

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## CERTAIN FOLDING METAL TABLES AND CHAIRS FROM CHINA

Investigation No. 731-TA-932 (Preliminary)

### DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3431, June 2001)

#### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States producing certain folding metal chairs is materially injured, and that there is a reasonable indication that an industry in the United States producing certain folding metal tables is materially injured, by reason of imports from China of certain folding metal tables and chairs, provided for in subheadings 9401.71.00, 9401.79.00, and 9403.20.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value (LTFV).

#### **COMMENCEMENT OF FINAL PHASE INVESTIGATION**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

#### **BACKGROUND**

On April 27, 2001, a petition was filed with the Commission and Commerce by MECO Corp., Greeneville, TN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain folding metal tables and chairs from China. Accordingly, effective April 27, 2001, the Commission instituted antidumping duty investigation No. 731-TA-932 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference 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

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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)).

May 4, 2001 (66 FR 22598). The conference was held in Washington, DC, on May 18, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.



## IEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States producing certain folding metal chairs is materially injured, and that there is a reasonable indication that an industry in the United States producing certain folding metal tables is materially injured, by reason of imports from China of certain folding metal tables and chairs that are allegedly sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in a preliminary antidumping investigation requires the Commission to find, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>2</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>3</sup>

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

In determining whether there is a reasonable indication that 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>4</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>5</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>6</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>7</sup> No single factor is dispositive, and the Commission

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<sup>2</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Ranchers-Cattlemen Action Legal Foundation v. United States, 74 F. Supp.2d 1353, 1368-69 (Ct. Int’l Trade 1999).

<sup>3</sup> American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</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

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may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>10</sup>

## **B. Product Description**

Commerce’s notice of initiation defines the imported merchandise within the scope of this investigation 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

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

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, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>8</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>9</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 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>10</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).

affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (“folding metal chairs”). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal, those that have a back pad, a seat pad, or both a back pad and a seat pad, and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of 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.<sup>11</sup>

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

Meco, a domestic producer (“Petitioner”), advocates a single domestic like product consisting of all of the products described in Commerce’s scope, *i.e.*, certain folding metal tables and chairs.<sup>12</sup> Respondent and importer Cosco Corporation (“Cosco”) urges the Commission to find a single domestic like product consisting of all rigid supplemental casual tables and seating, including products made primarily out of metal, plastic, wood, or other fibrous material and whether for household or commercial use.<sup>13</sup>

We have considered the following domestic like product issues: 1) whether or not certain folding metal tables and certain folding metal chairs should be one domestic like product, as Petitioner argues; 2) whether “residential” and “commercial” folding metal chairs, as defined by Petitioner, should be included in the same domestic like product, as Petitioner also argues; and 3) whether it is appropriate to define the domestic like product more broadly than Commerce’s scope to include additional casual seating and table products, including “commercial” folding metal tables, as Cosco argues. Based on the evidence on the record in the preliminary phase of this investigation, we find two domestic like products corresponding to Commerce’s scope; certain folding metal chairs, encompassing both residential and commercial folding chairs (“folding metal chairs”), and certain folding metal tables, including only residential folding metal tables (“folding metal tables”).

#### **1. Whether Folding Metal Tables and Folding Metal Chairs Constitute One or More Domestic Like Products**

There are marked differences in physical characteristics and uses between folding metal chairs and folding metal tables. Although both are made primarily of tubular steel, folding metal tables have a flat

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<sup>11</sup> 66 Fed. Reg. 28728, 28729-28730 (May 24, 2001).

<sup>12</sup> Petitioner Postconference Brief at 9.

<sup>13</sup> Cosco Postconference Brief at 4-5; Conference Transcript (“Tr.”) at 82.

surface, while folding metal chairs are upright with a seat and a back.<sup>14</sup> Folding metal chairs seat people and folding metal tables hold objects. The two products are not interchangeable.<sup>15</sup>

Folding metal tables and chairs are sold either individually or as sets (i.e., one table and four chairs). Most sales of domestic products involve either folding metal chairs or folding metal tables, with only a small percentage of sales being in sets.<sup>16</sup> Petitioner reported that sets account for \*\*\* to \*\*\* percent of its overall sales, and that it is the only domestic producer of folding metal tables.<sup>17</sup> \*\*\* of domestically produced chairs but \*\*\* of domestically produced tables were \*\*\* during the period examined, with the balance of the chairs sold mainly to \*\*\*.<sup>18</sup>

Petitioner manufactures folding metal tables and chairs in common facilities using the same workers, applying similar production processes and common raw materials.<sup>19</sup> Table tops and seat cushions are produced on the same “cut and sew” line by the same workers.<sup>20</sup> Several producers manufacture only chairs and not tables.<sup>21</sup>

Mass merchandisers display the tables and chairs together in “open stock” so that customers can either buy chairs and tables in sets or separately. The products are color-coordinated in order to encourage customers to buy sets.<sup>22</sup> With regard to prices, both sell within a wide range of prices, which may overlap.<sup>23</sup>

We find that folding metal tables and folding metal chairs are separate domestic like products. Although the Petitioner manufactures both tables and chairs on common production lines, other producers manufacture only folding metal chairs. Customers buy folding metal tables and chairs more often individually than as part of a set. Folding metal tables and chairs differ physically, have distinct uses, are not interchangeable, and are perceived by customers as distinct products.<sup>24</sup> Evidence on channels of distribution and prices is mixed. On balance, we conclude that folding metal tables and folding metal chairs are separate domestic like products.

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<sup>14</sup> Confidential Staff Report (“CR”) at I-3-5. Public Staff Report (“PR”) at I-3-4.

<sup>15</sup> Tr. at 44-45.

<sup>16</sup> CR at V-3; PR at V-2.

<sup>17</sup> CR at V-3 & n.4. PR at V-2 & n.4.

<sup>18</sup> CR at I-7. PR at I-5.

<sup>19</sup> Tr. at 9-10. CR at I-4-5. PR at I-3-4.

<sup>20</sup> Petitioner Postconference Brief at 9-10.

<sup>21</sup> CR at III-2, PR at III-1.

<sup>22</sup> Tr. at 43-44, 54.

