

results for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, see *id.*

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (Act): (1) the cash deposit rates for the companies examined in the instant review will be the rates listed above (except that if the rate for a particular company is *de minimis*, i.e., less than 0.50 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 24.64 percent. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information

disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: November 30, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

#### Appendix

*Comment 1:* Whether the Department Should Continue to Reject the Post-Sale Price Adjustments That Vita Reported for U.S. Sales

[FR Doc. E6-20779 Filed 12-6-06; 8:45 am]

BILLING CODE 3510-DS-S

### DEPARTMENT OF COMMERCE

#### International Trade Administration

A-570-827

#### Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce ("the Department") has preliminarily determined that sales by the respondents in this review, covering the period December 1, 2004, through November 30, 2005, have been made at prices at less than normal value ("NV"). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** December 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1766 and (202) 482-3773, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 28, 1994, the Department published in the **Federal Register** an antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"). See *Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994).

On December 1, 2005, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain cased pencils from the PRC covering the period December 1, 2004, through November 30, 2005. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005).

On December 9, 2005, in accordance with 19 CFR 351.213(b), a PRC exporter/producer, Shandong Rongxin Import and Export Co., Ltd. ("Rongxin"), requested an administrative review of the order on certain cased pencils from the PRC. On December 30, 2005, the petitioner<sup>1</sup> requested a review of three companies.<sup>2</sup> In addition, on January 3, 2006, the following exporter/producers requested their own reviews<sup>3</sup>: CFP, Three Star, Beijing Dixon Stationary Company Ltd. ("Dixon"), and Oriental International Holding Shanghai Foreign Trade Co., Ltd. ("SFTC") requested their own reviews.

On January 27, 2006, the Department published in the **Federal Register** a notice of initiation for this administrative review covering the companies listed in the requests received from the interested parties. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006) ("Initiation Notice").

On February 8, 2006, the Department issued quantity and value ("Q&V") questionnaires to each PRC company

<sup>1</sup> The petitioner includes Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company.

<sup>2</sup> These companies are: China First Pencil Company, Ltd. ("CFP"), Shanghai Three Star Stationery Industry Corp. ("Three Star"), and Tianjin Custom Wood Processing Co., Ltd. ("TCW").

<sup>3</sup> CFP, Three Star, Dixon, and SFTC filed submissions dated December 31, 2005, requesting a review, in accordance with 19 CFR 351.213(b). However, because the Department was closed on December 31, 2005, the Department accepted these submissions for filing on January 3, 2006, the next business day.

listed in the *Initiation Notice*.<sup>4</sup> These questionnaires requested the quantity and value for the identified companies that produced and/or exported certain cased pencils from the PRC. On February 14, 2006, SFTC timely withdrew its review request in accordance with 19 CFR 351.213(d)(1).

In response to the Department's Q&V questionnaire, the following companies responded on February 22, 2006, that they exported subject merchandise to the United States during the period of review ("POR"): (1) CFP; (2) Three Star; (3) Dixon; and (4) Rongxin. TCW indicated that it had no exports, sales or entries of subject merchandise to the United States during the POR.

On March 10, 2006, we met with counsel for CFP, Three Star, and Dixon, at its request, to discuss respondent selection in this administrative review (see Memorandum to the File, entitled *Ex-Parte Meeting with Counsel for Beijing Dixon Stationary Company Ltd., China First Pencil Company, et al.*, dated March 10, 2006).

Because it was not practicable for the Department to individually examine all of the companies covered by the review, the Department limited its examination for these preliminary results to the largest producers/exporters that could reasonably be examined, accounting for the greatest possible export volume, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended ("the Act"). Therefore, the Department selected CFP and Three Star as the mandatory respondents in this review and designated Dixon and Rongxin as Section A respondents. See Memorandum From Irene Darzenta Tzafolias, Acting Office Director, to Stephen Claeys, Deputy Assistant Secretary, entitled *Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Selection of Respondents*, dated March 23, 2006. Accordingly, on March 23, 2006, we issued the full antidumping duty questionnaire to CFP and Three Star and only Section A of the questionnaire to Dixon and Rongxin.

