

*From Mexico: Final Results of Antidumping Duty Administrative Review*, 66 FR 21311 (April 30, 2001). The cash deposit will be altered, if warranted, pursuant only to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: October 20, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-868

#### **Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China**

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

**ACTION:** Notice of Preliminary Determination of Circumvention of Antidumping Duty Order

**SUMMARY:** We preliminarily determine that imports from the People's Republic of China ("PRC") of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on folding metal tables and chairs ("FMTCs") from the PRC.

**EFFECTIVE DATE:** October 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-0650.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 31, 2005, Meco requested that the Department of Commerce ("Department") determine whether folding metal tables with cross-bars are circumventing the order. On June 1, 2006, the Department initiated a formal anti-circumvention inquiry relating to minor alterations with respect to folding metal tables and chairs. On November 6, 2006, the Department issued a questionnaire to all producers in the

PRC on the scope service list. On December 21, 2006, Cosco Home and Office Products ("Cosco"), a U.S. importer of subject merchandise, and PRC producers Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively "Feili"), New-Tec Integration (Xiamen) Co., Ltd. ("New-Tec"), Dongguan Shichang Metals Factory Co. Ltd. ("Shichang"), and Lifetime Products (Xiamen), Inc. ("Lifetime"), submitted responses to the Department's questionnaire. On January 12, 2007, Lifetime, Meco and Cosco submitted comments on the questionnaire responses.

On February 2, 2007, Meco submitted rebuttals to Cosco's comments on the questionnaire responses. On May 25, 2007 and June 1, 2007, the Department verified the information in Feili's and New-Tec's questionnaire responses, respectively. On August 13, 2007, the Department issued verification reports for Feili ("Feili Verification Report") and New-Tec ("New-Tec Verification Report").

##### **Scope of the Order**

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

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

Lawn furniture;

Trays commonly referred to as "TV trays;"

Side tables;

Child-sized tables;

Portable counter sets consisting of rectangular tables 36" high and matching stools; and,

Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28" to 36" wide by 48" to 96" long and with a set of

folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

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

Folding metal chairs with a wooden

back or seat, or both;

Lawn furniture;

Stools;

Chairs with arms; and

Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC (collectively, "RPA"), the Department ruled on January 13, 2003, that RPA's poly-fold metal folding chairs are within the scope of the order because they are identical in all material respects to the merchandise described in the petition, the initial investigation, and the determinations of the Secretary.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. ("Staples"), the Department issued a scope ruling that the chair component of Staples' "Complete Office-To-Go," a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the

order because it is identical in all material respects to the scope description in the order, but that the table component, with measurements of: width (table top): 43 inches; depth (table top): 27.375 inches; and height: 34.875 inches, has legs that fold as a unit and meets the requirements for an exemption from the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order because these products have all of the components that constitute a folding metal table as described in the scope.

On July 13, 2005, the Department issued a scope ruling determining that “butterfly” chairs are not within the scope of the antidumping duty order because they do not meet the physical description of merchandise covered by the scope of the order because they do not have cross braces affixed to the front and/or rear legs, and the seat and back is one piece of cloth that is not affixed to the frame with screws, rivets, welds, or any other type of fastener.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs imported by Korhani of America Inc. are within the scope of the antidumping duty order because the imported chair has a wooden seat which is padded with foam and covered with fabric or polyvinyl chloride, attached to the tubular steel seat frame with screws, and has cross braces affixed to its legs.

On May 1, 2006, the Department issued a scope ruling determining that “moon chairs” are not included within the scope of the antidumping duty order because moon chairs have different physical characteristics, different uses, and are advertised differently than chairs covered by the scope of the order.

On October 4, 2007, the Department issued a scope ruling determining that International E-Z Up Inc.’s (“E-Z Up”) Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the order.

On April 18, 2008, the Department issued a scope ruling determining that the VIKA Twofold 2-in-1 Workbench/Scaffold (“Twofold Workbench/Scaffold”) imported by Ignite USA, LLC from the PRC is not included within the scope of the antidumping duty order because its rotating leg mechanism differs from the folding metal tables subject to the order, and its weight is twice as much as the expected maximum weight for folding metal tables within the scope of the order.

## Legal Framework

Section 781(c) of the Tariff Act of 1930 (“the Act”), dealing with minor alterations of merchandise, states that:

(1) In general. The class or kind of merchandise subject to— (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Section 351.225(i) of the Department’s regulations states that under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

## Criteria for Analysis

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching an anti-circumvention determination. Previous anti-circumvention cases<sup>1</sup> have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anti-circumvention provisions contained in section 781), which states:

[i]n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently

designated article. The Commerce Department should consider such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987).