<sup>23</sup> Petitioner argues that tables and chairs have similar prices, based on the average prices for its double-cushion chair and its 34" square table. The average price Petitioner charges for a 34" square table is \*\*\*, and the average price that it charges for a double cushion chair is \*\*. Petition at 11. Average weighted prices for domestically produced Product 2 (double-cushion folding metal chair) are \*\*\* than domestically produced Product 4 (square folding metal table, 32 to 36 inches), in 2000. CR/PR at Tables V-2 and V-4. Average weighted prices for Product 1 (an all-metal chair) were approximately \*\*\* than prices for Product 4 in the first three quarters of 2000, and approximately \*\*\* in the last quarter of 2000. CR/PR at Tables V-1 and V-4.

<sup>24</sup> Domestic producers’ U.S. sales of folding chairs far outsell tables. Domestic producers shipped \*\*\* chairs for every table in 1998, \*\*\* chairs for every table in 1999, and \*\*\* chairs for every table in 2000. In interim 2000, domestic producers shipped \*\*\* chairs for every table, and in interim 2001, \*\*\* chairs for every table. CR/PR at Tables IV-4 and IV-5.

**2. Whether Residential and Commercial Chairs Should Be Included in the Same Domestic Like Product(s)**

Petitioner distinguishes folding metal chairs for residential and commercial use physically by the fact that commercial folding metal chairs have one or more additional cross-brace(s), a different manner of affixing the cross-brace(s) to the chair, possibly a higher grade fabric, and a slightly heavier gauge of steel.<sup>25</sup> There is a perception that the additional cross-brace adds strength to the chair.<sup>26</sup> For purposes of this opinion, we define commercial folding metal chairs as chairs with more than one cross-brace, and residential folding metal chairs as chairs with only one cross-brace.

Residential folding metal chairs and commercial folding metal chairs have overlapping uses, and only minor physical differences as discussed above. The products are highly interchangeable, although commercial folding chairs may hold a heavier weight-load.<sup>27</sup> However, residential chairs are sometimes tested based on “commercial” standards.<sup>28</sup> In fact, commercial folding metal chairs are sometimes sold for residential use, and residential folding metal chairs are sometimes sold for commercial use.<sup>29</sup> Both types of chairs are generally sold in the same channels of distribution, e.g., to mass merchandisers, although mass merchandisers specializing in office supplies may tend to sell more commercial folding metal chairs.<sup>30</sup> They are produced on the same production lines, using the same workers and equipment.<sup>31</sup> Petitioner argues that purchasers do not buy chairs based on the number of cross-braces.<sup>32</sup> The cost to produce both types of chairs is similar, as the cost of an additional cross-brace is minimal.<sup>33</sup> For the foregoing reasons, we define the domestic like product for folding metal chairs to include both residential and commercial folding metal chairs.

**3. Whether Other Table and Seating Products Beyond Those Described in Commerce’s Scope Should Be Included in the Domestic Like Product(s)**

We have also considered the parties’ arguments regarding whether it is appropriate to define the domestic like product more broadly than Commerce’s scope to include other casual table and seating products. Petitioner has argued that the Commission should not expand its domestic like product definition more broadly than Commerce’s scope to include folding metal tables with two pairs of legs each joined with a cross-brace that fold together rather than independently, which Petitioner refers to as “commercial” or “banquet” tables.<sup>34</sup> For purposes of this opinion, we refer to these tables as “commercial” folding metal

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<sup>25</sup> Petition at 6. Tr. at 11.

<sup>26</sup> Tr. at 11, 38-40.

<sup>27</sup> Petitioner Postconference Brief at 11-12.

<sup>28</sup> Petitioner Postconference Brief at 13.

<sup>29</sup> Petitioner Postconference Brief at 12.

<sup>30</sup> Tr. at 33. See also Cosco Postconference Brief, Exhibits 14-17. (Exhibits show business furniture and office retailers advertising commercial folding metal chairs but not residential folding metal chairs). Tr. at 11 and Petitioner Postconference Brief at 12 (Petitioner states that it sells both commercial and residential grade folding metal chairs to the warehouse clubs which cater to both residential and small business users).

<sup>31</sup> Petitioner Postconference Brief at 12.

<sup>32</sup> Petitioner Postconference Brief at 13.

<sup>33</sup> Tr. at 32; CR at I-6, n.13, PR at I-5, n.13.

<sup>34</sup> Petitioner Postconference Brief at 8-9; Tr. at 40-41.

tables. Cosco argues that the Commission should include commercial folding metal tables in its domestic like product definition, as well as a broad assortment of other casual seating and table products.

We first address the issue regarding whether folding metal commercial tables should be added to the domestic like product, and then turn to Cosco's arguments for an even broader domestic like product.

Commercial folding metal tables differ from residential folding metal tables in that they have two pairs of legs that fold together with a cross-brace, rather than four independently folding legs, and they have a structural support from the table-top to the legs to keep the table from rocking.<sup>35</sup> They are heavier than residential tables and will not fold as flat.<sup>36</sup> Commercial folding metal tables generally are not interchangeable with residential folding metal tables, because they are frequently much larger than residential folding metal tables and are designed for different uses such as holding heavy boxes or office equipment.<sup>37</sup> Channels of distribution for commercial folding metal tables are similar to those of residential folding metal tables, with both sold to mass merchandisers.<sup>38</sup> Although both types of tables share some manufacturing facilities, and production workers,<sup>39</sup> Petitioner states that the legs on the commercial folding tables require a different type of assembly.<sup>40</sup> Petitioner also states that commercial folding metal tables cost more to produce than residential folding metal tables.<sup>41</sup> For the foregoing reasons, for purposes of this preliminary determination, we do not define the domestic like product for folding metal tables to include commercial folding metal tables.<sup>42</sup>

Cosco also argues for an even broader domestic like product definition that would encompass other casual table and seating products beyond those described in Commerce's scope. Cosco defines its proposed domestic like product as "rigid frame supplemental casual seating and tables," including "products made primarily of metal, plastic, wood, [and] other fibrous materials, whether for household or commercial use."<sup>43</sup> It presented an exhibit at the conference listing a very broad array of furniture to include within its proposed domestic like product, including lawn furniture, dinette furniture, kitchen stools, stacking chairs, and upholstered wood office seating, as well as "[o]ther chairs and seats."<sup>44</sup> Cosco has not specified exactly what additional products should be included in the Commission's domestic like product, nor has it drawn a clear dividing line between its proposed domestic like product and other products, with the exception of non-rigid furniture.<sup>45</sup>

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<sup>35</sup> Tr. at 40-41.

<sup>36</sup> Tr. at 49-52; Petitioner Postconference Brief at 8-9.

<sup>37</sup> Petitioner Postconference Brief at 8. See Cosco Posthearing Brief, Exhibit 24, folding banquet tables ranging from 48" to 96" long.

<sup>38</sup> At the conference, Cosco brought as exhibits a commercial folding metal table sold at Costco Price Club and a residential folding metal table sold at WalMart. Cosco Postconference Brief, Exhibits 10 and 11.

<sup>39</sup> CR at I-8-9, PR at I-6.

<sup>40</sup> Tr. at 41.

<sup>41</sup> Tr. at 52.

<sup>42</sup> Chairman Koplan, Vice Chairman Okun and Commissioner Miller intend to seek additional data on residential and commercial folding metal tables in any final phase of the investigation.

<sup>43</sup> Tr. at 82.

<sup>44</sup> Tr. at 84 & Exhibit 1 to Testimony of Bruce P. Malashevich; Cosco Postconference Brief, Exhibit 1.

<sup>45</sup> Tr. at 83. Non-rigid furniture would include inflatable furniture or bean bag chairs. Id. Cosco maintains that there is no narrower bright line than its proposed domestic like product. Tr. at 96-98. We further note that it is unclear whether all of the types of products that Cosco proposes be included in the Commission's definition of the domestic like product are produced in the United States, as must be the case to be included in the like product.

Cosco's proposed definition encompasses products, such as high quality patio furniture,<sup>46</sup> settees, and rockers, that are quite different from the folding metal tables and chairs subject to investigation. Although some of the proposed products may share some uses with the subject products,<sup>47</sup> overall the definition proposed by Cosco includes products with significant differences in production processes, price, customer and producer perceptions, and interchangeability.<sup>48</sup>

For the foregoing reasons, we decline to define the domestic like product as proposed by Cosco to include rigid supplemental casual seating and table products beyond those described in Commerce's scope. Consequently, we define two domestic like products corresponding to Commerce's scope: 1) folding metal tables, and 2) folding metal chairs.

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

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>49</sup> Based on our definition of the domestic like product, we define two domestic industries consisting of: (1) all domestic producers of certain folding metal chairs, and (2) all domestic producers of certain folding metal tables.

We must further determine whether any producer of the domestic like products should be excluded from the domestic industries pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>50</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>51</sup>

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<sup>46</sup> See also Cosco Postconference Brief, Exhibit 19, (Cosco's definition would include products such as teakwood folding side chair priced at \$80.00 and octagonal folding table priced at \$251.00 (medium) and \$269.00 (large), and cast iron english rose patio/deck set priced at \$269.00).

<sup>47</sup> For example, stackable chairs can be used in some applications instead of folding metal chairs, although stackable chairs may be primarily made from different materials than folding metal chairs, and store differently. Wooden folding tables can be used in some applications instead of folding metal tables, but they differ physically from folding metal tables.

<sup>48</sup> Cosco acknowledges that different processes are utilized to manufacture casual tables and chairs made of wood, plastic or other fibrous material, than for folding metal tables and chairs, although there may be some overlap in final assembly processes and hardware. Cosco Postconference Brief at 15. Petitioner states that bar stools and step stools are also made from tubular steel and stamped steel parts, like folding metal tables and chairs. Petitioner Postconference Brief at 36. However, bar stools and step stools differ markedly from folding metal tables and chairs in use and interchangeability. Cosco acknowledges that there is a broad range in prices for casual seating and table products. Cosco Postconference Brief at 16-17.

<sup>49</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).

<sup>50</sup> 19 U.S.C. § 1677(4)(B).

<sup>51</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), 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

(continued...)

There are two related party issues in this investigation. Cosco produced both folding metal tables and folding metal chairs in 1998.<sup>52</sup> Cosco was a significant importer of both folding metal tables and folding metal chairs from China in 1998, as well as 2000. Its 1998 imports \*\*\* its domestic production.<sup>53</sup> In 1998, Cosco accounted for \*\*\* of domestic production.<sup>54</sup> Cosco is no longer producing. Cosco's interests have been those of an importer, not a domestic producer.<sup>55</sup> We exclude Cosco as a related party from both domestic industries.

Petitioner has argued that Samsonite Commercial Furniture Industries ("SCF Industries") should be excluded from the domestic industry as a related party because it imports subject merchandise, although Petitioner does not know "the extent to which [SCF Industries is] importing versus producing."<sup>56</sup> SCF Industries is a domestic producer of folding metal chairs, but it did not respond to \*\*\* the domestic producer questionnaire \*\*\*.<sup>57</sup> \*\*\*.

### III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS OF FOLDING METAL CHAIRS AND FOLDING METAL TABLES

In the preliminary phase of an antidumping duty investigation, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>58</sup> In making this determination, the Commission must consider the volume of subject 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>59</sup> The statute defines

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<sup>51</sup> (...continued)

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 at 14 n.81 (Feb. 1997).

<sup>52</sup> Cosco produced \*\*\* folding metal tables and \*\*\* folding metal chairs in 1998. CR/PR at III-1, n.3.

<sup>53</sup> \*\*\*. Cosco Importer Questionnaire at 6, 7, and 7a.

<sup>54</sup> Based on data from reporting domestic producers, including data regarding Cosco production in 1998, Cosco accounted for \*\*\* percent of U.S. production of folding metal chairs in 1998, and \*\*\* percent of U.S. production of folding metal tables in 1998, and zero percent of U.S. production for both products thereafter. CR/PR at III-1, n.3 and Tables III-1 and III-2. Since Cosco submitted an incomplete domestic producer questionnaire, Cosco's data on its domestic production is not included in domestic producer data in the staff report, except for a footnote setting forth its reported production of folding metal tables and chairs.

<sup>55</sup> Cosco ceased domestic production of folding metal tables and chairs because of difficulty in hiring enough people to work at its plant during a time of low unemployment, as well as quality and production inefficiencies. Tr. at 92-95. Cosco did not state that it ceased production due to the effects of subject imports. *Id.* Cosco's share in 2000 of U.S. shipments of imports from China was \*\*\* percent of subject folding metal chairs and \*\*\* percent of subject folding metal tables. Cosco Importer Questionnaire at 6, 7, and 7a and CR/PR at Tables IV-4 and IV-5.

<sup>56</sup> Tr. at 41-42.

<sup>57</sup> CR at III-1-III-2 & n.1, and IV-1. PR at III-1 & n.1, and IV-1.

<sup>58</sup> 19 U.S.C. §§ 1671b(a) and 1673b(a).

<sup>59</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the (continued...)

“material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>60</sup> In assessing whether there is a reasonable indication that 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>61</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>62</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industries producing folding metal chairs and folding metal tables are materially injured by reason of subject imports.

## **A. Folding Metal Chairs**

### **1. Conditions of Competition**<sup>63</sup>

Apparent U.S. consumption of folding metal chairs has been flat in recent years by quantity and by value, although it was slightly higher in the first quarter of 2001 than in the first quarter of 2000 by quantity and value.<sup>64</sup> There are six domestic producers of folding metal chairs. The four producers responding to the Commission’s questionnaire account for an estimated \*\*\* percent of domestic production of folding metal chairs.<sup>65</sup>

Most sales of folding metal chairs are sales of chairs alone, although folding metal chairs are often color coordinated with folding metal tables so that they can be used as sets.<sup>66</sup> Folding metal chairs are often marketed with folding metal tables as “open stock” thereby giving the consumer the option to buy as many chairs and tables as desired.<sup>67</sup>

Sales of folding chairs have increasingly shifted to mass merchandisers and office superstores in lieu of distributors and higher-priced retailers.<sup>68</sup> In 2000, domestic producers sold \*\*\* and importers \*\*\* of their folding metal chairs to mass merchandisers, with most of the balance to end-users.<sup>69</sup> The record

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(...continued)

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>60</sup> 19 U.S.C. § 1677(7)(A).

<sup>61</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>62</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>63</sup> Imports from China accounted for \*\*\* percent of U.S. imports, by quantity, of folding metal chairs in 2000. CR/PR at Table IV-2. Thus, negligibility is not an issue in this investigation with regard to folding metal chairs. See 19 U.S.C. § 1677 (24).

<sup>64</sup> From 1998 to 2000, U.S. apparent consumption increased in quantity by \*\*\* percent. It increased from \*\*\* chairs in 1998 to \*\*\* chairs in 2000. In interim 2001, it was \*\*\* chairs as compared to \*\*\* chairs in interim 2000.

From 1998 to 2000, U.S. apparent consumption increased in value by \*\*\*. It increased from \*\*\* in 1998 to \*\*\* in 2000. In interim 2001, it was \*\*\* as compared to \*\*\* in interim 2000. CR/PR at Table C-2.

<sup>65</sup> CR/PR at III-1-2 & nn.1 & 7.

<sup>66</sup> CR at V-3, PR at V-2. Petitioner Postconference Brief at 4-5.

<sup>67</sup> Tr. at 43, 54.

<sup>68</sup> CR/PR at II-1.

<sup>69</sup> CR at I-7, PR at I-5. \*\*\* domestic folding metal chairs and \*\*\* of imported chairs are also sold to

(continued...)

reflects that mass merchandisers may prefer dealing with fewer suppliers offering a wide variety of products.<sup>70</sup>

\*\*\* domestic producers, \*\*\*, reported that \*\*\* percent of their sales were on a contract basis.<sup>71</sup> Responding firms reported a mix of both contract and spot sales, but responding U.S. producers reported more sales on a contract basis as compared with importers.<sup>72</sup>

Mass merchandisers are reportedly fierce competitors, and if one has a less expensive source of supply, there is pressure on competitors to obtain an equally lower-priced supplier.<sup>73</sup> Petitioner asserts that it is difficult to recapture sales volume once it is lost, due to the relatively small buying community.<sup>74</sup>

All responding U.S. producers and 11 of 13 importers indicated that domestically produced folding metal chairs and Chinese folding metal chairs could be used interchangeably.<sup>75 76</sup>

## **2. Volume of Subject Folding Metal 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>77</sup>

The quantity and value of subject imports of folding metal chairs rose over the period of investigation, as did subject import market share. U.S. shipments of subject imports, by quantity, increased from \*\*\* chairs in 1998 to \*\*\* chairs in 1999, falling \*\*\* to \*\*\* chairs in 2000. The quantity of subject import shipments in interim (January to March) 2001 was \*\*\* chairs as compared to \*\*\* chairs in interim 2000.<sup>78</sup> The value of U.S. shipments of subject imports of folding metal chairs followed similar trends.<sup>79</sup>

Market share for subject imports, by quantity, increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, and to \*\*\* percent in 2000. Subject import market share, measured in quantity, was \*\*\* larger in

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<sup>69</sup> (...continued)  
distributors. Id.

<sup>70</sup> Respondent Cosco maintains that the trend among mass merchandisers is to deal with fewer suppliers who offer a wider array of products. CR/PR at II-1. \*\*\*. CR at V-16, PR at V-7.

<sup>71</sup> CR/PR at V-3, n.5.

<sup>72</sup> CR/PR at V-3.

<sup>73</sup> Petitioner Postconference Brief at 5.

<sup>74</sup> Tr. at 14.

<sup>75</sup> CR at II-4, PR at II-3.

<sup>76</sup> There are no significant nonsubject imports of folding metal chairs. In 2000, subject imports from China of folding metal chairs accounted for \*\*\* percent of apparent U.S. consumption in quantity and \*\*\* percent by value, whereas nonsubject imports accounted for only \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. CR/PR at Table IV-8. The only reported nonsubject imports were from Mexico, \*\*\*, and \*\*\*. CR/PR at IV-1 and importers’ questionnaires.

<sup>77</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>78</sup> CR/PR at Table C-2.

<sup>79</sup> Import shipments of folding metal chairs were \*\*\* in 1998, rising to \*\*\* in 1999, and falling \*\*\* to \*\*\* in 2000. Import shipments by value in interim 2001 were \*\*\* as compared to \*\*\* in interim 2000. CR/PR at Table C-2.

interim 2001 (\*\*\*) percent) than in interim 2000 (\*\*\*) percent).<sup>80</sup> By value, import market share for subject folding metal chairs followed similar trends.<sup>81</sup>

At the same time, U.S. producers' market share declined. Market share of domestic producers, by quantity, fell from \*\*\* percent in 1998, to \*\*\* percent in 1999, dropping \*\*\* to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent in interim 2000.<sup>82 83</sup>

The increase in import market share occurred while U.S. apparent consumption was relatively \*\*\*.<sup>84</sup> Thus, subject imports gained market share at the expense of the domestic producers. Moreover, the Commission's import coverage is incomplete.<sup>85</sup> Consequently, our import volume and market share data are understated.

For purposes of this preliminary determination, we find the volume and increase in volume of subject imports, both in absolute terms and relative to apparent consumption in the United States, to be significant.

### **3. Price Effects of the Subject Folding Metal 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>86</sup>

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<sup>80</sup> CR/PR at Table C-2.

<sup>81</sup> Import market share for subject folding metal chairs, measured in value, increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, dropping \*\*\* to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent in interim 2000. CR/PR at Table C-2.

<sup>82</sup> Market share of domestic producers, by value, declined from \*\*\* percent in 1998 to \*\*\* percent in 1999, then declined further to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent in interim 2000. CR/PR at Table C-2.

<sup>83</sup> Chairman Koplun, Vice Chairman Okun and Commissioner Miller note that the decrease in domestic producer U.S. shipments and market share of folding metal chairs in the first quarter of 2001 coincided with the lost sale to Target. See CR/PR at Table C-2 and n.93, *infra*.

<sup>84</sup> CR/PR at Table C-2. Although domestic consumption was \*\*\* larger, in quantity and value, in interim 2001 than in interim 2000, import market share was \*\*\* larger, in quantity and value, in interim 2001 than in interim 2000. *Id.*

<sup>85</sup> In this preliminary phase of investigation, we have relied on data submitted in response to Commission questionnaires. Folding metal chairs are part of a broader HTS category that includes other non-subject products; thus, we could not use official import statistics. Ninety-one firms out of the 165 firms that were identified by Petitioner or from the Custom Net Import File as potential importers, or that were identified as producers by Petitioner or Commission staff, did not respond to the Commission's importer questionnaire. CR/PR at IV-1. See also Cosco Postconference Brief at 27.

<sup>86</sup> 19 U.S.C. § 1677(7)(C)(ii).

As stated earlier, all of the responding domestic producers and the majority of responding importers reported that domestic folding metal chairs and subject folding metal chairs could be used interchangeably. The procurement process in this industry is highly competitive. Retail buyers for mass merchandisers conduct a separate procurement seeking offers from competing domestic producers and importers for product lines, such as folding metal tables and chairs.<sup>87</sup> Buyers closely monitor their competitors' price levels, and conduct line reviews on an annual or semiannual basis to assess a product's performance and price before a new contract is negotiated.<sup>88</sup> Contracts with buyers are negotiated for a fixed term – typically either a year or six months, and at a fixed price for that term.<sup>89</sup> Thus, it appears that there is direct and intense competition on the basis of price between interchangeable domestic and imported folding metal chairs.

During the period of investigation, subject import market share steadily increased while domestic prices for the two folding metal chair products for which the Commission obtained data fluctuated but remained \*\*\*.<sup>90</sup> Petitioner maintains that the customers it has managed to retain are the smaller accounts that tend to purchase more of the premium priced products, which may explain why the data do not show price declines.<sup>91</sup> At the same time, price comparisons between the domestic folding metal chairs and the subject folding metal chairs from China show consistent and significant price underselling by the imported products.<sup>92</sup> Additionally, four out of seven importers that are mass merchandisers reported that prices for imports of folding metal chairs from China were lower than domestically produced folding metal chairs.<sup>93 94</sup>

We intend to explore further the procurement and bidding process, as well as attempt to gather additional information through purchaser questionnaires and contacts, in any final phase of the investigation. We find, based on the interchangeability of the products, coupled with a steady increase in import market share and significant underselling, as well as some confirmed lost sales and revenues, that for purposes of this preliminary determination, subject imports of folding metal chairs are having significant negative price effects on the U.S. industry producing folding metal chairs.

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<sup>87</sup> Petitioner Postconference Brief at 16.

<sup>88</sup> Tr. at 25-26.

<sup>89</sup> CR at V-4, PR at V-3.

<sup>90</sup> CR/PR at Tables V-1 and V-2.

<sup>91</sup> CR at V-5, PR at V-4; Tr. at 36.

<sup>92</sup> For Product 1, an all-metal chair, the imported products undersold the domestic product in all quarters, by margins ranging from \*\*\* to \*\*\* percent. For Product 2, a double-padded chair, the imported products undersold the domestic products in all but one quarter, by margins ranging from \*\*\* to \*\*\* percent. CR at V-5-6, PR at V-4. CR/PR at Tables V-1 and V-2.

<sup>93</sup> CR at II-4, PR at II-3.

<sup>94</sup> We have received mixed information in this preliminary investigation regarding lost sales and lost revenues due to lower priced imports from China.

\*\*\*. CR at V-13-16, PR at V-6-7. CR/PR at Tables V-5 and V-6.

#### 4. Impact of the Subject Folding Metal Chair Imports<sup>95 96</sup>

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>97</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>98</sup>

Domestic production of folding metal chairs steadily declined from 6.6 million chairs in 1998, to 5.1 million chairs in 1999, and to 4.8 million chairs in 2000. Domestic production of folding metal chairs was 914,000 chairs in interim 2001, as compared to 1.2 million chairs in interim 2000.<sup>99</sup> Capacity remained level while capacity utilization fell steadily from 53.8 percent in 1998, to 41.4 percent in 1999, and further to 39.0 percent in 2000. Capacity utilization was 29.7 percent in interim 2001, as compared to 40.4 percent in interim 2000.<sup>100</sup> Domestic producers’ U.S. shipments also declined by quantity and value.<sup>101</sup> Apparent U.S. consumption remained \*\*\* both from 1998 to 2000 and in the interim periods.<sup>102</sup>

As stated earlier, the domestic producers’ market share declined from 1998 to 2000, at the same time as the subject imports’ market share increased. The U.S. producers’ market share was lower, and the subject import market share higher, in interim 2001 as compared to 2000.<sup>103</sup> Domestic producers’ net sales of folding metal chairs declined steadily from 6.7 million chairs in 1998 to 5.2 million chairs in 1999 and further to 4.8 million chairs in 2000. Domestic producers’ net sales of folding metal chairs were 877,000 chairs in interim 2001 compared to 1.2 million chairs in interim 2000. The number of production workers

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<sup>95</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 notice of initiation, Commerce identified estimated dumping margins for a single class of merchandise, certain folding metal tables and chairs, ranging from 21.31 percent to 82.46 percent. 66 Fed. Reg. 28728, 28730 (May 24, 2001).

<sup>96</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of dumping to be of particular significance in evaluating the effects of subject imports on the domestic products. *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); *Anhydrous Sodium Sulfate from Canada*, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

<sup>97</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 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>98</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851, 885; *Live Cattle from Canada and Mexico*, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

<sup>99</sup> CR/PR at Table C-2.

<sup>100</sup> CR/PR at Table C-2.

<sup>101</sup> By quantity, domestic producers’ U.S. shipments declined from 6.4 million chairs in 1998 to 4.8 million chairs in 1999 and to 4.6 million chairs in 2000. In interim 2001, domestic producers’ U.S. shipments were 795,000 chairs as compared to 1.2 million chairs in interim 2000.

By value, domestic producers’ U.S. shipments declined from \$69.8 million in 1998 to \$56.4 million in 1999, and further to \$54.9 million in 2000. Domestic producers’ U.S. shipments by value were \$9.6 million in interim 2001 as compared to \$13.3 million in interim 2000. CR/PR at Table C-2.

<sup>102</sup> CR/PR at Table C-2.

<sup>103</sup> CR/PR at Table C-2.

employed by the domestic industry producing folding metal chairs fell by 5.3 percent between 1998 and 2000, and was 18 percent lower in interim 2001 than in interim 2000.<sup>104 105</sup>

Domestic producers' operating income declined irregularly from 1998 to 2000 and was lower in interim 2001 than in interim 2000.<sup>106</sup> Operating income margins were positive through 2000.<sup>107</sup> In interim 2001, the operating margin was a negative 6.9 percent as compared to the positive 6.2 percent margin in interim 2000.<sup>108</sup> Capital expenditures fell irregularly from 1998 to 2000, but were higher in interim 2001 than in interim 2000.<sup>109 \*\*\*.</sup><sup>110</sup>

We find that a significant volume of low-priced subject imports is having a significant negative impact on the U.S. industry producing folding metal chairs, in view of the industry's declining market share, production, sales, shipments, revenues, and employment, and an operating loss in interim 2001.

## **B. Folding Metal Tables**

### **1. Conditions of Competition**<sup>111</sup>

The conditions of competition for the domestic industry producing folding metal tables are similar to those for the domestic industry producing folding metal chairs. Additional conditions of competition unique to folding metal tables are discussed below.

Petitioner Mecco is the only domestic producer of folding metal tables.<sup>112 \*\*\*</sup> percent of domestic folding metal tables and \*\*\* percent of imported folding metal tables were sold to mass merchandisers during the period examined, with \*\*\* folding tables sold to \*\*\*.<sup>113</sup> Apparent U.S. consumption of folding metal tables fluctuated but remained \*\*\* overall from 1998 to 2000. However, apparent consumption was lower in interim 2001 than in interim 2000.<sup>114</sup>

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<sup>104</sup> CR/PR at Table C-2.

<sup>105</sup> Petitioner's representative testified that it had laid off 175 of its employees due to the loss of major accounts to dumped imports from China, although it is not clear how many of these workers produced chairs but not tables. Tr. at 8-9. \*\*\*. CR/PR at D-3.

<sup>106</sup> CR/PR at Table C-2. Domestic producers' operating income was \$5.1 million in 1998, \$6.4 million in 1999, and \$4.9 million in 2000. It was a negative \$718,000 in interim 2001 as compared to a positive \$816,000 in interim 2000.

<sup>107</sup> CR/PR at Table C-2.

<sup>108</sup> CR/PR at Table C-2.

<sup>109</sup> CR/PR at Table VI-12.

<sup>110</sup> CR/PR at D-3. \*\*\*.

<sup>111</sup> Imports from China accounted for \*\*\* percent of U.S. imports, by quantity, of folding metal tables in 2000. CR/PR at Table IV-1. Thus, negligibility is not an issue in this investigation with regard to folding metal tables. See 19 U.S.C. § 1677 (24).

<sup>112</sup> CR/PR at III-1.

<sup>113</sup> CR at I-7, PR at I-5.

<sup>114</sup> From 1998 to 2000, apparent U.S. consumption measured in quantity decreased from \*\*\* tables in 1998 to \*\*\* tables in 1999 and recovered to \*\*\* tables in 2000. In interim 2001, it was \*\*\* tables as compared to \*\*\* tables in interim 2000.

From 1998 to 2000, apparent U.S. consumption measured in value decreased from \*\*\* to \*\*\* and recovered \*\*\* to \*\*\* in 2000. In interim 2001, it was \*\*\* as compared to \*\*\* in interim 2000. CR/PR at Table C-1.

The U.S. producer and seven of the eight responding importers indicated that domestically produced folding metal tables and Chinese folding metal tables could be used interchangeably.<sup>115 116</sup>

## **2. Volume of the Subject Folding Metal Tables**

U.S. shipments of subject imports by quantity decreased from \*\*\* tables in 1998 to \*\*\* tables in 1999, and further to \*\*\* tables in 2000.<sup>117</sup> In interim 2001, however, U.S. shipments of subject imports of folding metal tables were \*\*\* tables, \*\*\* percent larger than the \*\*\* tables in interim 2000.<sup>118</sup> Similarly, the value of U.S. shipments of subject imports of folding metal tables decreased from 1998 to 2000, but was higher in interim 2001 than in interim 2000.<sup>119</sup>

Subject import market share for subject folding metal tables, measured by quantity, increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, before falling to \*\*\* percent in 2000. In interim 2001, subject import market share \*\*\* to \*\*\* percent, as compared to \*\*\* percent in interim 2000.<sup>120</sup> By value, subject import market share for subject folding metal tables followed similar trends.<sup>121</sup>

The domestic industry's market share of apparent U.S. consumption, by quantity, fell from \*\*\* percent in 1998, to \*\*\* percent in 1999, then increased to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent share in interim 2000.<sup>122 123 124</sup>

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<sup>115</sup> CR at II-4, PR at II-3, and importer questionnaires.

<sup>116</sup> There are no significant nonsubject imports of folding metal tables. In 2000, subject imports from China of folding metal tables accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value, whereas nonsubject imports accounted for only \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent in value. CR/PR at Table IV-7. Nonsubject imports of folding metal tables were from Mexico and \*\*\*. Tr. at 90 and importers' questionnaires.

<sup>117</sup> CR/PR at Table C-1.

<sup>118</sup> CR/PR at Table C-1.

<sup>119</sup> The value of subject imports of folding metal tables fell from \*\*\* in 1998, to \*\*\* in 1999, and fell further to \*\*\* in 2000. However, in interim 2001, U.S. shipments of subject imports of folding metal tables, by value, were \*\*\* , \*\*\* percent larger than \*\*\* in interim 2000. CR/PR at Table C-1.

<sup>120</sup> CR/PR at Table C-1.

<sup>121</sup> Subject import market share, by value, increased from \*\*\* percent in 1998, to \*\*\* percent in 1999, before falling to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent in interim 2000. CR/PR at Table C-1.

<sup>122</sup> CR/PR at Table C-1.

<sup>123</sup> Chairman Koplun, Vice Chairman Okun and Commissioner Miller note that the decrease in domestic producer U.S. shipments and market share of folding metal tables in the first quarter of 2001 coincided with the lost sale to Target. See Table C-1 and n.93, *supra*.

<sup>124</sup> By value, the domestic industry's market share declined from \*\*\* percent in 1998 to \*\*\* percent in 1999, then increased to \*\*\* percent in 2000. In interim 2001, it was \*\*\* percent as compared to \*\*\* percent in interim 2000. CR/PR at Table C-1.

The \*\*\* increase in import market share in interim 2001, by quantity and value, as compared to interim 2000, coincided with a decrease in apparent U.S. consumption.<sup>125</sup> Moreover, our import information is incomplete.<sup>126</sup> Consequently, our import volume and market share data are understated.

For purposes of this preliminary determination, we find the volume and increase in volume of subject imports in the interim period, both in absolute terms and relative to apparent consumption in the United States, to be significant.<sup>127</sup>

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

As stated earlier, the responding domestic producer, and the majority of responding importers reported that domestic folding metal tables and subject folding metal tables could be used interchangeably. The procurement process in this industry is highly competitive, and the record reflects that the procurement process is the same for folding metal tables as for folding metal chairs.<sup>128</sup> Thus, as for chairs, there is direct and intense competition on the basis of price between domestic and Chinese folding metal tables.

Domestic prices fluctuated but remained \*\*\* throughout the period of investigation, with an increase in interim 2001.<sup>129</sup> As stated earlier with regard to chairs, Petitioner maintains that the customers it has managed to retain are the smaller accounts that tend to purchase more of the premium priced products, which explains why the data do not reflect price declines.<sup>130</sup> We note that Petitioner alleges that in the first quarter of this year, the loss of its lower-priced, larger volume customer, Target, may have caused a unit price increase.<sup>131</sup> Actual price data show an increase in price in the first quarter of 2001.<sup>132</sup> At the same time, price comparisons between domestic folding metal tables and the subject folding metal tables from China show consistent and significant price underselling by the imported products, and some

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<sup>125</sup> Apparent U.S. consumption measured in quantity was \*\*\* percent lower in interim 2001 than in interim 2000. Apparent U.S. consumption measured in value was \*\*\* percent lower in interim 2001 than in interim 2000. CR/PR at Table C-1.

<sup>126</sup> In this preliminary phase of the investigation, we have relied on data submitted in response to Commission questionnaires. Folding metal tables are part of a broader HTS category that includes other non-subject products; thus, we could not use official import statistics. Ninety-one firms out of the 165 firms that were identified by Petitioner or from the Custom Net Import File as potential importers, or that were identified as producers by Petitioner or Commission staff, did not respond to the Commission's importer questionnaire. CR/PR at IV-1. See also Cosco Postconference Brief at 27.

<sup>127</sup> Vice Chairman Okun and Commissioner Bragg note that standing alone the volume evidence would appear to be more indicative of a threat of material injury finding, given that the increase in imports is only apparent in the most recent quarter. Vice Chairman Okun and Commissioner Bragg find, however, that there are several factors which, together with the increase in the volume of subject imports, lead to a finding of a reasonable indication of present material injury. These additional corroborating factors include: the unique conditions of competition and market structure, whereby the concentration of sales are primarily to mass merchandisers and the impact of the loss of a sale to a mass merchandiser devastates the financial performance of the industry; the fierce price bidding and procurement process; interchangeability of domestic like product and subject imports; and the decline of financial performance indicators throughout the period of investigation.

<sup>128</sup> Petitioner Postconference Brief at 16.

<sup>129</sup> CR/PR at Table V-4.

<sup>130</sup> CR at V-5, PR at V-4; Tr. at 36.

<sup>131</sup> Tr. at 34, 36.

<sup>132</sup> Weighted average prices for domestically produced Product 4 (square folding metal table) were \*\*\* in the first quarter of 2001 as compared to \*\*\* in the last quarter of 2000. CR/PR at Table V-4.

drop in prices for the imported products.<sup>133</sup> Additionally, three out of four importers of subject folding metal tables that are mass merchandisers reported that prices for imports of folding metal tables from China were lower than domestically produced folding metal tables.<sup>134 135</sup>

We intend to explore further the procurement and bidding process, as well as attempt to gather additional information through purchaser questionnaires and contacts, in any final phase of investigation. We find, based on the interchangeability of the domestic and imported products, a significant import market share throughout the period examined, a \*\*\* displacement of the domestic industry's market share in interim 2001, coupled with significant underselling, as well as some confirmed lost sales and revenues, that for purposes of this preliminary determination, subject imports of folding metal tables are having significant negative price effects on the U.S. industry producing folding metal tables.

#### 4. **Impact of the Subject Folding Metal Table Imports**<sup>136 137</sup>

Domestic production of folding metal tables increased irregularly from 1998 to 2000, and then dropped \*\*\* in interim 2001 as compared to interim 2000.<sup>138 139</sup> Capacity \*\*\* while capacity utilization increased irregularly from 1998 to 2000, ending at \*\*\* percent utilization in 2000, and then dropped \*\*\* to \*\*\* percent in interim 2001, as compared to \*\*\* percent in interim 2000.<sup>140</sup> The domestic producer's U.S. shipments also increased irregularly from 1998 to 2000 by quantity and value, and then were \*\*\* lower in interim 2001 than in interim 2000.<sup>141</sup> The number of production workers manufacturing folding metal

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<sup>133</sup> The imported products undersold the domestic product in all quarters, by margins ranging from \*\*\* to \*\*\* percent. Moreover, margins of underselling increased to \*\*\* in the third quarter of 2000 and the first quarter of 2001. CR at V-6, PR at V-4, and CR/PR at Table V-4.

<sup>134</sup> Importers' questionnaires.

<sup>135</sup> As with chairs, we have received mixed information regarding domestic producers' lost sales and lost revenues. Petition at 17-21. CR at V-13-16, PR at V-6-7, CR/PR at Tables V-5 and V-6.

<sup>136</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 notice of initiation, Commerce identified estimated dumping margins for a single class of merchandise, certain folding metal tables and chairs, ranging from 21.31 percent to 82.46 percent. 66 Fed. Reg. 28728, 28730 (May 24, 2001).

<sup>137</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of dumping to be of particular significance in evaluating the effects of subject imports on the domestic products. *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); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

<sup>138</sup> As stated earlier, Petitioner is the sole domestic producer of folding metal tables. We note that Petitioner's \*\*\*. CR/PR at VI-1, n.1.

<sup>139</sup> Domestic production declined from \*\*\* tables in 1998 to \*\*\* tables in 1999, and then rose to \*\*\* tables in 2000. Domestic production of folding metal tables was \*\*\* tables in interim 2001 as compared to \*\*\* tables in interim 2000. CR/PR at Table C-1.

<sup>140</sup> CR/PR at Table C-1. Capacity utilization fell from \*\*\* percent in 1998 to \*\*\* percent in 1999, and then increased to \*\*\* percent in 2000. *Id.*

<sup>141</sup> By quantity, the domestic producer's U.S. shipments declined from \*\*\* tables in 1998 to \*\*\* tables in 1999, and increased to \*\*\* tables in 2000. In interim 2001, the domestic producer's U.S. shipments were \*\*\* tables as compared to \*\*\* tables in interim 2000.

By value, the domestic producer's U.S. shipments of folding metal tables declined from \*\*\* in 1998 to \*\*\* in 1999, and then increased to \*\*\* in 2000. The domestic producer's U.S. shipments by value were \*\*\* in

(continued...)

tables increased irregularly from 1998 to 2000, but was \*\*\* smaller in interim 2001 than in interim 2000.<sup>142</sup>

Operating income declined from 1998 to 2000, declining from \*\*\* in 1998 to \*\*\* in 1999, and recovering somewhat to \*\*\* in 2000. In interim 2001, Petitioner had an operating \*\*\* compared to \*\*\* in interim 2000.<sup>143</sup> The record reflects a \*\*\* drop in sales in interim 2001 as compared to interim 2000.<sup>144</sup> Reflecting the drop in production, unit cost of goods sold was \*\*\* higher in interim 2001 than in interim 2000.<sup>145</sup> Petitioner had \*\*\* margins from 1998 to 2000, but in interim 2001, while imports displaced a \*\*\* percentage of its market share, its operating margin \*\*\*.<sup>146</sup>

Moreover, \*\*\*.<sup>147</sup> Petitioner's reported capital expenditures for tables increased from 1998 to 2000, but were lower in interim 2001 than in interim 2000.<sup>148</sup>

We find for purposes of this preliminary determination that the significant volume of low-priced imports of folding metal tables from China, which increased both absolutely and as a percentage of apparent U.S. consumption in interim 2001, is having a significant negative impact on the U.S. industry producing folding metal tables.

### CONCLUSION

For the foregoing reasons, we determine that there is a reasonable indication that an industry in the United States producing certain folding metal chairs is materially injured, and an industry in the United States producing certain folding metal tables is materially injured, by reason of imports of folding metal chairs and tables from China that are allegedly sold in the United States at less than fair value.

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<sup>141</sup> (...continued)

interim 2001 as compared to \*\*\* in interim 2000. CR/PR at Table C-1.

<sup>142</sup> The number of production workers manufacturing folding metal tables was \*\*\* in 1998, \*\*\* in 1999, and \*\*\* in 2000. In interim 2001 the number of production workers was \*\*\* as compared to \*\*\* in interim 2000. CR/PR at Table C-1.

<sup>143</sup> CR/PR at Table C-1. Unit operating income fell from 1998 to 2000, with \*\*\* per table in interim 2001 as compared to \*\*\* per table in interim 2000. Id.

<sup>144</sup> CR/PR at Table C-1. Net sales were \*\*\* tables in 1998, \*\*\* tables in 1999 and \*\*\* tables in 2000. In interim 2001, net sales were \*\*\* tables as compared to \*\*\* tables in interim 2000.

<sup>145</sup> Unit cost of goods sold was \*\*\* per table in 1998, \*\*\* per table in 1999, and \*\*\* per table in 2000. In interim 2001, it was \*\*\* per table, as compared to \*\*\* per table in interim 2000. CR/PR at Table C-1.

<sup>146</sup> CR/PR at Table C-1. The domestic industry operating margin was \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in 2000. In interim 2001, the industry operating margin was \*\*\* percent as compared to \*\*\* percent in interim 2000. Id.

<sup>147</sup> CR/PR at D-3.

<sup>148</sup> CR/PR at Table VI-12.