

UNITED STATES INTERNATIONAL TRADE COMMISSION

CERTAIN FOLDING METAL TABLES AND CHAIRS FROM CHINA

Investigation No. 731-TA-932 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3515, June 2002)

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## CERTAIN FOLDING METAL TABLES AND CHAIRS FROM CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain folding metal chairs, provided for in subheadings 9401.71.00 and 9401.79.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that an industry in the United States is materially injured by reason of imports from China of certain folding metal tables, provided for in HTS subheading 9403.20.00, that have been found by Commerce to be sold in the United States at LTFV. The Commission further determines that critical circumstances do not exist with regard to imports of certain folding metal tables and chairs from China that are subject to Commerce's affirmative critical circumstances finding.<sup>2</sup>

### BACKGROUND

The Commission instituted this investigation effective April 27, 2001, following receipt of a petition filed with the Commission and Commerce by Mecor Corp., Greeneville, TN. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain folding metal tables and chairs from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of January 8, 2002 (67 FR 916). The hearing was held in Washington, DC, on April 23, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Lynn M. Bragg found that critical circumstances exist with regard to imports of certain folding metal tables and chairs from China that are subject to Commerce's affirmative critical circumstances finding.

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States producing certain folding metal chairs is materially injured by reason of imports of certain folding metal chairs from China that the U.S. Department of Commerce (“Commerce”) has determined are sold in the United States at less than fair value (“LTFV”), and that an industry in the United States producing certain folding metal tables is materially injured by reason of imports of certain folding metal tables from China that Commerce has determined are sold in the United States at LTFV. We also determine that critical circumstances do not exist with respect to subject imports of certain folding metal tables and chairs from China that are subject to Commerce’s affirmative critical circumstances findings.<sup>1</sup>

### I. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>2</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>3</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>4</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>5</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>6</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>7</sup>

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<sup>1</sup> Commissioner Lynn M. Bragg dissenting. See infra, nn. 129 & 170.

<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(10).

<sup>5</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>6</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>7</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are (continued...)”).

Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>8</sup>

## **B. Product Description**

Commerce's final determinations defined the imported merchandise within the scope of these investigations as follows:

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 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

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<sup>7</sup> (...continued)

not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.")

<sup>8</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

packs of the same item, or in five piece sets consisting of four chairs and one table.

Specifically excluded from the scope of 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 9401710010, 9401710030, 9401790045, 9401790050, 9403200010, and 9403200030 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.<sup>9</sup>

### **C. Domestic Like Product Issues**

In the preliminary phase of this investigation, the Commission found two domestic like products corresponding to Commerce's scope: certain folding metal chairs, encompassing both "residential" and "commercial" folding chairs, and certain folding metal tables, including only residential folding metal tables.<sup>10</sup> Folding metal tables are commonly known as card tables. Folding metal tables and chairs generally are considered occasional-use furniture, and collapse for efficient storage.<sup>11</sup> The Commission considered and rejected separating residential and commercial folding metal chairs into different like products. The Commission also considered and rejected the argument of Respondent Dorel Juvenile Group, Inc. ("Dorel")<sup>12</sup> to expand the like product to include other rigid-frame casual furniture.<sup>13</sup>

In the final phase of this investigation, Petitioner Mecor Corporation ("Mecor") has accepted the Commission's preliminary like product findings of two separate like products: certain folding metal tables and certain folding metal chairs.<sup>14</sup> Dorel continues to argue that the domestic like product(s) should be expanded beyond the scope to include banquet tables<sup>15</sup> and "other rigid-frame casual tables," and "other

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<sup>9</sup> Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China, 67 Fed. Reg. 20090, 20090-20091 (Apr. 24, 2002).

<sup>10</sup> Certain Folding Metal Tables and Chairs from China, Inv. No. 731-TA-932 (Preliminary), USITC Pub. No. 3431 (June 2001) ("USITC Pub. 3431") at 5-6, 9.

<sup>11</sup> Confidential Report ("CR") at I-3 and Public Report ("PR") at I-3.

<sup>12</sup> Dorel was formerly known as Cosco, Inc., which is how it was referred to throughout the preliminary phase of this investigation. See Dorel APO Amendment dated February 21, 2002 and Dorel Postconference Brief dated April 17, 2002. Cosco Home and Office Products, Inc. is a division of Dorel. Transcript of Commission Hearing (April 23, 2002) ("Tr.") at 107 (Testimony of Cosco Home and Office Products, Inc. Vice President Joy Broadhurst).

<sup>13</sup> USITC Pub. 3431 at 7-9. In the final phase of this investigation, the Commission collected additional information regarding commercial tables ("banquet tables"). CR at I-8-12, PR at I-2-8; CR/PR at Tables C-3 & C-4. No imports of banquet tables were reported. CR at I-8, n.19; PR at I-6, n.19. Chairman Koplan, Vice Chairman Okun and Commissioner Miller indicated in the preliminary phase of this investigation, that they intended to seek additional data in order to consider whether the domestic like product for tables should be defined more broadly to include banquet tables in any final phase of this investigation. USITC Pub. 3431 at 8, n.41.

<sup>14</sup> Mecor's Prehearing Brief at 3-4.

<sup>15</sup> Dorel argues that there is no bright line between folding metal tables and banquet tables. Dorel Prehearing Brief at 14.

rigid-frame casual chairs,” either as one or two like products.<sup>16</sup> National Public Seating Corporation (“NPSC”), an importer of subject chair merchandise, argues that the like product for chairs should be expanded to include “stacking chairs and other chairs that directly compete with folding metal chairs.”<sup>17</sup> As in the preliminary phase of this investigation, we continue to find that certain folding metal tables and certain folding metal chairs are separate domestic like products.

The Commission looks for a clear dividing line between possible like products, including when it considers expanding the domestic like product beyond the articles specified in the scope.<sup>18</sup> After examining our traditional like product factors and considering the arguments of the parties, we find that the record reflects a clear dividing line between certain folding metal tables and banquet tables, and that an expansion of the domestic like product(s) to include “other rigid-frame casual tables and chairs” is not warranted.

## **1. Banquet Tables**

Physical characteristics and end uses: Banquet tables are generally larger and stronger than folding metal tables.<sup>19 20</sup> Banquet tables have two legs that fold together while folding metal tables have

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<sup>16</sup> Dorel Posthearing Brief at 1-2. Dorel Comments on Questionnaires at 2. Dorel is \*\*\*. CR at IV-3; PR at IV-2.

<sup>17</sup> NPSC Prehearing Brief at 3.

<sup>18</sup> Minivans from Japan, Inv. No. 731-TA-522 (Final), USITC Pub. 2529 (July 1992) at 6 (“there is no clearer dividing line if the like product were defined to include minivans plus any other category of vehicles. If we broadened the like product to include, for example, station wagons, it is not clear that a rational basis would exist for excluding passenger automobiles from the like product”), aff’d, General Motors Corp. v. United States, 17 CIT 697, 827 F. Supp. 774 (1993).

<sup>19</sup> Both Meco and Dorel compared folding metal tables to banquet tables. In both comparisons, banquet tables were longer than folding metal tables, except that Dorel argued that there was an overlap at 48". Dorel stated that the lengths for folding metal tables were 34", 37", 38", and 48", while the lengths for banquet tables were 48", 54", 60", 72", and 96". Dorel Posthearing Brief, Exhibit 12 at 9. Meco stated that folding metal tables were 34" or 38", while banquet tables were 72" or 60". Meco Prehearing Brief at 9. Thus, the parties agree that banquet tables are generally longer than folding metal tables. Dorel also states that banquet tables have a thicker hardboard than folding metal tables, and Meco agrees. Dorel Posthearing Brief, Exhibit 12 at 9; Meco Prehearing Brief at 9. Although Dorel maintains that they overlap in weight, both parties are in agreement that only folding metal tables are under twenty-three pounds and only banquet tables are over thirty pounds. Dorel Posthearing Brief, Exhibit 12 at 10; Meco Prehearing Brief at 9. Both parties also agree that banquet tables have a maximum load capacity that significantly exceeds the maximum load capacity for folding metal tables with no overlap. Meco Prehearing Brief at 9 (maximum load limit for banquet tables: 200-300 pounds, folding metal tables: 100 pounds). Dorel Posthearing Brief, Exhibit 12 at 10 (banquet tables: 400 pounds; folding metal tables 150 pounds). The gauge of steel tubing for the two types of tables overlap, but banquet tables have somewhat thicker steel tubing. Meco Prehearing Brief at 9 (banquet tables: 1"-1 1/4" gauge of steel tubing ; folding metal tables, 7/8" - 1" gauge of steel tubing). Dorel Posthearing Brief, Exhibit 12 at 10 (banquet tables: 1" - 1 1/4" diameter of steel tubing; folding metal tables: 7/8" - 1 1/4" diameter of steel tubing).

<sup>20</sup> It appears that the domestic producer Lifetime Products (“Lifetime”) makes at least one 37 inch square folding metal table, although we have limited information on its products. Meco Posthearing Brief Exhibit 1. CR/PR at III-1, n.1. The parties differ on the respective weight of Lifetime tables versus most banquet and folding metal tables. Dorel argues that the Lifetime tables are “very lightweight.” Tr. at 118 (Testimony of Joy Broadhurst). Meco argues that Lifetime tables “weigh considerably more than card tables.” Meco Posthearing Brief at 2. Lifetime’s tables are apparently more expensive than most folding metal tables. Meco Posthearing Brief at 2. Tr. at 118.

independently folding legs.<sup>21</sup> The greater size and strength of banquet tables allow banquet tables to support a heavier maximum load limit than folding metal tables. These differences are significant even though there may be banquet tables similar in shape and size to folding metal tables.<sup>22</sup> Responding domestic producers reported differences in end uses and physical differences for banquet tables as compared with folding metal tables in their questionnaire responses. Responding importers were divided on the issue.<sup>23</sup>

Interchangeability: The four responding U.S. producers of folding metal tables or banquet tables viewed interchangeability between folding metal tables and banquet tables as very limited or non-existent.<sup>24</sup> Of the four importers, two stated that folding metal tables and banquet tables were interchangeable, one did not find the products interchangeable, and one stated that folding metal tables and banquet tables would be substituted infrequently.<sup>25</sup> Meco argues that banquet tables are intended for heavy-duty uses, such as banquet dining, storage or displays of boxes or equipment, holding sewing machines and computers, or for examining luggage at airport security.<sup>26</sup> Dorel agrees that folding metal tables are not used as airport screening tables, but maintains that the tables have overlapping end-uses.<sup>27</sup>

Although there may be some limited overlap in uses, such as for informal dining, folding metal tables and banquet tables are not generally interchangeable. Folding metal tables are intended for light use, whereas banquet tables are intended to be used for heavy weight loads. The interchangeability that does exist is greatest with respect to the smallest and lightest banquet tables, but the majority of banquet tables are larger and less interchangeable with folding metal tables.<sup>28</sup>

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<sup>21</sup> Meco Prehearing Brief at 9. Dorel Posthearing Brief, Exhibit 12 at 10. Meco states that only banquet tables have structural supports while Dorel argues that both types of tables have structural supports. Meco Prehearing Brief at 9. Dorel Posthearing Brief Exhibit 12 at 10. In Exhibit Z to Dorel's Posthearing Brief, some folding metal tables do have some small structural supports attached just below the top of the table. However, the same exhibit demonstrates that banquet tables have much bigger structural supports attached to the paired leg structure, and sometimes an additional structural support near the bottom of the paired legs. Record evidence reflects that these structural supports lend strength to the banquet tables.

<sup>22</sup> Certain banquet tables made by Lifetime are similar in size to some folding metal tables but support a much heavier load than is customary for folding metal tables. According to its website, some Lifetime tables are tested for up to 2,500 pounds, and one Lifetime table is tested for 1,200 pounds, as compared to testing up to 300 pounds for Dorel's folding metal tables. Meco Posthearing Brief at 2, Exhibit 1, Tr. at 119 (Testimony of Joy Broadhurst), Tr. at 209 (Testimony of Warren Connelly).

<sup>23</sup> CR at I-9, PR at I-6. There were no reported imports of banquet tables. It is unclear whether importers were comparing imported or domestic folding metal tables to domestic banquet tables, but the imported folding metal tables are "virtually identical to those made in the United States." CR at I-5; PR at I-4. Dorel does not dispute this assessment by staff with respect to merchandise sold through mass merchandiser channels, which was the \*\*\* channel of distribution for domestically produced folding metal tables, \*\*\*. Dorel Prehearing Brief at 10. CR/PR at Table I-1.

<sup>24</sup> CR at I-8, I-10; PR at I-7.

<sup>25</sup> CR at I-10; PR at I-7.

<sup>26</sup> Meco Prehearing Brief at 9-10 & Exhibit 7.

<sup>27</sup> Dorel Posthearing Brief, Exhibit N.

<sup>28</sup> The usual length of banquet tables is 5' (60"), 6' (72") or 8' (96"). Meco Prehearing Brief at 9 & Exhibit 5. However, there are also 48" banquet tables. *Id.* at Exhibit 5. Some Lifetime tables are smaller and apparently lighter than other banquet tables, but they are more expensive than folding metal tables, and support heavier maximum weight loads than folding metal tables. Meco Posthearing Brief at 2 & Exhibit 1. Tr. at 118, 209.

Channels of distribution: Although it is mixed, record evidence indicates more differences than similarities in the channels of distribution between certain folding metal tables and banquet tables. Domestically produced folding metal tables have \*\*\*, reflecting Meco's loss of \*\*\* as a customer.<sup>29</sup> \*\*\* of the sales of banquet tables are \*\*\* and \*\*\*.<sup>30 31</sup>

Manufacturing facilities, production processes, and employees: The record reflects some commonality in the employees and/or equipment used to make certain folding metal tables and banquet tables. Three of the four domestic producers stated that there was some commonality in production processes and employees, but that some separate equipment is used to make banquet tables.<sup>32</sup> One importer cited similarities in manufacturing facilities, production processes and employees, and one importer cited differences, stating that the "manufacturing facilities are somewhat different, as the heavy particle board cutting and molding work is unique to banquet tables. Welding is not needed on card tables."<sup>33</sup>

Moreover, the record shows that equipment and/or employees used to produce certain folding metal tables also can be used to produce certain folding metal chairs and other products, such as stacking chairs, barbecue grills and other chairs.<sup>34</sup> Such broad adaptability of the equipment and employees involved renders the commonality that does exist between the production processes for folding metal tables and banquet tables less significant to the like product analysis.

Customer and producer perceptions: All four U.S. producers perceived folding metal tables and banquet tables as different and believed their customers also shared their view. The two U.S. producers who explained why their customers viewed them as different based it on the strength of banquet tables -- their durability and "heavy-duty" uses.<sup>35</sup> Meco produces both types of tables and reports that "hardly anyone would buy a banquet table when a card table would do and vice versa," because banquet tables are heavy, bulky and expensive compared to folding metal tables.<sup>36</sup> Two importers argued that they

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<sup>29</sup> CR at Table I-1, I-5-6. Table I-1 reflects \*\*\* sales in the "other customers" category for certain folding metal tables, and \*\*\* sales to distributors/wholesalers.

<sup>30</sup> The customer base for office superstores and other mass merchandisers appears to overlap. Meco states that office superstores sell to individuals as well as to businesses. Meco Prehearing Brief at 7. The Target representative testified at the hearing that most of its customers were residential customers, but that some were small businesses. He testified that even though the office superstores were not as direct a competitor as K-Mart, he had to be sensitive to the assortment of furniture that they were carrying to "ensure that I can present a good value to my guests, as well." Tr. at 122, 143.

<sup>31</sup> The \*\*\* segments for banquet tables are \*\*\*. CR at I-11; PR at I-7.

<sup>32</sup> CR at I-9-10; PR at I-6-7.

<sup>33</sup> CR at I-10; PR at I-7. Although it is unclear whether the importers are describing production processes in the United States or in China, the record does not reflect significant differences in production processes in the two countries. Meco representatives have stated that the production processes for certain folding metal tables (and chairs) in the United States and in China are essentially the same, although the U.S. facilities are slightly more automated. CR at I-5, PR at I-4.

<sup>34</sup> CR at II-3, PR at II-2.

<sup>35</sup> CR at I-10-11; PR at I-6-7. \*\*\* stated that banquet tables would be seen as "commercial" and "heavy-duty." \*\*\* stated that the "differences are sufficiently significant that a clear distinction has developed between the two products." \*\*\* stated that "our customers view card tables as too cheap and not durable enough." *Id.*

<sup>36</sup> Tr. at 19 (Testimony of Allan Reitzer, Meco President).



were perceived as different and two argued that they were perceived as similar.<sup>37</sup> On balance, producer and customer perceptions do not support including banquet tables in the domestic like product.

Price: The record reflects significant differences in prices of banquet tables and folding metal tables. U.S. producers and importers both reported that banquet tables command much higher prices than folding metal tables. One importer described the range of folding metal table prices as \$30-\$40 and the range of banquet tables as \$40-\$100. \*\*\* cited a range of \$45-\$100 for banquet tables, compared with a range of \$20-\$35 for folding metal tables. \*\*\* stated that banquet tables were four to twenty times more expensive than folding metal tables. Although \*\*\* argued that some banquet tables were in the same price range as folding metal tables, record evidence generally shows a significant price difference for the two types of tables.<sup>38</sup>

In sum, due to the significant differences between banquet tables and folding metal tables, we do not include banquet tables in our definition of the domestic like product for folding metal tables.