In the case of an allegation of a “minor alteration” claim under section 781(c) of the Act, it is the Department’s practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.<sup>2</sup> Each anti-circumvention review is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. Thus, in anti-circumvention cases we have historically analyzed several additional criteria to determine if circumvention of the order is taking place.<sup>3</sup>

## Analysis

We organized the evidence and argument we received in the questionnaire responses, in the comments on those questionnaire responses, and at the verifications into the following categories:

- A. Whether Tables with Cross-Bars Were Expressly Excluded from the Scope;
- B. Senate Report Criteria; and
- C. Other Case-Specific Criteria.

Based on our review of the record evidence and our analysis of the comments received, the Department determines that imports from the PRC of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meet the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on FMTCs from the PRC. For a complete discussion of the Department’s analysis, see the Preliminary Analysis Memorandum for the Minor Alterations Anti-Circumvention Inquiry of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People’s Republic of China (“Preliminary Analysis Memorandum”), dated concurrently with this notice.

As explained in the Preliminary Analysis Memorandum, we preliminarily determine that the folding metal tables with cross-bars at issue in this case are not expressly excluded

<sup>1</sup> See, e.g., *Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate from Canada*, 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617, 7618 (January 24, 2001)) (“*Canadian Plate*”); see also *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan*, 68 FR 33676, 33679 (June 5, 2003).

<sup>2</sup> See, e.g., *Canadian Plate*, 65 FR at 64929.

<sup>3</sup> See *id.*, 65 FR at 64930-31.

from the order. Also, regarding the Senate Report criteria, we preliminarily find that folding metal tables with legs connected by cross-bars have the same physical characteristics as the folding metal tables in the scope of the FMTCs order and the *ITC Final Report* except for the presence of cross-bars located near the table top. There are no significant differences in the expectations of the ultimate users, uses of the merchandise, and channels of marketing between folding metal tables with and without cross-bars.

Furthermore, respondents conceded that the cost of adding cross-bars to tables in the course of production is negligible.

With respect to other case-specific criteria, we preliminarily find that since the original investigation, respondents have shifted the majority of their production for U.S. customers away from folding metal tables without cross-bars to folding metal tables with cross-bars. The timing of this shift further indicates circumvention of the order by making a minor alteration.

Although parties claim that the cross-bar increases the table's strength, there is no documentation supporting that claim. The fact that the bars are positioned near the top of the table, minimizing any potential benefit from their addition, weighs against finding that the cross-bars were added simply to strengthen the table. Moreover, these tables are not advertised as having cross-bars, nor are any claims made in the marketing materials that they are stronger or that they have no pinch points. Taken as a whole, this evidence leads to our determination that folding metal tables with legs with cross-bars are being produced and imported in circumvention of the antidumping duty order.

As a result of our inquiry, we preliminarily determine that imports from the PRC of folding metal tables with legs connected by cross-bars, so that the legs fold in sets, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on FMTCs from the PRC. See Section 781(c) of the Act.

#### **Suspension of Liquidation**

In accordance with section 351.225(l)(2) of the Department's regulations, for folding metal tables meeting the description of the folding metal tables described in the scope of the FMTCs order except that they have cross-bars connecting the legs, so that the legs fold in sets, we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of merchandise entered, or withdrawn

from warehouse, for consumption on or after June 1, 2006, the date of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after June 1, 2006, the date of initiation of this inquiry, in accordance with section 351.225(l)(2).

#### **Public Comment**

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. See 19 CFR 351.225(f)(1)(iii). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than 10 days after the date on which the case briefs are due. See 19 CFR 351.225(f)(1)(iii). Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: October 20, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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### **DEPARTMENT OF COMMERCE**

#### **International Trade Administration**

**A-201-836**

#### **Initiation of Antidumping Duty Changed Circumstances Review: Light-Walled Rectangular Pipe and Tube from Mexico**

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

**SUMMARY:** In response to a request from Ternium México, S.A. de C.V. ("Ternium Mexico"), and pursuant to section 751(b) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping duty order on light-walled rectangular pipe and tube ("LWRPT") from Mexico. This review will determine whether Ternium Mexico is

the successor-in-interest to Hylsa, S.A. de C.V. ("Hylsa").

**EFFECTIVE DATE:** October 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482-0195 or (202) 482-3019, respectively.

#### **Background**

The Department published the antidumping duty order on LWRPT from Mexico on August 5, 2008. See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008).

On September 3, 2008, Ternium Mexico filed a request for a changed circumstances review of the antidumping duty order on LWRPT from Mexico, claiming that Hylsa, a Mexican producer of LWRPT, has changed its name to Ternium Mexico. Ternium Mexico requested that the Department determine whether it is the successor-in-interest to Hylsa, in accordance with section 751(b) of the Act, and 19 CFR 351.216. In addition, Ternium Mexico submitted documentation in support of its claim. In response to Ternium Mexico's request, the Department is initiating a changed circumstances review of this order.

#### **Scope of the Order**

The merchandise that is covered by this order are certain welded carbon quality light walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium.