Cosco argues that if the Department agrees with Meco that two separate records exist, then it must open the record for parties to perfect the record with re-submitted surrogate value data that parties assumed to already be part of the record. Cosco also argues that Meco has no evidence for its claim that the 2008-2009 Maximaa financial statements are incomplete.

Department Position: We agree with Meco that the 2007-2008 deferred administrative review, the 2008-2009 administrative review, and the completed 2007-2008 administrative review are each separate and distinct proceedings, with independent records. We also agree with Meco's assessment of which financial statements are on the record of each review. Regarding Cosco's argument that the 2007-2008 deferred review does not constitute a separate review from the completed 2007-2008 review, Cosco is mistaken. The Department has maintained separate records for the completed 2007-2008 review of New-Tec and the 2007-2008 deferred review of Feili. Additionally, the Department initiated the 2007-2008 deferred review with respect to Feili separately from the 2007-2008 administrative review with respect to New-Tec.³⁹ The Prelim SV Memo shows that the Department intended to treat the two reviews as completely separate, by placing information from the completed review on the record for the ongoing 2007-2008 deferred review.

Cosco correctly points out that the Department appeared to cite to information contained in the

³⁹ See *2008 Initiation* and *2009 Initiation*.

“New-Tec record” in a footnote of the *Preliminary Results*.⁴⁰ However, this reference to New-Tec’s January 21, 2009, Surrogate Value Comments was an inadvertent citation error by the Department. We actually relied upon Feili’s February 22, 2010, Surrogate Value Comments, and Mecos’s March 5, 2010, Surrogate Value Comments submitted in the instant proceeding, but erroneously cited to a document from the completed 2007-2008 review of New-Tec. Moreover, we do not find persuasive Cosco’s assertion that the Department must now re-open the record of the instant proceeding. No party to this proceeding has indicated that they were hampered in making their arguments because of potential confusion over which data are on which record.

Comment 4: Whether it is Appropriate to Change the Primary Surrogate Country Between Issuance of the Preliminary and Final Results

- Mecos recognizes that it did not contend until after the publication of the preliminary results that Indonesia should be selected as the primary surrogate country. However, Mecos contends that nothing in the statute, the Department’s regulations or case precedent precludes Mecos from raising this contention in its post-preliminary SV submission. Further, citing *Pineapple from Thailand, SSB from Germany, 8/17/09 WBF, 8/20/08 WBF, Tehnoimportexport, Kerr McGee*, at 1179, *Shikoku*, at 522, and *TMI (2008)*, at 23, Mecos asserts there are several examples of where the Department changed its surrogate country selection after preliminary results.
- Feili and Cosco contend that Mecos withheld Indonesian SV information until after the preliminary results, did not comment on surrogate country selection, and submitted data based on India as a surrogate country prior to the preliminary results.
- Feili argues that principles of fairness prevent the Department from changing its methodologies at this late stage of a proceeding. To support this argument, Feili cites to *Preliminary Results, 12/28/09 FMTCs*, and *Shikoku*, at 422.
- New-Tec argues that the Department departs from its practice of using India as the surrogate country only when India is not a significant producer of comparable merchandise or when the record is deficient with respect to surrogate country information. However, New-Tec contends that none of these exceptions apply to this proceeding. New-Tec maintains that the cases cited by Mecos where the Department changed surrogate countries are not applicable to this review, and that in those cases the Department gave the parties notice at the preliminary stage that it sought additional comments on the appropriate surrogate country. To support this argument, New-Tec cites to *8/17/09 WBF, 8/20/08 WBF, Tehnoimportexport*, at 1169, *Kerr McGee*, at 1179, *Shikoku*, at 422, and *TMI (2008)*.

Department Position: We agree with Mecos that the Department is not legally precluded from changing the surrogate country selection after the preliminary results. Mecos cites to past cases

⁴⁰ See *Preliminary Results*, at 22.

where the Department has, in fact, changed its surrogate country selection or financial statements after the preliminary determination and the CIT has upheld these determinations.⁴¹ However, we note that where the Department resorts to a different primary surrogate country for the final determination than it used in the preliminary determination, there is a strong factual basis for the switch. For example, in *Tehnoimportexport*, the Department did not have adequate SV information for its originally selected surrogate country, unlike the record of the current proceeding.⁴² Specifically, the Department explained in its preliminary determination in *Tehnoimportexport* that it had been unable to obtain adequate pricing information from the primary surrogate country and, as a result, it would conduct additional fact finding as to the appropriate surrogate country for the final determination.⁴³ In the instant review, the Department did not face this same issue and made no such announcement in the *Preliminary Results* regarding the selection of surrogate country. Additionally, we find *Kerr-McGee* and *TMI* not informative for the instant administrative reviews because *Kerr-McGee* and *TMI* involve the Department's use of multiple financial statements within the same primary surrogate country.⁴⁴

We further agree with Meco that its submission of Indonesian data and financial statements was timely,⁴⁵ notwithstanding that it did initially argue on the record of 2008-2009 review that the Department should select India as the surrogate country, and suggested Indian surrogate values with which to value the respondents' FOPs.⁴⁶ Therefore, the Department has not rejected the 8/3/10 SV Submission as untimely new factual information and has considered it for the final results of both reviews because it was submitted to both records. In *Shikoku*, cited by Feili, the CIT explained that “{a}t some point, Commerce must be bound by its prior actions . . .,” and that “{p}rinciples of fairness prevent Commerce from changing its methodology at {a} late stage” of a proceeding.⁴⁷ Consistent with *Shikoku*, we find that in light of the Department's use of India as a primary surrogate country in all prior segments of this order and all parties' initial advocacy for India in the underlying reviews (including Meco), the Department would need a compelling reason to change surrogate countries at this point in these proceedings. After careful review of the record, we have determined that nothing on the record submitted by Meco after the *Preliminary Results* provides such a compelling reason and the Department is not persuaded to change its preliminary selection of India as the primary surrogate country. See the Department Positions to Comments 1, 2, and 3, above.

⁴¹ See *Tehnoimportexport*, *Kerr McGee*, at 1179, and *TMI* (2008).

⁴² See *Tehnoimportexport*.

⁴³ See *id.*

⁴⁴ See *Kerr-McGee* and *TMI*.

⁴⁵ See 8/17/09 WBF and 8/20/08 WBF,

⁴⁶ See 3/5/10 SV Submission.

⁴⁷ See *Shikoku*, at 388.

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 these reviews and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date