On July 19, 2006, we placed on the record of this segment of the proceeding

documentation submitted by CFP and Three Star in prior segments for purposes of examining whether these companies should be collapsed in this review. See Memorandum to the File from Brian C. Smith, Team Leader, entitled *2004-2005 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China: Placement of Additional Documents on the Record of This Review*, dated July 19, 2006.

On August 9, 2006, we extended the time limit for the preliminary results in this review until December 1, 2006. See *Certain Cased Pencils From the People's Republic of China: Notice of Extension of Time Limit for 2004-2005 Administrative Review*, 71 FR 45519 (August 9, 2006).

On August 10, 2006, in accordance with section 751(a)(3)(A) of the Act, the Department rescinded this review with respect to SFTC because it withdrew its request for a review in a timely manner. The Department also rescinded this review with respect to TCW because it did not have shipments of subject merchandise to the United States during the POR. See *Certain Cased Pencils From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 47169 (August 16, 2006).

The Department is conducting this administrative review in accordance with section 751 of the Act.

#### Mandatory Respondents

On March 23, 2006, the Department issued the full antidumping duty questionnaire to CFP and Three Star. On April 20 and 25, 2006, CFP and Three Star submitted their section A questionnaire response ("section A response"). On May 15, 2006, CFP and Three Star submitted their sections C and D questionnaire responses ("sections C and D responses").

On June 1, 2006, the Department issued CFP and Three Star a section A supplemental questionnaire and they submitted their response on June 29, 2006 ("supplemental section A response"). On June 19, 2006, the Department issued CFP and Three Star a section C supplemental questionnaire and they submitted their response on July 11, 2006. On July 11, 2006, the Department issued CFP and Three Star a section D supplemental questionnaire and CFP and Three Star submitted their response on August 30 and September 6, 2006, respectively. On October 20 and 24, 2006, the Department issued CFP and Three Star additional section D supplemental questionnaires and they submitted their responses on October 31, 2006.

On November 29, 2006, Three Star submitted information per the Department's request. On December 1, 2006, the Department issued CFP and Three Star a supplemental questionnaire for purposes of clarifying certain items in their response. As the due date for submitting their response to this questionnaire is after these preliminary results, the Department will consider CFP's and Three Star's response to this supplemental questionnaire for the final results.

#### Section A Respondents

On March 23, 2006, the Department issued the section A questionnaire to Dixon and Rongxin. Rongxin and Dixon submitted their section A questionnaire responses on April 14 and 26, 2006, respectively.

On May 3, 2006, the Department issued Rongxin a section A supplemental questionnaire, to which it responded on May 24, 2006. On May 16, 2006, the Department issued Dixon a section A supplemental questionnaire, to which it responded on June 9, 2006.

#### Surrogate Country and Factors

On February 9, 2006, the Department identified five countries, including India, that are comparable to the PRC in terms of overall economic development to use as surrogates in this review for purposes of valuing factors of production (see Memorandum from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta-Tzafolias, Acting Office Director, Office 2, dated February 9, 2006). On May 17, 2006, the Department solicited comments on surrogate country selection from interested parties. The Department received no comments from the interested parties. See the "Normal Value" section below for further detail.

On July 7, 2006, the Department received surrogate-value information from the petitioner. On November 6, 2006, CFP and Three Star submitted surrogate-value information. Because CFP's and Three Star's surrogate-value information was submitted four months past the original deadline (i.e., July 7, 2006), we did not consider it for purposes of these preliminary results. However, we will consider CFP's and Three Star's surrogate-value information for purposes of the final results. For a detailed discussion of the Department's selection of surrogate values and financial ratios, see "Factor Valuations" section below. See also Memorandum from the Team to the File, entitled *2004-2005 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China - Factors Valuation*

<sup>4</sup> In two prior administrative reviews of this antidumping duty order, the Department collapsed CFP with Three Star. See *Certain Cased Pencils From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005), and accompanying Issues and Decision Memorandum at Comment 1; and *Certain Cased Pencils From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 7 ("PRC Pencils 2003-2004 AR").