## **2. Other Rigid-Frame Casual Chairs or Tables**

Dorel defines “other rigid-frame casual chairs and tables” as follows:

other rigid-frame casual chairs and tables that are constructed primarily of metal, wood, plastic, or other fibrous material. These are chairs and tables designed for occasional indoor use, including stacking chairs and folding stools. Excluded from this definition are director’s chairs; camp chairs; child-sized chairs; portable countertops; TV trays; side tables; child-sized tables; aluminum and wrought iron porch, lawn and outdoor furniture; non-stacking wooden and/or metal chairs and stools for restaurants, cafeterias, bars and bowling centers; non-folding tubular dining and breakfast tables and chairs; and non-folding wood office seating.<sup>39</sup>

Dorel’s proposed definition of the domestic like product to include this broader range of products is vague.<sup>40</sup> While Dorel gives examples of certain types of furniture that should be included in or excluded from the domestic like product, it does not define a “casual” table or chair. Furthermore, Dorel provides no rationale for finding a “clear dividing line” between certain products, by including some products in the domestic like product definitions for tables and chairs, but excluding others.<sup>41</sup>

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<sup>37</sup> CR at I-11; PR at I-7.

<sup>38</sup> CR at I-12; PR at I-8.

<sup>39</sup> Dorel Posthearing Brief at 1; Dorel Comments on Questionnaires at 2.

<sup>40</sup> NPSC’s proposed definition (which refers to “other chairs that compete with folding metal chairs”) is even more vague.

<sup>41</sup> Director’s chairs, which could be viewed as occasional, “casual” use items, are not included in Dorel’s domestic like product for chairs, but stacking chairs are included; however, Dorel provides no basis for this distinction. Non-folding tubular dining and breakfast tables are not included, but wooden non-folding dining tables, which can cost well over \$100.00, are included (assuming they fall within Dorel’s undefined characterization of “casual.”) See Meco Prehearing Brief, Exhibit 11. Dorel also would exclude wooden and/or metal chairs and stools “for restaurants, cafeterias, bars and bowling centers” in its domestic like product for chairs, which is an exclusion based solely on end use; its proposed definition is silent on whether identical chairs and stools would be included if purchased by consumers.

Physical characteristics and end uses: Chairs and tables made of wood differ physically from folding metal chairs. Stacking chairs and folding stools differ physically from each other and from folding metal chairs. Stationary wooden tables differ physically from folding metal tables.<sup>42</sup>

There are differences in end-uses for these products. Counter stools have raised seats and generally are used in conjunction with a counter, while folding metal chairs often are used without a table. Wooden chairs or tables may be for more formal uses than folding metal chairs and tables.<sup>43</sup>

Interchangeability: There is some interchangeability between folding metal tables and chairs and some of the products contained within Dorel's proposed domestic like product definition. Stacking chairs may be used instead of folding metal chairs in some instances, but they store differently, using different equipment.<sup>44</sup> Questionnaire respondents listed substitutes for folding metal tables and chairs, but opinions on this issue differed widely. Approximately forty percent of the responding purchasers said that there were no substitutes for folding metal tables and chairs.<sup>45</sup> Moreover, purchasers that did state there were substitutes for folding metal tables and chairs, often listed different substitutes. The substitutes reported included a variety of products with significant differences in physical characteristics: stacking chairs, folding tables and chairs made of wood or plastic, and non-folding tables and chairs.<sup>46 47</sup>

Channels of distribution: Channels of distribution for some of these products may also overlap. Storehouse, Ikea, Crate and Barrel, and Target all sell rigid frame tables and chairs, but the record does not reflect that the mass merchandisers such as Target carry the high-end rigid frame chairs and stools sold by Storehouse and Crate and Barrel, or the high-end rigid-frame tables sold by Ikea and Crate and Barrel. At the hearing, the Target representative testified that Target served value-conscious customers, and that its furniture could cost less than \$20.00, while some of the rigid-frame furniture sold at Storehouse, Crate and Barrel, Ikea, and other retailers may be well in excess of \$100.00.<sup>48</sup>

Manufacturing facilities, production processes, and employees: Different processes are used to produce metal, wood, plastic, or other fibrous components of furniture.<sup>49</sup> NPSC and Dorel both have

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<sup>42</sup> In its prehearing brief, Meco provides examples of chairs and tables within Dorel's proposed domestic like product pictured on various websites. Meco Prehearing Brief, Compare a wooden Stakmore folding chair (Exhibit 10) to a folding metal chair (Exhibit 1). Compare stools (Exhibit 10) to stacking chairs and folding metal chairs (Exhibit 3). Stools have no back like folding metal chairs or stacking chairs. Stacking chairs do not fold flat for storage. Compare Exhibits 11 (wooden tables) and Exhibit 1 (folding metal table).

<sup>43</sup> Meco Prehearing Brief, Compare Exhibit 1 & 10 (counter stools) to Petition, Exhibit 3 (showing folding metal chairs lined up to provide seating for an event without tables). Compare rigid-frame wooden tables and chairs (Exhibits 10 & 11) to folding metal tables and chairs (Exhibit 1).

<sup>44</sup> Tr. at 84-85.

<sup>45</sup> CR at II-11; PR at II-7 (10 out of 23 firms).

<sup>46</sup> CR at II-4; PR at II-2. \*\*\* listed stacking chairs, wooden folding chairs, "ready to assemble" chairs and resin chairs as substitutes. \*\*\* listed wooden chairs, plastic resin chairs, and stacking chairs as substitutes. \*\*\* listed varying products made of other materials as substitutes. Id.

<sup>47</sup> \*\*\* states that its imported commercial quality folding metal chairs from China are interchangeable only with commercial quality folding metal chairs produced in the United States, and that its imported residential quality folding metal chairs are interchangeable only with residential quality folding metal chairs produced in the United States. CR at II-7, n 7. This limited interchangeability does not support Dorel's and NPSC's expanded like product definitions.

<sup>48</sup> Tr. at 120-124. Meco Prehearing Brief, Exhibits 10 & 11.

<sup>49</sup> Dorel (Cosco) Postconference Brief at 15.

recognized that there are differences in production processes for products produced from different constituent materials.<sup>50</sup>

Customer and producer perceptions: As for customer and producer perceptions, NPSC's president stated that in the institutional market, customers perceive stacking chairs and folding metal chairs as different.<sup>51</sup> Meco and Krueger view folding metal tables and chairs as distinct from stacking chairs and other rigid frame seating and tables.<sup>52</sup> As noted, forty percent of the purchasers responding to the questionnaires stated that there were no substitutes for folding metal tables and chairs,<sup>53</sup> and purchasers that did state that there were substitutes often listed different substitutes.<sup>54</sup>

Price: The majority of questionnaire respondents did not believe there were substitutes for folding metal tables and chairs that competed on the basis of price. Although some price competitive substitutes were listed, they cover a wide variety of seating and tables, most of which have significantly different physical characteristics from folding metal tables and chairs in terms of constituent materials.<sup>55</sup> The record reflects a wide range in prices for rigid frame seating and table products.<sup>56</sup>

In sum, Dorel's proposed domestic like product(s) would include a broad array of products with a broad range of physical characteristics, prices, uses, production processes and channels of distribution, with no apparent rationale for why certain products are inside the definition, and other products are not. For all of the reasons set forth above, we again find two domestic like products corresponding to Commerce's scope: certain folding metal chairs and certain folding metal tables.

#### **D. Domestic Industry and Related Parties**

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product."<sup>57</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>58</sup> Based on our domestic like product determinations, we find two domestic industries consisting of all domestic producers of folding metal chairs, and all domestic producers of folding metal tables.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry

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<sup>50</sup> NPSC Comments on Draft Questionnaires at 2. Dorel Comments on Draft Questionnaires at 3-4.

<sup>51</sup> Tr. at 183-184.

<sup>52</sup> Tr. at 84-85. Meco Prehearing Brief at 14-18 & Exhibits 10 and 11.

<sup>53</sup> CR at II-11; PR at II-7 (10 out of 23 firms).

<sup>54</sup> CR at II-4; PR at II-2.

<sup>55</sup> CR at II-4; PR at II-2.

<sup>56</sup> Meco Prehearing Brief, Exhibits 10 & 11. Stacking chairs are generally much more expensive than folding chairs, although prices for stacking chairs can overlap with those of folding chairs, depending on the quality of the chairs. Tr. at 83-84 (Testimony of Warren Connelly, Counsel for Meco and Randy Tess, Krueger Product Manager). Tr. at 116, 139 (Testimony of Joy Broadhurst, and Barry Stauber, President of NPSC).

<sup>57</sup> 19 U.S.C. § 1677(4)(A).

<sup>58</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int'l Trade 1994), aff'd, 96 F.3d 1352 (Fed. Cir. 1996).

producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>59</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>60</sup>

The only issue with respect to domestic industry is whether \*\*\*, which produces folding metal chairs,<sup>61</sup> should be excluded from the domestic industry producing folding metal chairs as a related party.<sup>62 63</sup>

\*\*\*, an importer of subject folding metal chairs, is a sister company to \*\*\*. They are both \*\*\*-percent owned by \*\*\*. Therefore, under the statute, \*\*\* is a related party because a third-party directly controls both \*\*\* and an importer of subject merchandise.<sup>64</sup> Moreover, \*\*\* accounted for \*\*\* percent of \*\*\* sales of imports in 2001. This relationship also constitutes a separate basis for \*\*\* to be deemed a related party.<sup>65</sup>

We consequently examine whether "appropriate circumstances" exist to exclude \*\*\* from the domestic industry producing certain folding metal chairs. \*\*\* accounts for \*\*\* percent of domestic production of certain folding metal chairs,<sup>66</sup> and \*\*\* the petition.<sup>67</sup> \*\*\* U.S. production of chairs decreased from \*\*\* in 1999 to \*\*\* in 2001, while \*\*\* began its importing operations with \*\*\* chairs from

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<sup>59</sup> 19 U.S.C. § 1677(4)(B).

<sup>60</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), 111 aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

<sup>61</sup> CR at III-2; PR at III-1.

<sup>62</sup> Dorel produced both folding metal tables and folding metal chairs in 1998, but then ceased domestic production. In the preliminary phase of the investigation, the Commission excluded Dorel from both domestic industries because it had ceased production and had become \*\*\* importer of both subject chair merchandise and subject table merchandise. Commission Confidential Preliminary Determination at 13 & n.52; USITC Pub. 3431 at 10 & n.52. Dorel was not a domestic producer of folding metal tables or folding metal chairs during the period of investigation (1999 - 2001) for the final phase of this investigation. Therefore, no issue remains as to whether it should be excluded from the domestic industry.

<sup>63</sup> \*\*\*.

<sup>64</sup> 19 U.S.C. § 1677(4)(B)(i) & (ii)(III).

<sup>65</sup> CR at III-7; PR at III-5.

<sup>66</sup> CR at III-2; PR at III-1.

<sup>67</sup> CR at III-2; PR at III-1.

China in 2001.<sup>68</sup> \*\*\*.<sup>69</sup> \*\*\*'s operating income margin (ratio of operating income to net sales) \*\*\* in 2001, which \*\*\*.<sup>70</sup>

\*\*\* does not appear to be shielded from injury that might be caused by the subject imports. \*\*\* has indicated that one of the reasons it is importing is so that it can \*\*\*.<sup>71</sup> \*\*\* and \*\*\*. Moreover, as noted above, no party, including Meco, advocated excluding \*\*\* from the domestic industry producing folding metal chairs. We conclude that appropriate circumstances do not exist for the exclusion of \*\*\* from the domestic industry producing folding metal chairs.

Accordingly, we define the domestic industry for folding metal chairs to include all producers of folding metal chairs in the United States, and the domestic industry for folding metal tables to include all producers of folding metal tables in the United States.

## **II. MATERIAL INJURY BY REASON OF SUBJECT IMPORTS OF CERTAIN FOLDING METAL CHAIRS AND CERTAIN FOLDING METAL TABLES**

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>72</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>73</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>74</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>75</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>76</sup>

For the reasons discussed below, we determine that the domestic industry producing folding metal chairs is materially injured by reason of subject chair imports from China found to be sold at LTFV, and that the domestic industry producing folding metal tables is materially injured by reason of subject table imports from China found to be sold at LTFV.

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<sup>68</sup> CR at III-8; PR at III-5.

<sup>69</sup> CR at III-8, n.19; PR at III-5, n.19.

<sup>70</sup> CR/PR at Table VI-6.

<sup>71</sup> CR at III-7-8; PR at III-4-5.

<sup>72</sup> 19 U.S.C. §§ 1671d(b) and 1673d(b).

<sup>73</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>74</sup> 19 U.S.C. § 1677(7)(A).

<sup>75</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>76</sup> 19 U.S.C. § 1677(7)(C)(iii).

## **A. Folding Metal Chairs**

### **1. Conditions of Competition**<sup>77</sup>

Several conditions of competition pertinent to the folding metal chairs industry are relevant to our analysis.<sup>78</sup>

Apparent domestic consumption of folding metal chairs has been declining in recent years. Consumption fell by \*\*\* by quantity and \*\*\* by value over the period of investigation.<sup>79</sup>

There are eight domestic producers of folding metal chairs: Meco, Virco, Krueger, McCourt, SCF, Mity-Lite, Lifetime, and HON.<sup>80</sup> These producers sell into several different channels of distribution that encompass both residential and commercial users. These include mass merchandisers/office superstores, other retailers, other customers and distributors/wholesalers. Mass merchandisers are retailers such as Target or K-Mart, whose strategies are to provide stores offering “no frills” service and low prices;<sup>81</sup> the large office superstores include Staples, Office Max, and Office Depot.<sup>82</sup> “Other retailers” refers to retailers besides the large “box” stores, such as department stores.<sup>83</sup> Folding metal chairs also are sold to other customers, including sales to schools, government institutions and commercial institutions, and through distributors/wholesalers.<sup>84</sup> While there is significant overlap among domestic folding metal chairs and subject chair imports in these channels of distribution,<sup>85</sup> subject chair imports are concentrated in the mass merchandiser market.<sup>86 87</sup>

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<sup>77</sup> Meco filed the petition on April 27, 2001. Import data in this investigation are based solely on importer questionnaire data because official import statistics for certain folding metal chairs include nonsubject products. CR at IV-1 & Table IV-1, n.1. In calendar year 2000, subject imports of folding metal chairs from China accounted for \*\*\* of total imports of folding metal chairs. Imports of folding metal chairs from China are therefore not negligible. See 19 U.S.C. § 1677(24).

<sup>78</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>79</sup> CR/PR at Table C-2.

<sup>80</sup> CR at III-1, n.1 & III-2; PR at III-1, n.1 & III-2.

<sup>81</sup> Dorel Prehearing Brief at 5-6.

<sup>82</sup> Meco Posthearing Brief at 13.

<sup>83</sup> Tr. at 21 (Testimony of Meco President Allan Reitzer).

<sup>84</sup> Tr. at 36-37 (Testimony of Randy Tess; Krueger sells folding metal chairs through catalogue sales, and to schools, businesses, and institutions, including governmental entities). Approximately \*\*\* of subject imports is sold to other customers. CR/PR at Table I-1.

<sup>85</sup> In 2001, \*\*\* of domestic folding metal chairs were sold to other retailers, \*\*\* were sold to “other customers,” \*\*\* were sold to mass merchandisers/office superstores, and \*\*\* were sold to distributors/wholesalers. In the same year, \*\*\* of imported product was sold to mass merchandisers/office superstores, \*\*\* were sold to “other customers,” \*\*\* were sold to distributors/wholesalers, and \*\*\* were sold to other retailers. Domestic product and imported product \*\*\* in the mass merchandiser and “other customers” channels of distribution, although \*\*\* of the domestic product is sold to other retailers and distributors/wholesalers. CR/PR at Table I-1. The share of domestic folding chairs sold to mass merchandisers was down from \*\*\* in 2000 to \*\*\* in 2001, due in large part to Meco’s loss of the Target account in 2001. Meco Prehearing Brief at 27. CR at I-7 & n.14, PR at I-5 & n.14.

<sup>86</sup> CR at I-7; PR at I-5.

<sup>87</sup> Meco and Dorel agree that they compete against each other in the mass merchandiser segment of the certain folding metal chair industry. CR at I-7; PR at I-5. They differ in their perception of the competition between the

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Both residential consumers and small businesses purchase folding metal chairs from both mass merchandisers and office superstores,<sup>88</sup> and there is no clear industry standard distinguishing residential and commercial chairs.<sup>89</sup> \*\*\*.<sup>90</sup>

Both quality and price are important in this industry,<sup>91</sup> and over the period of investigation, the quality of the subject imports has reportedly improved.<sup>92</sup> As a result, subject imports and domestic folding metal chairs are highly interchangeable.<sup>93</sup> While various types of chairs, including stacking chairs, and wooden and plastic chairs could be used for folding metal chairs in some applications, the majority of questionnaire respondents stated that there were no substitutes that competed closely with folding metal chairs on the basis of price.<sup>94</sup>

Nonsubject imports of folding metal chairs (including nonsubject imports from China) have decreased irregularly over the period of investigation. Measured in quantity, nonsubject imports of folding

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<sup>87</sup> (...continued)

imported and domestic products. Dorel argues that subject imports and the domestic products sold by domestic producers other than Meco do not compete against each other in the folding metal chair industry. Dorel argues that the other domestic producers focus on sales to the commercial/institutional or governmental market, and not the residential market, which is where Meco's products and subject imports compete. Dorel Prehearing Brief at 3-5, 9. Meco disagrees, maintaining that there is significant competition between the imported product and the domestic producers that focus on the commercial segment of the market. Tr. at 8 (Testimony of Warren Connelly, Counsel for Meco).

<sup>88</sup> Costco caters to both residential and small office users of folding metal tables and chairs, and it is now Meco's \*\*\*. Meco's Prehearing Brief at 37. Meco states that office superstores sell to individuals as well as to businesses. Meco Prehearing Brief at 7. Tr. at 122, 143.

<sup>89</sup> Although having a single brace is considered an indication of a "residential" chair, and more than one brace an indication of a "commercial" chair, both Meco's single-brace and double-brace chairs have been sold as "commercial" chairs. Meco's Prehearing Brief at 7-8. Meco tests its single-brace chair against standards developed for chairs sold to government customers. *Id.* at 5. Krueger, who markets primarily to commercial accounts, has used one cross-brace on its chairs. *Id.* at 6. No residential grade standards exist. *Id.* at 7.

<sup>90</sup> Meco Posthearing Brief at 13. \*\*\* Importer Questionnaire Response at 28; \*\*\* Domestic Producer Questionnaire at 26; \*\*\* Domestic Producer Questionnaire, Attachment B; \*\*\* Producer Questionnaire at 35; \*\*\* Importer Questionnaire at 7; \*\*\* Importer Questionnaire at 6-7. CR at IV-3; PR at IV-2. A Dorel representative testified that they quote all the office superstores "because we consider them mass marketers." Tr. at 156 (Joy Broadhurst).

We note that \*\*\* primarily imports nonsubject merchandise from China, and only imports a small amount of subject merchandise. CR at IV-3; PR at IV-2. However, \*\*\* supplied metal folding chairs to \*\*\* valued at \*\*\* in 1999. CR at V-15-16 & n.10; PR at V-6 & n. 10.

Importer NPSC and domestic producers SCF, Krueger and Virco compete directly. Tr. at 139, 150 (Testimony of Barry Stauber). Dorel and Meco also compete directly. Tr. at 11 (Testimony of Peter Winik, Counsel for Dorel).

<sup>91</sup> CR at II-6; PR at II-3.

<sup>92</sup> CR at II-6; PR at II-3. \*\*\*. Affidavit of Senior Buyer Megan Tucci, Target Stores, dated May 6, 2002. Tr. at 27 (Testimony of Bill Neal).

<sup>93</sup> CR at II-7; PR at II-4.

<sup>94</sup> CR at II-4. Dorel Posthearing Brief at 6; NPSC Posthearing Brief at 3-5. Stacking chairs are generally much more expensive than folding chairs, although there is an overlap in price, depending on the quality of the chair. Tr. at 83-84 (Testimony of Warren Connelly, and Randy Tess). Tr. at 115-116, 139 (Testimony of Joy Broadhurst, and Barry Stauber, President of NPSC).

metal chairs increased from \*\*\* of U.S. apparent consumption in 1999 to \*\*\* in 2000, and then decreased to \*\*\* in 2001.<sup>95</sup>

## **2. Volume of the Subject Chair Imports**

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>96</sup>

The volume of imports of certain folding metal chairs from China increased during the period of investigation.<sup>97</sup> The volume of subject chair imports increased from \*\*\* in both 1999 and 2000, to \*\*\* in 2001.<sup>98</sup> The share of apparent U.S. consumption held by subject chair imports increased from \*\*\* in 1999 to \*\*\* in 2001, while domestic producer market share dropped from \*\*\* in 1999 to \*\*\* in 2001.<sup>99</sup> In comparison, nonsubject imports were a more minor factor in the market, and decreased in both volume and market share over the period of investigation.<sup>100</sup> Therefore, subject Chinese chair imports predominantly replaced U.S. production, but also replaced nonsubject imports.

We find the large volume of subject imports, and the increase in that volume over the period of investigation, both in absolute terms and relative to consumption in the United States, to be significant.

## **3. Price Effects of the Subject Chair Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>101</sup>

Price competition in this industry is intense,<sup>102</sup> and occurs frequently through annual contract negotiations.<sup>103</sup> Domestic folding metal chairs and imported subject chairs are highly interchangeable.<sup>104</sup> Importers and domestic producers tend to focus on either the residential or commercial market for folding metal chairs, suggesting some market segmentation; however, as noted above, the lines between these

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<sup>95</sup> CR/PR at Table IV-6.

<sup>96</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>97</sup> CR/PR at Tables IV-2 and C-2.

<sup>98</sup> CR/PR at Table IV-2.

<sup>99</sup> CR/PR at Table IV-6.

<sup>100</sup> CR/PR at Tables IV-6 & IV-2. Nonsubject imports, including Chinese nonsubject imports decreased from \*\*\* of U.S. apparent consumption in 1999 to \*\*\* in 2001.

<sup>101</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>102</sup> Tr. at 7 (Testimony of Warren Connelly). \*\*\* CR at V-25; PR at V-8.

<sup>103</sup> CR at V-2-3; PR at V-1-2. Tr. at 26-27 (Testimony of Bill Neal). Meco Posthearing Brief, Tabs K & P.

<sup>104</sup> CR at II-7, II-11-12; PR at II-4, II-7.



markets are blurred. Among products of comparable quality, price is the most important factor in purchasing decisions.<sup>105</sup>

The Commission collected pricing data for two chair products. Subject imported chairs undersold the domestic product in 23 out of 24 quarterly price comparisons, by margins ranging from 13.4 percent to 41.0 percent. The margins of underselling also increased over the period of investigation. For both Product 1 (all-metal folding chair) and Product 2 (double-cushion folding metal chair), the margins of underselling were higher in each quarter of 2001 than they were in the same quarters in 1999.<sup>106</sup> We find that there has been significant price underselling by subject chair imports as compared to the price of the domestic folding metal chairs.

The significance of the underselling can be seen in Meco's loss of Target's business to Dorel in 2001. Target had been Meco's \*\*\*,<sup>107</sup> accounting for \*\*\* of total domestic industry sales of folding metal chairs measured by quantity in 2000.<sup>108</sup> Target acknowledged switching from Meco to Dorel in 2001, and that Dorel's bid was \*\*\* than Meco's.<sup>109</sup> This shift occurred after \*\*\*,<sup>110</sup> \*\*\*,<sup>111</sup> While other factors may have played a role in Target's decision to switch suppliers, we conclude that price was an important factor.<sup>112</sup> Several instances of confirmed lost sales or revenues also underscore the significance of the underselling.<sup>113</sup>

The record is mixed regarding price depression by subject imports. While Meco, the \*\*\* domestic producer, dropped its prices for specific high volume accounts or for specific products due to

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<sup>105</sup> CR at II-7; PR at II-4.

<sup>106</sup> CR/PR at Tables V-1-V-2.

<sup>107</sup> CR at III-7; PR at III-4.

<sup>108</sup> Calculated from \*\*\* Questionnaire Response, \*\*\* at 7. CR/PR at Table C-2.

<sup>109</sup> Affidavit of Megan Tucci at 2, (May 6, 2002).

<sup>110</sup> Dorel Posthearing Brief, Exhibit 12 at 16-18 & Tabs S, T & W.

<sup>111</sup> Tr. at 175 (Testimony of Steve Smith). See also Affidavit of Megan Tucci at 1 (May 6, 2002).

<sup>112</sup> Target offered various non-price reasons for its purchase decision. We note that the stated reasons changed over the course of the investigation. Compare Confidential Prehearing Staff Report at V-21 with Tr. at 153-154, 163, 194 (Testimony of Steve Smith) with Affidavit of Megan Tucci at 1-2, May 6, 2002. In any event, the Target representative at the hearing indicated that price is always a consideration to Target. Tr. at 194-195 (Testimony of Steve Smith). Although Target alleged quality and production problems with Meco's products, the Target representative at the hearing confirmed that Target awarded the 2001 contract a month before Meco's alleged production problems arose, and that the quality of Meco's and Dorel's products was comparable. Tr. at 125, 166-167, 194.

<sup>113</sup> Lost sales to \*\*\* were confirmed, and lost sales to \*\*\* were partially confirmed. Lost revenues to \*\*\* were confirmed. CR at V-18-22, 25.

price pressure from Dorel's subject imports,<sup>114</sup> pricing data show that overall U.S. prices have increased over the period of investigation for both Products 1 and 2.<sup>115</sup>

The record contains evidence of price suppression.<sup>116</sup> While U.S. prices increased over the period of investigation for both Products 1 and 2, and the unit values of the domestic industry's sales increased by 7.5 percent from 1999 to 2001,<sup>117</sup> industry sales revenue did not keep pace with increased costs. Unit COGS increased by \$1.15 per chair from 1999 to 2001,<sup>118</sup> and COGS as a ratio of net sales also rose by 3.7 percentage points over the period of investigation. Thus, although unit COGS increased, domestic producers were unable to increase price levels sufficiently to cover rising costs in the face of market competition with lower priced subject imports. This price-cost squeeze can be explained in large part by the loss of sales volume attributable to subject imports.

Based on the discussion above, we find significant underselling by the subject imports and evidence of price suppression.<sup>119</sup>

#### **4. Impact of the Subject Chair Imports on the Domestic Industry**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>120</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>121 122 123</sup>

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<sup>114</sup> Meco's Final Comments at 4-8, and record sources cited therein. CR at V-18-19; PR at V-7. Meco argues that this reflects that importers have captured the higher-volume but lower-priced sales to mass merchandisers. It argues that the weighted average prices for domestic producers' sales have come increasingly from their smaller accounts, which pay somewhat higher average unit prices and are typically sales of higher end merchandise than are the sales to the mass merchandisers. Meco Prehearing Brief at 32-33. Meco Posthearing Brief at 14-15. Meco argues that under these circumstances the injury to the domestic industry is primarily seen through declining sales volumes, which has occurred in this industry. Meco Posthearing Brief at 14. CR/PR at Table C-2.

<sup>115</sup> CR/PR at Tables V-1 & V-2.

<sup>116</sup> Commissioner Bragg finds significant price suppression by reason of subject imports in this investigation. The record indicates that although unit COGS increased, domestic producers were unable to increase price levels sufficiently to cover rising costs in the face of market competition with lower priced subject imports. Specifically, as the domestic industry's unit COGS increased 12.5 percent from 1999 to 2001, U.S. shipment unit values and net sales unit values increased only 7.7 percent and 7.5 percent, respectively, during the same period, evidencing a cost-price squeeze. This is corroborated by the increase in the ratio of COGS to net sales from 79.1 percent in 1999 to 81.0 percent in 2000 and to 82.8 percent in 2001. CR/PR at Tables VI-4 & C-2.

<sup>117</sup> CR/PR at Table C-2.

<sup>118</sup> CR/PR at Tables VI-4, VI-5 & C-2.

<sup>119</sup> Commissioner Bragg finds significant price suppression by reason of subject imports in this investigation.

<sup>120</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.)

<sup>121</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885.

<sup>122</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping  
(continued...)

As detailed above, imports of the subject chair merchandise increased over the period of investigation and captured an increasing share of the U.S. market, significantly displacing market share held by the domestic industry. The record also reflects significant underselling by subject imports. The domestic industry's overall financial condition deteriorated and ended the period with a loss.<sup>124</sup>

The quantity of the domestic chair industry's production fell during each year of the period of investigation, decreasing by 32.4 percent overall.<sup>125</sup> Capacity utilization levels also fell steadily throughout the period, as did the quantity of domestic shipments of folding metal chairs, which fell by 30.6 percent from 1999 to 2001. The value of domestic shipments was stable from 1999 to 2000 and then declined from 2000 to 2001. Employment indicators also declined over the period of investigation. From 1999 to 2001, the number of production workers fell by 6.6 percent, hours worked fell by 12.4 percent, and wages paid fell 8.2 percent, while wages paid per hour increased.<sup>126</sup>

The financial performance of the domestic industry deteriorated over the period of investigation. Net sales fell by 26.9 percent measured in quantity and 21.4 percent measured in value. The chair industry's profit margin (operating income as a percentage of sales) decreased from a positive 3.1 percent in 1999 to a negative 0.2 percent in 2001.<sup>127</sup>

For the foregoing reasons, we find that subject imports are having a significant adverse impact on the domestic industry.<sup>128</sup>

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<sup>122</sup> (...continued)

proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its amendments to its affirmative final antidumping determination, Commerce found a single class of merchandise, certain folding metal tables and chairs, and found the following dumping margins in its affirmative final determinations: Commerce found a zero dumping margin for Shin Crest Pte, Ltd; a 13.72 percent dumping margin for Feili Furniture Development Co., Ltd. and Feili (Fujian) Co., Ltd., Dongguan Shichang Metals Factory Co., Ltd., and New-Tec Integration Co., Ltd; and a 70.71 percent dumping margin as the PRC-wide margin. 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 Fed. Reg. 34898, 34899 (May 16, 2002).

<sup>123</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

<sup>124</sup> CR/PR at Tables VI-4 & C-2.

<sup>125</sup> CR/PR at Tables III-2 & C-2.

<sup>126</sup> CR/PR at Tables III-2 & C-2.

<sup>127</sup> CR/PR at Table VI-4. The industry's financial decline is even more severe if one considers additional data from Meco, the \*\*\* domestic producer of folding metal chairs, CR at III-2; PR at III-1, pertaining to the end of 2001 and the first three months of 2002. Table VI-4 includes Meco's data on a non-calendar fiscal year basis (July 1- June 30). Accordingly, Meco supplemented its financial data with data from three additional quarters of its 2002 fiscal year (July 1, 2001 to March 31, 2002). Its additional financial data reflect an operating income margin of \*\*\* and an \*\*\* for the period July 1, 2001 to March 31, 2002. Meco Posthearing Brief, Appendix, Tab H (operating income margin calculated from data).

<sup>128</sup> Evidence was introduced by Dorel of declines in commercial purchases due to the 2001 recession. Dorel Prehearing Brief at 26 & Exhibit 9. We acknowledge that the recession may have had an effect on apparent domestic consumption of folding metal chairs, which may have had an effect on domestic producers focusing on the commercial segment of the U.S. market. However, apparent domestic consumption fell by \*\*\* over the period of investigation. Any downturn in commercial spending in 2001 cannot explain the significant gains by subject imports in market share at the expense of the domestic industry during the period examined.



## 5. Critical Circumstances for Subject Chair Imports<sup>129</sup>

In its final determination, Commerce made affirmative critical circumstances findings with respect to folding metal tables and chairs produced or exported by Chinese producers/exporters that did not have specific antidumping margins.<sup>130</sup> Because we have determined that the domestic folding metal chair industry is materially injured by reason of subject imports, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping duty order to be issued.”<sup>131</sup> The SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of relief, the importers have seriously undermined the remedial effect of the order.”<sup>132</sup>

The statute further provides that in making this determination the Commission shall consider, among other factors it considers relevant:

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.<sup>133</sup>

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<sup>129</sup> Commissioner Bragg makes an affirmative critical circumstances determination, finding that the subject imports identified by Commerce in its affirmative critical circumstances determination are likely to undermine seriously the remedial effect of an order covering folding metal chairs.

First, with regard to the timing and volume of imports, the limited monthly import and foreign export data for chairs indicate that the increases in the volumes of imports that are subject to a critical circumstances analysis \*\*\* when comparing the six month period preceding the filing of the petition with the six month post-petition period. Specifically, subject chair imports considered in the critical circumstances analysis increased from \*\*\* chairs six months before the filing of the petition to \*\*\* chairs six months after the filing of the petition. See INV-Z-071. Furthermore, the subject imports considered in the critical circumstances analysis are equivalent to \*\*\* percent of U.S. chair production during all of 2001. See CR/PR Table C-2 & INV-Z-071.

Second, although the one responding importer reported that inventories of subject imports increased less than \*\*\* percent during the period May 2001 through October 2001, the record evidences a rapid increase in end of period inventories of subject imports held by U.S. importers over the period of investigation. Specifically, U.S. inventories of subject chairs increased by \*\*\* percent from 2000 to 2001. See, INV-Z-071; PR/CR at Table C-2.

Finally, the record indicates that with respect to the domestic folding metal chairs industry, the levels of production, capacity, capacity utilization, sales, and profitability declined by reason of the unfairly traded imports during 2001. *See infra* section III.A.4. The progressive deterioration in the performance of the domestic industry over the latter portion of the period of investigation indicates that the remedial effect of an antidumping duty order will be seriously undermined by reason of the increasing volume of unfairly traded imports identified by Commerce in its affirmative critical circumstances determination.

<sup>130</sup> Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People’s Republic of China, 67 Fed. Reg. 20090, 20091-20092 (Apr. 24, 2002).

<sup>131</sup> 19 U.S.C. § 1673d(b)(4)(A)(i).

<sup>132</sup> SAA at 877.

<sup>133</sup> 19 U.S.C. § 1673d(b)(4)(A)(ii).

Consistent with Commission practice,<sup>134</sup> in considering the timing and volume of subject imports, we have considered import quantities prior to the filing of the petition with those subsequent to the filing of the petition using monthly statistics on the record regarding subject chair imports from Chinese producers or exporters that have not received specific margins.<sup>135</sup> The petition was filed on April 27, 2001. We have compared subject import volume of the reported subject imports covered by Commerce's critical circumstances determination for the six month period prior to and including April 2001 (November 2000 to April 2001), to the volume of those subject imports for the six month period following the filing of the petition (May 2001 to October 2001). The volume for the subject chair imports covered by Commerce's affirmative critical circumstances determinations was \*\*\* chairs for the six month period prior to the filing of the petition, and \*\*\* chairs for the six month period following the filing of the petition,<sup>136</sup> a substantial increase of \*\*\*. We do not find, however, that the level of subject imports covered by Commerce's critical circumstances determination is sufficiently large that it is likely to undermine seriously the remedial effect of the antidumping order. The volume of reported subject chair imports covered by Commerce's affirmative critical circumstances determination for the twelve-month period November 2000 to October 2001 is \*\*\* chairs, which is an amount equal to only \*\*\* of total subject chair imports in 2001, and only \*\*\* of apparent domestic consumption of folding metal chairs for 2001.<sup>137</sup> We have no pricing data specific to the subject imports covered by Commerce's affirmative critical circumstances determination, and the available information regarding inventories does not suggest a buildup of inventories during the post-petition period.<sup>138</sup>

We determine that critical circumstances do not exist with respect to the subject chair imports covered by Commerce's affirmative critical circumstances determination because the absolute level of subject chair imports covered by Commerce's critical circumstances determination is not sufficiently large that it is likely to undermine seriously the remedial effect of the antidumping order.

## **B. Folding Metal Tables**

### **1. Conditions of Competition<sup>139</sup>**

The conditions of competition for the domestic industry producing folding metal tables are generally similar to those for the domestic industry producing folding metal chairs.

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<sup>134</sup> See, e.g., Certain Ammonium Nitrate from Russia, Inv. No. 731-TA-856 (Final), USITC Pub. 3338, at 12-13 (Aug. 2000); Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777 to 79 (Final), USITC Pub. 3159, at 24 (Feb. 1999).

<sup>135</sup> CR at IV-10-11 and Memorandum INV-Z-071 (May 20, 2002); PR at IV-3.

<sup>136</sup> CR at IV-11 and Memorandum INV-Z-071 (May 20, 2002); PR at IV-3.

<sup>137</sup> Calculated from CR/PR at Tables IV-2 & IV-6; CR at IV-11; Memorandum INV-Z-071; and PR at IV-3.

<sup>138</sup> Only one of the responding importers that provided critical circumstances data also maintained inventories, and that company reported that inventories increased less than \*\*\* percent during the period May 2001 through October 2001. Memorandum INV-Z-071.

<sup>139</sup> Mecor filed the petition on April 27, 2001. As with chairs, import data for folding metal tables are based solely on importer questionnaire data as the official import statistics for certain folding metal tables include nonsubject products. In calendar year 2000, subject imports of folding metal tables from China accounted for \*\*\* of total imports of folding metal tables. Imports of folding metal tables from China are therefore not negligible. CR/PR at Table IV-1. 19 U.S.C. § 1677(24).

Consumption of folding metal tables changed little over the investigation period. Apparent domestic consumption of folding metal tables increased by \*\*\* from 1999 to 2000, and decreased by \*\*\* from 2000 to 2001, ending \*\*\* higher in 2001 than in 1999. Measured in value, however, apparent domestic consumption increased by \*\*\* from 1999 to 2000, and then fell \*\*\* from 2000 to 2001, decreasing by \*\*\* over the period of investigation.<sup>140</sup>

Meco is the \*\*\* domestic producer of folding metal tables.<sup>141</sup> Meco is also the only domestic producer that offers folding metal tables and chairs in sets (e.g., four chairs and a table in matching vinyl). However, sets constitute a small part of Meco's folding metal table and chair business, and primarily serve as promotional products.<sup>142</sup> Subject imports were more often imported in sets.<sup>143</sup>

With respect to channels of distribution, during 2000, \*\*\* of the U.S.-produced folding metal tables went to mass merchandisers and \*\*\* went to other retailers, while in 2001, \*\*\* were sold to retail customers other than mass merchandisers/office superstores.<sup>144</sup> The majority of subject table imports, \*\*\*, went to mass merchandisers in 2001, with \*\*\* sold \*\*\*.<sup>145</sup>

Both quality and price are important in this industry,<sup>146</sup> and over the period of investigation, the quality of the subject imports has improved.<sup>147</sup> As a result, subject imports and domestic folding metal tables are highly interchangeable.<sup>148</sup> While other products, such as wooden folding tables, could substitute for folding metal tables in some applications, the majority of questionnaire respondents stated that there were no substitutes that competed closely with folding metal tables on the basis of price.<sup>149</sup>

Nonsubject imports of folding metal tables (including nonsubject imports from China) have decreased steadily over the period of investigation. Measured in quantity, nonsubject imports of folding metal tables accounted for \*\*\* of U.S. apparent consumption in 1999, falling to \*\*\* in 2000, and falling further to \*\*\* in 2001.<sup>150</sup>

## **2. Volume of the Subject Table Imports**

The volume of imports of certain folding metal tables from China increased during the period of investigation.<sup>151</sup> The volume of subject table imports increased from \*\*\* in 1999 to \*\*\* in 2000, and to \*\*\* in 2001.<sup>152</sup> The share of apparent U.S. consumption held by subject table imports increased from \*\*\*

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<sup>140</sup> CR/PR at Table C-1.

<sup>141</sup> CR at II-1, n.2; PR at II-1, n.2. We have limited information regarding Lifetime, which appears to be a second producer of folding metal tables. CR/PR at III-1, n.1. Meco Posthearing Brief, Exhibit 1.

<sup>142</sup> Tr. at 48-49 (Testimony of Bill Neal). CR at III-6; PR at III-4. CR at V-2; PR at V-2.

<sup>143</sup> CR at IV-1, V-2; PR at IV-1, V-1.

<sup>144</sup> CR/PR at Table I-1. Meco attributes this decline in shipments to the mass merchandiser channel of distribution to the \*\*\* as a customer. CR at I-5-6; PR at I-4.

<sup>145</sup> CR/PR at Table I-1.

<sup>146</sup> CR at II-6; PR at II-3.

<sup>147</sup> CR at II-6; PR at II-3. Tr. at 27 (Testimony of Bill Neal).

<sup>148</sup> CR at II-7; PR at II-4.

<sup>149</sup> CR at II-4; PR at II-2. \*\*\* Questionnaire Response at IV-C-8-9; \*\*\* Questionnaire Response at III-4-5.

<sup>150</sup> CR/PR at Table IV-5.

<sup>151</sup> CR/PR at Tables IV-1 & C-1.

<sup>152</sup> CR/PR at Table IV-1.

in 1999 to \*\*\* in 2001, while domestic producer market share dropped from \*\*\* in 1999 to \*\*\* in 2001.<sup>153</sup> Nonsubject imports' share of apparent domestic consumption decreased steadily over the period of investigation, from \*\*\* in 1999 to \*\*\* in 2001, while the share of subject imports increased.<sup>154</sup> Therefore, subject Chinese table imports predominantly replaced U.S. production, but also replaced non-subject imports.

We find the large volume of subject table imports, and the increase in that volume over the period of investigation, both in absolute terms and relative to consumption in the United States, to be significant.

### **3. Price Effects of the Subject Table Imports**

As with folding metal chairs, price competition for tables is intense,<sup>155</sup> and frequently occurs through annual contract negotiations.<sup>156</sup> Domestic folding metal tables and imported subject tables are highly interchangeable.<sup>157</sup> The Commission collected pricing data for one table product. Subject imported tables undersold the domestic product in all 12 quarterly comparisons, by margins ranging from 6.9 percent to 22.8 percent. The margins of underselling were higher in each quarter of 2001 than they were in the corresponding quarters in 1999.<sup>158</sup> We find that there has been significant price underselling by subject table imports as compared to the price of the domestic folding metal tables.

U.S. prices fell over the period of investigation. Prices were lower \*\*\*.<sup>159</sup> In light of the interchangeability, significant underselling, and growth in market share of subject imports at the expense of the domestic folding metal table industry, we conclude that the subject imports depressed domestic prices to a significant degree.

This conclusion is further corroborated by record evidence of underbidding and sales and revenue lost by the domestic industry to subject imports. Target has acknowledged that \*\*\*.<sup>160</sup> Comparisons of price quotes for folding metal tables for the Target account indicate that \*\*\*. As discussed above with respect to folding metal chairs, while other factors may have played a role in Target's decision to switch from Meco to Dorel in 2001, we conclude that price was an important factor. Confirmed lost revenue and lost sales allegations, and bid data submitted by Meco and Dorel, confirm that Meco lowered prices in the face of import competition.<sup>161</sup>

We find that lower-priced subject imports have significantly depressed domestic prices, particularly given the large volumes of imports, their increasing market share, their significant underselling of the domestic like product, and their dominance in the domestic market.

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<sup>153</sup> CR/PR at Table C-1.

<sup>154</sup> CR/PR at Table IV-5.

<sup>155</sup> Tr. at 7 (Testimony of Warren Connelly). \*\*\* CR at V-25; PR at V-9.

<sup>156</sup> CR at V-2-3; PR at V-1-2, Tr. at 26-27 (Testimony of Bill Neal). Meco Posthearing Brief, Tabs K & P.

<sup>157</sup> CR at II-7, II-11-12; PR at II-4, II-7.

<sup>158</sup> CR/PR at Table V-4.

<sup>159</sup> CR/PR at Table V-4.

<sup>160</sup> Affidavit of Megan Tucci at 2, dated May 6, 2002.

<sup>161</sup> CR at V-18- 22, 25. Meco's Final Comments at 4-8 and record sources cited therein.



#### 4. Impact of the Subject Table Imports on the Domestic Industry<sup>162 163</sup>

As detailed above, imports of the subject table merchandise increased over the period of investigation and captured an increasing share of the U.S. market, significantly displacing market share held by the domestic industry. The record reflects significant underselling as well as evidence of significant price depression caused by subject imports. Furthermore, the condition of the domestic industry deteriorated over the period, particularly with regard to production and shipment volume over the period of investigation.<sup>164</sup>

The quantity of the domestic table industry's production increased from 1999 to 2000 and fell \*\*\* in 2001, decreasing by \*\*\* over the period of investigation.<sup>165</sup> Capacity utilization followed a similar trend, and was at \*\*\* in 2001. The quantity of domestic shipments of folding metal tables also increased from 1999 to 2000 and then fell \*\*\* from 2000 to 2001, decreasing by \*\*\* from 1999 to 2001.<sup>166</sup> Employment indicators also declined \*\*\* over the period of investigation. From 1999 to 2001, the number of production workers fell by \*\*\*, hours worked fell by \*\*\*, and wages paid fell \*\*\*, while wages paid per hour increased.<sup>167</sup>

The financial performance of the domestic industry deteriorated over the period of investigation. Net sales fell by \*\*\* measured in quantity and \*\*\* measured in value. Consistent with a drop in shipments, production and sales, operating income and unit operating income fell over the period of investigation.<sup>168</sup> The industry's operating margin declined from \*\*\* in 1999 to \*\*\* in 2001. Even this decline may severely underestimate the financial deterioration of the certain folding metal tables industry, because Meco, the sole reporting domestic producer of certain folding metal tables, reported its financial data based on a non-calendar fiscal year (July 1- June 30). Accordingly, the financial data reported for this industry in the staff report only covers the period of investigation up until June 30, 2001. Meco

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<sup>162</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its amendments to its affirmative final antidumping determination, Commerce found a single class of merchandise, certain folding metal tables and chairs, and found the following dumping margins in its affirmative final determinations: Commerce found a zero dumping margin for Shin Crest Pte, Ltd; a 13.72 percent dumping margin for Feili Furniture Development Co., Ltd. and Feili (Fujian) Co., Ltd., Dongguan Shichang Metals Factory Co., Ltd., and New-Tec Integration Co., Ltd; and a 70.71 percent dumping margin as the PRC-wide margin. 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 Fed. Reg. 34898, 34899 (May 16, 2002).

<sup>163</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

<sup>164</sup> CR/PR at Table III-1.

<sup>165</sup> CR/PR at Tables III-1 & C-1. Production, capacity utilization, U.S. shipments and most employment indicators increased from 1999 to 2000, and then fell \*\*\* from 2000 to 2001. Meco received \*\*\*. CR at III-6; PR at III-4. Meco Prehearing Brief at 26.

<sup>166</sup> CR/PR at Tables III-1 & C-1.

<sup>167</sup> CR/PR at Table C-1.

<sup>168</sup> CR/PR at Tables VI-1, VI-2 & C-1.

supplemented its financial data with data from three additional quarters of its 2002 fiscal year (July 1, 2001 to March 31, 2002), and these data reflect an operating margin for that period of \*\*\*.<sup>169</sup>

For the foregoing reasons, we find that subject table imports are having a significant adverse impact on the domestic industry producing folding metal tables.

## **5. Critical Circumstances for Subject Folding Metal Tables**<sup>170</sup>

Consistent with our critical circumstances analysis with respect to folding metal chairs, we have compared subject import volume of the reported subject table imports covered by Commerce's critical circumstances determination for the six month period prior to and including April 2001 (November 2000 to April 2001), to the volume of those subject imports for the six month period following the filing of the petition (May 2001 to October 2001). The volume for these imports was \*\*\* tables for the six month period prior to the filing of the petition, and \*\*\* tables for the six month period following the filing of the petition,<sup>171</sup> a substantial increase of \*\*\*. We do not find, however, that the level of subject imports covered by Commerce's critical circumstances determination is sufficiently large that it is likely to undermine seriously the remedial effect of the antidumping order. The volume of reported subject table imports covered by Commerce's affirmative critical circumstances determination for the twelve-month period November 2000 to October 2001 is \*\*\* tables, which is an amount equal to only \*\*\* of total subject table imports in 2001, and only \*\*\* of apparent domestic consumption of folding metal tables for 2001.<sup>172</sup> We have no pricing data specific to the subject table imports covered by Commerce's affirmative critical circumstances determination, and no specific information regarding inventories of the subject table imports covered by critical circumstances.<sup>173</sup>

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<sup>169</sup> Mecor Posthearing Brief, Appendix, Tab H (operating income margin calculated from data).

<sup>170</sup> Commissioner Bragg makes an affirmative critical circumstances determination, finding that the subject imports identified by Commerce in its affirmative critical circumstances determination are likely to undermine seriously the remedial effect of an order covering folding metal tables.

First, with regard to the timing and volume of imports, the limited monthly import data for tables indicates that the increases in the volumes of imports that are subject to a critical circumstances analysis increased more than \*\*\* when comparing the six month period preceding the filing of the petition with the six month post-petition period. Specifically, subject table imports considered in the critical circumstances analysis increased from \*\*\* tables six months before the filing of the petition to \*\*\* tables six months after the filing of the petition. See INV-Z-071. Furthermore, the subject imports considered in the critical circumstances analysis are equivalent to \*\*\* percent of U.S. table production during all of 2001. See CR/PR Tables C-1 & INV-Z-071.

The record evidences a rapid increase in end of period inventories of subject imports held by U.S. importers over the period of investigation. Specifically, U.S. inventories of subject tables increased by approximately \*\*\* percent from 2000 to 2001. See, INV-Z-071; PR/CR at Table C-1.

Finally, the record indicates that with respect to the domestic folding metal tables industry, the levels of production, capacity, capacity utilization, sales, and profitability declined by reason of the unfairly traded imports during 2001. See infra section III.B.4. The progressive deterioration in the performance of the domestic industry over the latter portion of the period of investigation indicates that the remedial effect of an antidumping duty order will be seriously undermined by reason of the increasing volume of unfairly traded imports identified by Commerce in its affirmative critical circumstances determination.

<sup>171</sup> CR at IV-11; Memorandum INV-Z-071 (May 20, 2002); PR at IV-3.

<sup>172</sup> Calculated from CR/PR at Tables IV-1 & IV-5; CR at IV-11; Memorandum INV-Z-071 (May 20, 2002); and PR at IV-3.

<sup>173</sup> CR at IV-11; Memorandum INV-Z-071 (May 20, 2002); PR at IV-3.

We determine that critical circumstances do not exist with respect to the subject table imports covered by Commerce's affirmative critical circumstances determination because the absolute level of subject table imports covered by Commerce's critical circumstances determination is not sufficiently large that it is likely to undermine seriously the remedial effect of the antidumping order.

### **III. CONCLUSION**

For the foregoing reasons, we determine that an industry in the United States producing certain folding metal chairs is materially injured by reason of imports of certain folding metal chairs from China that are being sold in the United States at LTFV, and that an industry in the United States producing certain folding metal tables is materially injured by reason of imports of certain folding metal tables from China that are being sold in the United States at LTFV. We also determine that critical circumstances do not exist with respect to subject imports of certain folding metal tables and chairs from China as to which Commerce made affirmative critical circumstances findings.<sup>174</sup>

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<sup>174</sup> Commissioner Bragg dissenting. See, infra, nn.129 & 170.