

August 29, 2007

TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China

SUMMARY

We have analyzed the substantive response of the domestic interested parties in the sunset review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China ("PRC"). We recommend that you approve the positions we describe in this memorandum. Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

History of the Order

On April 24, 2002, the Department of Commerce ("the Department") published its affirmative determination of sales at less-than-fair-value ("LTFV") with respect to folding metal tables and chairs from the PRC. *See 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). On May 16, 2002, the Department issued an amended final determination of sales at LTFV with respect to folding metal tables and chairs from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 34898 (May 16, 2002) ("Amended Final LTFV"). On June 27, 2002, the Department published in the *Federal Register* an antidumping duty order on folding metal tables and chairs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 43277 (June 27, 2002). The Department established a weighted-average margin of 13.72 percent for Feili Furniture Development Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively "Feili"); 13.72 percent for

Dongguan Shichang Metals Factory Co. Ltd. (“Dongguan Shichang”); 13.72 percent for New-Tec Integration Co., Ltd. (“New-Tec”); zero percent for Shin Crest Pte. Ltd. (“Shin Crest”) for subject merchandise produced by Shin Crest; and 70.71 percent for the PRC-wide rate.

Following the investigation and prior to this sunset review, the Department conducted three administrative reviews. See *Folding Metal Tables and Chairs From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review* 69 FR 75913 (December 20, 2004) (“*Final Results First Review*”), and *Amended Final Results of the First Antidumping Duty Administrative Review: Folding Metal Tables and Chairs From the People's Republic of China*, 70 FR 3187 (January 21, 2005) (“*Amended Final Results First Review*”); *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) (“*Final Results Second Review*”); and *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).

The Department has also issued six scope rulings. On January 13, 2003, the Department issued a scope ruling determining that “Poly-Fold” chairs consisting of steel frames (20-gauge steel) with polypropylene seats and backs, zinc-plated rivets coated with an epoxy polyester powder coating, three drainage holes in the seat, specially designed back leg cross bar, four oversized leg stoppers with drainage holes, and a frame with hybrid coating are within the scope of the antidumping duty order.¹ On May 5, 2003, the Department issued a scope ruling with respect to the “Complete Office-To-Go” set, which consists of a single chair and a table with a monitor stand and legs that fold as a set. The Department ruled that the chair component is within the scope of the antidumping duty order because the chair component is identical to the chairs described in the order, but the Department ruled that table component is outside the scope of the antidumping duty order because it has legs that fold in sets.² On September 7, 2004, the Department issued a scope ruling determining that folding tables with tops made of blow-molded plastic and frames made of steel are within the scope of the antidumping duty order.³ On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs, with wooden seats that have been padded with foam and covered with fabric or polyvinyl chloride

¹See the Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, from Richard Weible, Director, Office 8, AD/CVD Enforcement “Final Scope Ruling on Whether RPA International Pty. Ltd.’s Poly-Fold Chairs Are Excluded from the Scope of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China,” January 13, 2003.

²See the Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, from Richard Weible, Director, Office 8, AD/CVD Enforcement “Final Scope Ruling on Whether Staples, The Office Superstore Incorporated’s ‘Complete Office-To-Go’ is Excluded from the Scope of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China,” May 5, 2003.

³See the Memorandum to Jeffrey A. May, Deputy Assistant Secretary for Import Administration, Through Edward C. Yang, Senior Enforcement Coordinator, China/NME Group, from Kristina Boughton, International Trade Compliance Analyst, China/NME Group, Office 9, “Final Scope Ruling on Whether Lifetime Tables 4600 and 4606 Are Excluded from the Scope of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China,” September 7, 2004.

(“PVC”) and attached to a tubular steel seat frame with screws, are within the scope of the antidumping duty order.⁴ Also on July 13, 2005, the Department issued a scope ruling determining that “butterfly” chairs are outside the scope of the antidumping duty order. Butterfly chairs are described as consisting of a collapsible metal rod frame and a cover, such that when the chair frame is spread open, the pockets of the cover are slipped over the upper ends of the frame and the cover provides both the seating surface and back of the chair. The frame consists of eight s-shaped pieces (with the ends offset at almost a 90-degree angle) made from metal rod that are connected by hinges. In order to collapse the frame, the chair cover must be removed. The frame is collapsed by moving the four legs inward until they meet in the center, similar to the folding mechanism of a pocket umbrella.⁵ On May 1, 2006, the Department issued a scope ruling determining that “moon chairs” are outside the scope of the antidumping duty order. Moon chairs are described as containing circular, fabric-padded, concave cushions that envelope the user at approximately a 105-degree reclining angle. The fabric cushion is ringed and supported by two curved 16-mm steel tubes. The cushion is attached to this ring by nylon fabric. The cushion is supported by a 16-mm steel tube four-sided rectangular cross-brace mechanism that constitutes the moon chair’s legs. This mechanism supports and attaches to the encircling tubing and enables the moon chair to be folded. To fold the chair, the user pulls on a fabric handle in the center of the seat cushion of the chair.⁶