For the Preliminary Results ("Factor Valuation Memorandum"), dated December 1, 2006, which is on file in Central Records Unit ("CRU") in Room B-099 of the main Department building.

### Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### Affiliation - CFP and Three Star

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a

finding.<sup>5</sup> For the reasons discussed below, we find that this condition has not prevented us from examining in this administrative review whether CFP and its subsidiary producers<sup>6</sup> are affiliated with Three Star.

In prior administrative reviews involving CFP and Three Star, the Department found CFP to be affiliated with Three Star as a result of Shanghai Light Industry, Ltd.'s ("SLI") direct oversight and control over both CFP and Three Star.<sup>7</sup>

In this review, CFP and Three Star claim that they are no longer affiliated and should not be collapsed because SLI no longer has oversight of their operations. In addition, CFP and Three Star maintain that the Department has no basis to collapse them because SLI transferred the shares it held in trust for CFP to the Huangpu District State Assets Administration Office ("HSAO") on October 11, 2005, and SLI transferred oversight of the assets it held in trust for Three Star to the HSAO on September 8, 2005.<sup>8</sup> In this review, the Department has examined whether CFP and its pencil-producing subsidiaries are still affiliated with Three Star for purposes of determining whether they should be collapsed in this review. For further discussion on this matter, see Memorandum From Team to James P. Maeder, Jr., Office Director, entitled *Certain Cased Pencils from the People's Republic of China: Whether to Continue To Collapse CFP and its Pencil-Producing Subsidiaries with Three Star*, dated December 1, 2006 ("Affiliation/Collapsing Memo").

Based on our analysis, we preliminarily find that during this POR, CFP and its pencil-producing subsidiaries were still affiliated with Three Star through the common control by SLI, pursuant to section 771(33)(F) and (G) of the Act. As for CFP's and Three Star's claim that SLI transferred the shares and/or oversight of assets it held in trust for both companies, the evidence indicates that these alleged events took place at the end of this POR.

<sup>5</sup> See, e.g., *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64934 (November 6, 2006), and *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review*, 70 FR 10965, 10969 (March 7, 2005).

<sup>6</sup> CFP's pencil-producing subsidiaries include the following companies: Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Fang Zheng Co. Ltd.

<sup>7</sup> See, e.g., *PRC Pencils 2003-2004 AR*, 71 FR 38366, and accompanying *Issues and Decision Memorandum* at Comment 7.

<sup>8</sup> See page A-5 of CFP's section A response and page A-2 of Three Star's section A response.

Therefore, because SLI continued to hold in trust a significant amount of CFP's sales and has oversight over all of Three Star's assets for the vast majority of the POR, these share and/or asset oversight transfers do not alter our conclusion that CFP, its pencil-producing subsidiaries, and Three Star were affiliated during the POR through common control by SLI. See *Affiliation/Collapsing Memo* for further discussion.

### Collapsing-CFP and Three Star

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. We also note that the rationale for collapsing, to prevent manipulation of price and/or production (see 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (Ct. Int'l. Trade 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, if there is evidence of significant potential for manipulation or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity (see, e.g., *Certain Preserved Mushrooms From the People's*

*Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review*, 70 FR at 10971 (unchanged in final results); and *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635, 54637 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 1). We also note that the rationale for collapsing, to prevent manipulation of price and/or production (see 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter.

As noted above in the "Affiliation - CFP and Three Star" section of this notice, we find a sufficient basis to conclude that CFP and its pencil-producing subsidiaries and Three Star are affiliated through the common control by SLI pursuant to section 771(33)(F) and (G) of the Act. All of CFP's three pencil-producing subsidiaries and Three Star produced cased pencils during the POR, which would be subject to the antidumping duty order if this merchandise entered the United States (see factors of production data submitted by CFP and Three Star in their section D responses). Therefore, we find that the first and second collapsing criteria are met because these producers have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities.

