

of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Wednesday, July 22, 2009 from 10:15 a.m. to 3:30 p.m. and Thursday, July 23, 2009, from 8 a.m. to 3:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the web page <http://www.sab.noaa.gov/Meetings/meetings.html> for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Aquarium of the Pacific, 100 Aquarium Way, Long Beach, California 90802. Please check the SAB Web site <http://www.sab.noaa.gov> for confirmation of the venue and for directions.

Status: The meeting will be open to public participation with a 30-minute public comment period on July 22 at 3 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments should be received in the SAB Executive Director's Office by July 16, 2009 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 16, 2009, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) NOAA Next Generation Strategic Plan for SAB comments; (2) National Weather Service Strategic Plan; (3) Marine Transportation in the U.S.; (4) NOAA's Marine Transportation Programs, Commerce and Transportation Goal; (5) Panel Discussion on NOAA's Transportation Services; and (6) Updates from the Ocean Exploration, Oceans and Health, and Ecosystem Sciences and Management Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301-734-1156, Fax: 301-713-1459, E-mail: Cynthia.Decker@noaa.gov); or visit the NOAA SAB Web site at <http://www.sab.noaa.gov>.

Dated: June 29, 2009.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-868]

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

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

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on folding metal tables and chairs ("FMTCs") from the People's Republic of China ("PRC") covering the period June 1, 2007, through May 31, 2008, and one respondent. We have preliminarily determined that New-Tec Integration (Xiamen) Co., Ltd. ("New-Tec"), did not make sales in the United States at prices below normal value ("NV") during the period of review ("POR"). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate entries of merchandise exported by New-Tec, during the POR without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: July 7, 2009.

FOR FURTHER INFORMATION CONTACT: Giselle Cubillos or Charles Riggall, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1778 and (202) 482-0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2002, the Department published the antidumping duty order on FMTCs 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). On June 9, 2008, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 32557 (June 9, 2008). In accordance with 19 CFR 351.213(b), interested parties made the following requests for review: (1) on June 23, 2008, Meco Corporation ("Meco"), a domestic producer of the like product, requested that the Department conduct administrative reviews of Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd., Feili Furniture Development Limited Quanzhou City, and Feili Furniture Development Co., Ltd. (collectively "Feili"), New-Tec Integration (Xiamen) Co. Ltd. ("New-Tec"), and Dongguan Shichang Metals Factory Co., Ltd. ("Shichang"), which are all producers/exporters of subject merchandise; (2) on June 26, 2008, Cosco Home & Office Products ("Cosco"), a U.S. importer of subject merchandise, requested that the Department conduct administrative reviews of Feili and New-Tec; and, (3) on June 30, 2008, Feili and New-Tec requested that the Department conduct an administrative review of their respective sales. Feili, in addition, requested that the Department defer the initiation of the review for one year in accordance with 19 CFR 351.213(c).

On July 30, 2008, the Department published the initiation of the administrative review of the antidumping duty order on FMTCs from the PRC and granted Feili's request for deferral of the 2007-2008 review.¹ No parties objected to the deferral of Feili's 2007-2008 review.

On August 11, 2008, Meco withdrew its request that the Department conduct an administrative review of Shichang. On September 26, 2008, the Department published the notice of partial rescission of antidumping administrative review rescinding the administrative review of FMTCs with respect to Shichang.²

The Department issued an antidumping duty questionnaire to New-Tec on September 9, 2008. On October 7, 2008, New-Tec submitted a Section A questionnaire response ("AQR"), and on October 30, 2008,

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

² See *Folding Metal Tables and Chairs from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 55813 (September 26, 2008).

New-Tec submitted Section C and D questionnaire responses (“CQR” and “DQR,” respectively). On December 11, 2008, the Department requested the Office of Policy to provide a list of surrogate countries for this review. *See* Memorandum to Carole Showers, Executive Director, Office of Policy, “Certain Folding Metal Tables and Chairs from the People’s Republic of China: Request for Surrogate Country Selection” (December 11, 2008). On December 22, 2008, the Office of Policy issued its list of surrogate countries. *See* Memorandum from Carole Showers, Executive Director, Office of Policy, “Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Folding Metal Tables and Chairs (“FMTC”) from the People’s Republic of China (PRC)” (December 22, 2008) (“Surrogate Country Memorandum”).

On December 22, 2008, the Department requested interested parties to submit surrogate value information and to provide surrogate country selection comments. On December 24, 2008, the Department issued a supplemental questionnaire to New-Tec. On January 21, 2009, Meco provided comments on publicly available information to value the factors of production (“FOP”). None of the interested parties provided comments on the selection of a surrogate country. On January 21, 2009, New-Tec submitted publicly available information to value the financial ratios and submitted its supplemental questionnaire response. On February 3, 2009, the Department issued a supplemental questionnaire to New-Tec. On February 25, 2009, New-Tec submitted a supplemental questionnaire response. On March 4, 2009, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until no later than May 1, 2009.³ On March 20, 2009, the Department issued a supplemental questionnaire to New-Tec. On March 30, 2009, Meco submitted comments on the supplemental questionnaire response filed by New-Tec on February 24, 2009. On April 3, 2009, New-Tec submitted a supplemental questionnaire response. On April 23, 2009, the Department issued a supplemental questionnaire to New-Tec.

On May 7, 2009 the Department published a notice in the **Federal Register** extending the time limit further

for the preliminary results of review until June 30, 2009.⁴ On May 18, 2009, New-Tec submitted a supplemental questionnaire response. On May 29, 2009, Meco provided comments on publicly available information to value additional FOPs. On June 3, 2009, Meco submitted comments on the May 18, 2009, supplemental questionnaire response filed by New-Tec. On June 5, 2009, the Department issued a supplemental questionnaire to New-Tec. On June 9, 2009, New-Tec submitted a supplemental questionnaire response.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results of review.

Period of Review

The POR is June 1, 2007, through May 31, 2008.

Scope of 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

³ *See Folding Metal Tables and Chairs from the People’s Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 9385 (March 4, 2009).

⁴ *See Folding Metal Tables and Chairs from the People’s Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 21332 (May 7, 2009).

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 as 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.

On May 6, 2009, the Department issued a final determination of circumvention, determining 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 circumventing the order and are properly considered to be within the class or kind of merchandise subject to the order on FMTCs from the PRC.

On May 22, 2009, the Department issued a scope ruling determining that folding metal chairs that have legs that are not connected with cross-bars are within the scope of the antidumping duty order on folding metal tables and chairs from the PRC.

Non-Market Economy Country Status

No party contested the Department’s treatment of the PRC as a non-market economy (“NME”) country, and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See, e.g., Certain Cased Pencils from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 27074, 27075 (May 14, 2007) (“*Pencils*”). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer’s FOPs, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the “Normal Value” section below. *See* Memorandum to The File, “Preliminary Results of the 2007–2008 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: Surrogate Value Memorandum” (June 30, 2009) (“*Surrogate Value Memorandum*”).

The Department determined that Columbia, India, Indonesia, Peru, the Philippines and Thailand are countries comparable to the PRC in terms of economic development. *See* Surrogate Country Memorandum. Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. On the record of this review, we have usable surrogate financial data from India, and no party has submitted surrogate financial data from any other potential surrogate country. Additionally, the data submitted by Meco and New-Tec for our consideration as potential surrogate values are sourced from India.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent’s FOPs, when available and appropriate. *See* Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. *See, e.g., Pencils*, 72 FR at 27075. It is the Department’s policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Id. Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of*

Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, at Comment 1 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

New-Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the PRC ("Company Law"). Other than limiting New-Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of *de jure* control, lacking record evidence to the contrary.⁵ We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control for New-Tec.

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4)

whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁶ The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates.

With regard to *de facto* control, New-Tec reported that: (1) it independently set prices for sales to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce did not coordinate the export activities of New-Tec; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its board of directors appoints its general manager; (6) there is no restriction on its use of export revenues; (7) its shareholders ultimately determine the disposition of respective profits, and New-Tec has not had a loss in the last two years; and (8) none of New-Tec's board members or managers is a government official. Furthermore, our analysis of New-Tec's questionnaire responses reveals no information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect to New-Tec's export functions and that New-Tec has met the criteria for the application of a separate rate.

The evidence placed on the record of this review by New-Tec demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of subject merchandise, in accordance with the criteria identified in *Sparklers*, 56 FR at 20589; and *Silicon Carbide*, 59 FR at 22587. Accordingly, we have preliminarily granted a separate rate to New-Tec.

Date of Sale

19 CFR 351.401(i) states that:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or

producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by New-Tec, we preliminarily determine that invoice date is the most appropriate date of sale for New-Tec. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

Normal Value Comparisons

To determine whether sales of FMTCs to the United States by New-Tec were made at less than NV, we compared export price ("EP") to NV, as described in the "Export Price," and "Normal Value" sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Because New-Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States, and use of a constructed export price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP based on the free-on-board or delivered price to unaffiliated purchasers for New-Tec. From this price, we deducted amounts for foreign inland freight, international movement expenses, air freight, brokerage and handling, and billing adjustments, as applicable, pursuant to section 772(c)(2)(A) of the Act.⁷

The Department valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative

⁵ See, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002–2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004).

⁶ See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁷ See Memorandum to The File, "Analysis for the Preliminary Results of the 2007–2008 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New-Tec Integration (Xiamen) Co. Ltd. ("New-Tec")" (June 30, 2009) ("New-Tec Preliminary Analysis Memorandum").

review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. See Surrogate Value Memorandum.

To value truck freight, we used the freight rates published by www.infobanc.com, “The Great Indian Bazaar, Gateway to Overseas Markets.” The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through September 2008. Since these dates are not contemporaneous with the POR, we deflated the rates using Indian WPI. See Surrogate Value Memorandum.

Zero-Priced Transactions

In the final results of the 2003–2004, 2004–2005, 2005–2006 and the 2006–2007 administrative reviews of FMTCs, we included New-Tec’s and/or other respondents’ zero-priced transactions in the margin calculation because the record demonstrated that respondents’ provided many pieces of the same product, indicating that these “samples” did not primarily serve for evaluation or testing of the merchandise. Additionally, respondents provided “samples” to the same customers to whom it was selling the same products in commercial quantities.⁸ As a result, we concluded that these transactions were not what we consider to be samples because respondents were not providing product to entice its U.S. customers to buy the product.

The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) has not required the Department to exclude zero-priced or *de minimis* sales from its analysis but, rather, has defined a sale as requiring “both a transfer of ownership to an unrelated party and

consideration.”⁹ The Court of International Trade (“CIT”) in *NSK Ltd. v. United States* stated that it saw “little reason in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time,” and that “it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.”¹⁰ Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples.¹¹ Moreover, even where the Department does not ask a respondent for specific information to demonstrate that a transaction is a sample, the respondent has the burden of presenting the information in the first place to demonstrate that its transactions qualify for exclusion.¹²

An analysis of New-Tec’s Section C computer sales listing reveals that it provided zero-priced merchandise to the same customer to whom it sold the same products in commercial quantities. Consequently, based on the facts cited above, the guidance of past court decisions, and our previous decisions, for the preliminary results of this review, we have not excluded these zero-priced transactions from the margin calculation for New-Tec.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department bases NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal

methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. In accordance with 19 CFR 351.408(c)(1), the Department normally uses publicly available information to value the FOPs. However, when a producer sources a meaningful amount of an input from a market-economy country and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input.¹³ Further, the Department disregards prices it has reason to suspect may be dumped or subsidized.¹⁴

We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.¹⁵ The legislative history explains that we need not conduct a formal investigation to ensure that such prices are not subsidized.¹⁶ Rather, Congress indicated that the Department should base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. In instances where respondents source a market economy input solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. In addition, we excluded Indian

¹³ See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department’s use of market-based prices to value certain FOPs).

¹⁴ See, e.g., *China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003) (aff’d, 104 Fed. Appx. 183 (Fed. Cir. 2004)), and see *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁵ See, e.g., *Frontseating Service Valves from the People’s Republic of China; Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009); and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

¹⁶ See *Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep. 100-576 at 590-91 (1988).*

⁸ See *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), and accompanying Issues and Decision Memorandum at Comment 4; *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), and accompanying Issues and Decision Memorandum at Comment 4; and *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), and accompanying Issues and Decision Memorandum at Comments 10 and 11.

⁹ See *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997).

¹⁰ See *NSK Ltd. v. United States*, 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002), 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002).

¹¹ See, e.g., *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs “to the party in possession of the necessary information”). See also *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (“The burden of creating an adequate record lies with respondents and not with {the Department}.”) (citation omitted).

¹² See *NTN Bearing Corp. of America v. United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993).

import data from NME countries and unidentified countries from our surrogate value calculations.¹⁷

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by New-Tec for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for New-Tec, see the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas ("WTA"), available at <http://www.gtis.com/wta.htm>. The WTA data are reported in rupees and are contemporaneous with the POR. Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. We used the U.S. Consumer Price Index as published in the Bureau of Labor Statistics, to adjust the air freight and air fuel surcharge values as published in AFMS Transportation Management Group. See Surrogate Value Memorandum.

We further adjusted material input values to account for freight costs incurred between the supplier and respondent. We used the freight rates

published by www.infobanc.com, "The Great Indian Bazaar, Gateway to Overseas Markets." The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through May 2009. Since these dates are not contemporaneous with the POR, we deflated the rates using Indian WPI. See Surrogate Value Memorandum.

New-Tec made raw materials purchases from market-economy suppliers. Therefore, in accordance with our practice outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁸ where at least 33 percent of an input was sourced from market-economy suppliers and purchased in a market-economy currency, the Department will use actual weighted-average purchase prices to value these inputs.¹⁹ Where the quantity of the input purchased from market-economy suppliers during the period was below 33 percent of its total volume of purchases of the input during the period, the Department will weight-average the weighted average market-economy purchase price with an appropriate surrogate value. See *Antidumping Methodologies: Market Economy Inputs*. For a complete description of the factor values we used, see Surrogate Value Memorandum and New-Tec Preliminary Analysis Memorandum.

To value liquid petroleum gas, we used per-kilogram values obtained from Bharat Petroleum, published June 4, 2009. We made adjustments to account for inflation and freight costs incurred between the supplier and New-Tec. See Surrogate Value Memorandum.

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. See Surrogate Value Memorandum.

To value water, we used the revised Maharashtra Industrial Development

Corporation ("MIDC") water rates available at <http://www.midcindia.com/> water-supply, which we deflated using Indian WPI. See Surrogate Value Memorandum.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's web site.²⁰ Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. See Surrogate Value Memorandum.

For factory overhead, selling, general, and administrative expenses ("SG&A"), and profit values, both New-Tec and Mecos submitted identical financial statements to those that were submitted and considered by the Department for use as surrogate financial statements in the preceding administrative review; none of which is contemporaneous with the current POR.²¹ The Department examined these financial statements in the preceding administrative review and found that Maximaa Systems Limited ("Maximaa") produced a greater proportion of comparable merchandise than the other companies (Infiniti Modules PVT Ltd., Godrej & Boyce Manufacturing Company Limited, and Tube Investments of India, Ltd.), and therefore best met the Department's criteria for surrogate financial ratios. Because parties have submitted for the instant review the same surrogate financial statements as those from the prior review, and the record indicates that Maximaa produced a greater proportion of comparable merchandise than other surrogate companies whose financial statements were placed on the record, we find that Maximaa continues to be the best available information with which to determine factory overhead as a percentage of the total raw materials, labor and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. See Surrogate Value Memorandum for a full discussion of the calculation of these ratios.

For packing materials, we used the per-kilogram values obtained from the

¹⁸ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-19 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

¹⁹ For a detailed description of all actual values used for market-economy inputs, see New-Tec Preliminary Analysis Memorandum dated concurrently with this notice.

²⁰ See Expected Wages of Selected NME Countries (May 14, 2008) (available at <http://ia.ita.doc.gov/wages>). The source of these wage rate data on Import Administration's web site is the *Yearbook of Labour Statistics 2005*, ILO, (Geneva: 2005), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2004 to 2005.

²¹ See New-Tec's January 21, 2009, Surrogate Value Comments at Exhibit 1, and Mecos's January 21, 2009, Surrogate Value Comments at Exhibit 7.

¹⁷ For a detailed description of all surrogate values used for each respondent, see Surrogate Value Memorandum.

WTA and made adjustments to account for freight costs incurred between the PRC supplier and New-Tec's plants. *See* Surrogate Value Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/Exporter	Margin (Percent)
New-Tec	0.18*

* *de minimis*

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than five days after the date on which the case briefs are due. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. *See* 19 CFR 351.310(d). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19

CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional, alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.²² Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review.

Where the respondent reports reliable entered values, we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount

by the total quantity sold to that importer (or customer).