On July 27, 2006, the Department published a notice of initiation of a fourth administrative review of the antidumping duty order covering the period June 1, 2005, through May 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006). The Department published the preliminary results on July 11, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 37703 (July 11, 2007). The final results are currently due by November 8, 2007.

⁴See the Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, from Wendy J. Frankel, Director, AD/CVD Operations, Office 8 “Final Scope Ruling of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China (A-570-868); Korhani of America, Inc.,” July 13, 2005.

⁵See the Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, from Wendy J. Frankel, Director, AD/CVD Operations, Office 8 “Final Scope Ruling of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China (A-570-868); Spencer Gifts, LLC,” July 13, 2005.

⁶See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Wendy J. Frankel, Director, AD/CVD Operations, Office 8 “Final Scope Ruling of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China (A-570-868); Mac Industries (Shanghai) Co., Ltd., Jiaxing Yinmao International Trading Company, Ltd and Fujian Zenithen Consumer Products Company Ltd.,” May 1, 2006.

Background

On May 1, 2007, the Department published the notice of initiation of the sunset review of the antidumping duty order on folding metal tables and chairs from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). *See Initiation of Five-Year (“Sunset”) Reviews*, 72 FR 23799 (May 1, 2007) (“*Initiation Notice*”). On May 16, 2007, the Department received a Notice of Intent to Participate from domestic interested parties, Meco Corporation (“Meco”) and KI, within the deadline specified in section 315.218(d)(1)(i) of the Department’s regulations. Meco and KI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of folding metal tables and chairs in the United States. On May 31, 2007, the Department received a substantive response from domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct an expedited review of the order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“the ITC”) the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments made collectively by the domestic interested parties participating in this proceeding.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

Meco and KI assert that the Act requires the Department to determine whether revocation of an antidumping duty order “would lead to continuation or recurrence” of dumping. *See* section 752(c)(1) of the Act; *see also*, *Procedures for Conducting Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998). Meco and KI also assert that the Department should consider (1) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (2) the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty order. *See* section 752(c)(1) of the Act; *see also*, *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (“*Policy Bulletin*”). Meco and KI use the *Policy Bulletin* to argue that rescission of an antidumping order is likely to lead to continued or recurring dumping if one

of the following criteria is met: (1) dumping continued at any level above *de minimis* after the issuance of the order; (2) imports of the subject merchandise ceased after the issuance of the order; or (3) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See id.*

Meco and KI argue that the first criterion listed in the *Policy Bulletin* is met because numerous Chinese producers of folding metal tables and chairs are subject to above *de minimis* margins. Meco and KI assert that the Department calculated an above *de minimis* margin for Dongguan Shichang in the *Amended Final Results First Review*, 70 FR at 3188. Meco and KI state that the margin calculated for Dongguan Shichang has not been recalculated by the Department since the first administrative review.

Additionally, Meco and KI claim that the Department acknowledged the existence of other active exporters subject to the PRC-wide above *de minimis* rate because the Department sent anticircumvention inquiry questionnaires to eight producers/exporters who are subject to the PRC-wide above *de minimis* rate. *See* Meco and KI Substantive Response, at Exhibit 1 (May 31, 2007). Further, Meco and KI claim that the website Alibaba.com advertises 16 additional Chinese producers and/or exporters of subject merchandise who are subject to the PRC-wide above *de minimis* rate. *See id.* Meco and KI argue that at least some of the companies with above *de minimis* margins have exported merchandise to the United States since the issuance of the antidumping duty order because over \$8 million dollars in antidumping duties have been disbursed in relation to the U.S. Customs and Border Protection's Continued Dumping and Subsidy Offset Act of 2000.⁷ *See id.*, at Exhibit 2.