Finally, we find that the third collapsing criterion is met in this case because a significant potential for manipulation of price or production exists among CFP and Three Star. See *Affiliation/Collapsing Memo* for further discussion. Therefore, based on the reasons mentioned in the *Affiliation/Collapsing Memo* and the guidance of 19 CFR 351.401(f), we have preliminarily collapsed CFP, its pencil-producing subsidiaries, and Three Star because there is a significant potential for manipulation of production and/or sales decisions among these parties. Consequently, we have considered CFP, its pencil-producing subsidiaries, and Three Star as a single entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate. This decision is specific to the facts presented in this review and is based on several

considerations, including the structure of the collapsed entity, the level of control between/among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding (see "Separate-Rates Determination" section below for further discussion).

#### Separate-Rates Determination

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (i.e., a country-wide rate). One respondent in this review, Dixon, is wholly owned by a company located outside the PRC. Therefore, an additional separate-rates analysis is not necessary to determine whether Dixon's export activities are independent from government control. See e.g., *Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 54021, 54024 (September 13, 2006), citing *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (the Department determined that the respondent wholly owned by persons located in Hong Kong qualifies for a separate rate).

The other Section A respondent, Rongxin, is a limited liability company. The mandatory respondents, CFP and Three Star, are a joint stock limited company and a company "owned by all of the people," respectively. However, CFP's shares are held in trust in part by SLI, which is also owned by "all of the people." Moreover, SLI, as trustee, has oversight over Three Star's assets. As discussed above in the "Collapsing-CFP and Three Star" section of this notice, we have preliminarily considered CFP and Three Star as a collapsed entity.

To establish whether a respondent is sufficiently independent from government control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), at Comment 1, and amplified in the *Final Determination of Sales at Less Than*

*Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. Thus, a separate-rates analysis is necessary to determine whether the export activities of Rongxin and the CFP-Three Star collapsed entity are independent from government control.

#### 1. Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See, e.g., *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR at 64935.

The CFP-Three Star collapsed entity and Rongxin have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the 1994 "Foreign Trade Law of the People's Republic of China;" the "Company Law of the PRC," effective as of July 1, 1994; and "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988. In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record of this segment, as well: the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988; and the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises." See December 1, 2006, memorandum to the file which places the above-referenced laws on the record of this segment.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by "all of the people" absent proof on the record to the contrary. See, e.g., *Notice of Final Determination of Sales at Less than Fair*

*Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("Furfuryl Alcohol"), and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995).

## 2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87 and *Furfuryl Alcohol*, 60 FR at 22545.

The affiliates in the CFP–Three Star collapsed entity (where applicable) and Rongxin each has asserted the following: (1) each establishes its own export prices; (2) each negotiates contracts without guidance from any government entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR was not coordinated among exporters. As a result, there is a sufficient basis to preliminarily determine that each respondent listed above (including the CFP–Three Star collapsed entity as a whole) has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have

preliminarily determined that each of these respondents has met the criteria for the application of separate rates. Moreover, with respect to the affiliates included in the CFP–Three Star collapsed entity, we have assigned to all of them the same antidumping rate in these preliminary results for the above-mentioned reasons.

## Fair-Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

## Export Price

In accordance with section 772(a) of the Act, the Department calculated EPs for sales by the CFP–Three Star collapsed entity to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation, and constructed export price methodology was not otherwise indicated. In accordance with 19 CFR 351.401(c), we made deductions from the net sales price for foreign inland freight and foreign brokerage and handling for all U.S. sales. Each of these services was provided by an NME vendor and, thus, as explained in the "Normal Value" section below, we based the amounts of the deductions for these movement charges on values from a surrogate country.

Where appropriate for certain sales, we also made deductions from the net sales price for international freight and marine insurance in accordance with 19 CFR 351.401(c). For international freight (*i.e.*, ocean freight), we used the reported expenses because the respondent used a market–economy freight carrier and paid for those expenses in a market–economy currency. However, because the respondent used a non–market economy service provider for marine insurance, we valued this expense based on a publicly available price quote from a marine insurance provider obtained from <http://www.rjgconsultants.com/insurance.html>.