To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for New-Tec, the cash deposit rate will be the company-specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 70.71 percent; and (4) for all non-PRC exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

²² *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

Dated: June 30, 2009.

John M. Andersen,

*Acting Deputy Assistant Secretary for
Antidumping and Countervailing Duty
Operations.*

[FR Doc. E9-15963 Filed 7-6-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-905]

Certain Polyester Staple Fiber from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limit for the Final Results

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

SUMMARY: The Department of Commerce ("Department") is conducting the first administrative review of the antidumping duty order on certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC") for the period of review ("POR") December 26, 2006, through May 31, 2008. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondents. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department intends to issue the final results no later than 180 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"). See "Extension of the Time Limits for the Final Results" below.

EFFECTIVE DATE: July 7, 2009.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Alexis Polovina AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 0219 or (202) 482 3927 respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2007, the Department published in the **Federal Register** an antidumping duty order on certain polyester staple fiber from the PRC. See

Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 30545 (June 1, 2007) ("Order"). On July 30, 2008, the Department published a notice of initiation of an administrative review of certain PSF from the PRC covering the period December 26, 2006, through May 31, 2008 for 27 companies.¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008) ("Initiation Notice"). On February 19, 2009, the Department published a notice extending the time period for issuing the preliminary results by 120 days to June 30, 2009. See *Certain Polyester Staple Fiber from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 7660 (February 19, 2009).

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On August 5, 2008, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order ("APO") to all interested parties having an APO as of five days of publication of the Initiation Notice, inviting comments regarding the CBP data and respondent selection. The Department received comments and rebuttal comments between August 14, 2008, and August 22, 2008.

¹ Those companies are: Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries; Ningbo Dafa Chemical Fiber Co., Ltd.; Cixi Sansheng Chemical Fiber Co., Ltd.; Cixi Santai Chemical Fiber Co., Ltd.; Cixi Waysun Chemical Fiber Co., Ltd.; Hangzhou Best Chemical Fibre Co., Ltd.; Hangzhou Hanbang Chemical Fibre Co., Ltd.; Hangzhou Huachuang Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Hangzhou Taifu Textile Fiber Co., Ltd.; Jiaxang Fuda Chemical Fibre Factory; Nantong Loulai Chemical Fiber Co., Ltd.; Nanyang Textile Co., Ltd.; Suzhou PolyFiber Co., Ltd.; Xiamen Xianglu Chemical Fiber Co.; Zhaoqing Tifo New Fiber Co., Ltd.; Zhejiang Anshun Pettechs Fibre Co., Ltd.; Zhejiang Waysun Chemical Fiber Co., Ltd.; Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; and Huvis Sichuan.

On October 1, 2008, the Department sent out a quantity and value ("Q&V") questionnaire to all 27 companies for which a review was requested because a significant amount of the volume in the CBP data was unclear. In the CBP data, the identity of the largest exporter could not be publicly identified by any party, including the Department. Moreover, it was unclear if companies with the same CBP module suffix could be grouped together or whether the CBP module suffix was properly used by those companies which were assigned the CBP module suffix in the investigation. In addition, parties requested numerous adjustments to the CBP data, including but not limited to grouping of companies, and corrections to company names. The Department received Q&V responses between October 16, 2008, and October 20, 2008, from 19 of the 27 companies who received the questionnaire.

On November 7, 2008, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa") and Cixi Santai Chemical Fiber Co. ("Santai") as mandatory respondents.² The Department sent antidumping duty questionnaires to Ningbo Dafa and Santai on November 14, 2008.

Ningbo Dafa submitted the Section A Questionnaire Response on December 5, 2008, the Section C Questionnaire Response on December 30, 2008, and the Section D Questionnaire Response on January 9, 2009. Santai submitted the Section A Questionnaire Response on December 12, 2008, and the Sections C and D Questionnaire Responses on January 9, 2009.

Petitioners submitted deficiency comments regarding respondents' questionnaire responses between December 2008 and May 2009. The Department issued supplemental questionnaires to Ningbo Dafa and Santai between March 2009 and May 2009 to which both companies responded.

² See Memorandum to James Dole, Director, AD/CVD Operations, Office 9, from Alexis Polovina, International Trade Compliance Analyst, AD/CVD Operations, Office 9; First Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the PRC: Selection of Respondents for Individual Review, dated November 7, 2008 ("Respondent Selection Memo").