Meco and KI assert that although the Department calculated *de minimis* margins for Feili and New-Tec in the second and third administrative reviews, it is premature to conclude that Feili and New-Tec will receive *de minimis* margins for the fourth review period. In addition, Meco and KI assert that the *Policy Bulletin* states that "although the Department may consider the existence of a zero or *de minimis* dumping margin in making its determination of likelihood, a zero or *de minimis* dumping margin, in itself, will not require that the Department to determine that continuation or recurrence of dumping is not likely." *See Policy Bulletin*, 63 FR at 18873. Meco and KI contend that *de minimis* dumping margins for two companies are not sufficient to require revocation because of the significant number of Chinese exporters subject to margins above *de minimis*.

⁷This legislation is also known as the Byrd Amendment.

Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”),⁸ the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See, e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at comment 1; *see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007), and accompanying Issues and Decision Memorandum at comment 1. In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of folding metal tables and chairs from the PRC as well as in the subsequent administrative reviews it has conducted since the original antidumping duty investigation.

Although Shin Crest is excluded from the antidumping duty order, and the Department has calculated margins below *de minimis* for Feili and New-Tec, the Department calculated an above *de minimis* rate for Dongguan Shichang in the *Amended Final Results First Review*, 70 FR at 3187. Dongguan Shichang also recently requested an administrative review for the period covering June 1, 2006 through May 31, 2007, which coincides with the period for this sunset review, demonstrating that it has continued to export subject merchandise to the United States. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). Further, the PRC-wide rate of 70.71 percent remains in effect for all other exporters of folding metal tables and chairs. Exports from the PRC have continued to enter the United States under the PRC-wide rate, evidenced by Wok and Pan Industry, Inc.’s (“Wok and Pan”) exports during earlier administrative review periods, where Wok and Pan was found to be part of the PRC-wide entity. *See Final Results First Review*, 69 FR at 75914; and *Final Results Second Review*, 71 FR at 2908.

Consistent with section 752(c)(1)(B) of the Act, the Department also considers the volume of imports of subject merchandise before and after issuance of the order. In reviewing import statistics obtained from the ITC Trade DataWeb web site, located at <http://dataweb.usitc.gov/>, the Department notes that the level of imports has increased steadily since the issuance of the order, and has exceeded pre-order levels each year since the order. *See Attachment 1*. Not only have imports from the PRC increased since the order, companies have also continued to dump with the discipline of an order in place. The Department finds that the existence of dumping margins even with an order in place is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. Therefore, the Department determines

⁸ *See, e.g.,* Statement of Administrative Action accompanying the URAA, H. Doc. No. 103-316, vol. 1, 889 (1994) (“SAA”); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

Meco and KI assert that section 752(c)(3) of the Act directs the Department to provide the ITC with the magnitude of dumping that is likely to prevail if the Department revokes the order. Meco and KI also assert that the SAA, at 890, states that the Department will normally select a margin “from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order.” Meco and KI argue that there is no reason to deviate from the normal practice in this case.

Meco and KI state that the Department calculated a final dumping margin of 13.72 percent for Feili, New-Tec, and Dongguan Shichang and 70.71 percent for the PRC-wide entity in the *Amended Final LTFV*, 67 FR at 34899. Meco and KI argue these are the only rates that reflect the behavior of exporters without the discipline of the order. Therefore, Meco and KI contend that the Department should provide these rates to the ITC as the rates likely to prevail in the absence of the order.

Department Position

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the order were revoked. Normally, the Department will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Although the Department has completed three administrative reviews since the issuance of the antidumping duty order, the Department does not find any indication that the margins calculated in the administrative reviews are more probative of the behavior of manufacturers, producers and exporters without the discipline of the order because the margins calculated in the original investigation are the only calculated rates without the discipline of an order in place. Therefore, consistent with section 752(c)(3) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigation as noted in the “Final Results of Review” section, below.

Final Results of Review

We determine that revocation of the antidumping duty order on folding metal tables and chairs from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers Weighted-Average Margin (percent)

| | |
|-------------------|-------|
| Dongguan Shichang | 13.72 |
| Feili | 13.72 |
| New-Tec | 13.72 |
| PRC-wide | 70.71 |

Recommendation

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

David M. Spooner
Assistant Secretary
for Import Administration

(date)

Attachment 1
FMTC imports to the United States from the People's Republic of China
United States International Trade Commission DataWeb