For the reasons stated in the "Normal Value" section below, we selected India as the primary surrogate country. To value brokerage and handling, the Department used an average of the publicly summarized data from the following two sources, which we have placed on the record of this review: (1)

data reported in the U.S. sales listing in the February 28, 2005, submission from Essar Steel Ltd. in the antidumping duty administrative review of Certain Hot–Rolled Carbon Steel Flat Products from India, A–533–820 (covering December 2003 – November 2004); and (2) data reported in Pidilite Industries' March 9, 2004, public version response submitted in the antidumping duty investigation of Carbazole Violet Pigment 23 from India, A–533–838 (covering the period November 2002 – September 2003). We identify the source used to value foreign inland freight in the "Normal Value" section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices ("WPI") for India as published in the *International Financial Statistics Online Service* maintained by the Statistics Department of the International Monetary Fund at the website <http://www.imfstatistics.org> ("IFS").

## Normal Value

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

The Department will base NV on FOPs because the presence of government controls on various aspects of these NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, and packing.

In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOPs in one or more market–economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. We determined that India is comparable to the PRC in terms of *per capita* gross national product and the

national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. See *Memorandum from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta-Tzafolias, Acting Office Director, Office 2*, dated February 9, 2006, regarding potential surrogate countries, which is available in the CRU - Public File.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy country and pays for it in market-economy currency, the Department will normally value the factor using the actual price paid for the input. See 19 CFR 351.408(c)(1); see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). Where a portion of the input is purchased from a market-economy supplier and the remainder from an NME supplier, the Department will normally use the price paid for the inputs sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy inputs as a share of total purchases from all sources is "meaningful." See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295, 27366 (May 19, 1997); *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001). See also 19 CFR 351.408(c)(1).

With regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies, and it is reasonable to infer that exports to all markets from these countries may be subsidized. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in final results); and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. App. 183 (Fed. Cir. 2004).

We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590-91 (1988), *reprinted* in 1988 U.S.C.C.A.N. 1547, 1623. Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. See *Factor Valuation Memorandum*.

#### Factor Valuations

Section 773(c)(3) of the Act states that "the factors of production utilized in producing merchandise include, but are not limited to the quantities of raw materials employed." Therefore, the Department is required under the Act to value all inputs. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor, using the WPI for the appropriate surrogate country as published in the IFS.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). We valued the FOPs as follows:

- (1) Except where noted below, we valued all reported material, energy, and packing inputs using Indian import data from the World Trade Atlas ("WTA") for December 2004 through November 2005, in

accordance with the Department's established practice in this case (see *e.g.*, *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76759 (December 28, 2005) ("*Prelim PRC Pencils 2003-2004 AR*") (unchanged in the final results).

- (2) For tallow, we used inflated Indian import data from the WTA for the period December 2003 through November 2004 because contemporaneous data were not available.
- (3) For ferrules, kaolin clay, pigment, plastic toppers, master cartons, packing boxes, and plastic boxes, we used inflated Indian import data from the WTA for the period December 2002 through November 2003 because contemporaneous data were not available.
- (4) For a certain input (for which the respondent claims proprietary treatment), we used inflated Indian import data from the WTA for the period December 2002 through November 2003 because contemporaneous data were not available.
- (5) To value lindenwood pencil slats, we used publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries.<sup>9</sup> The U.S. lumber prices for basswood are published in the 2006 Hardwood Market Report for the period December 4, 2004, through November 26, 2005.
- (6) The CFP-Three Star collapsed entity reported that meaningful percentages of its purchases of specific inputs were sourced from market-economy countries and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by the CFP-Three Star collapsed entity for these inputs.

<sup>9</sup>In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625, 55632 (November 8, 1994). This methodology was upheld by the Court of International Trade. See *Writing Instrument Manufacturers Association, Pencil Section, et. al. v. United States*, 984 F. Supp. 629, 639 (Ct. Int'l. Trade 1997), *aff'd* 178 F.3d 1311 (Fed. Cir. 1998).

Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. See *Factor Valuation Memorandum* and *Memorandum from the Team to the File*, entitled *Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: China First Pencil Company, Ltd. ("CFP") and Shanghai Three Star Stationery Industry Corp. ("Three Star")* ("Preliminary Calculation Memorandum"), dated December 1, 2006.

- (7) We valued electricity using rates from *Energy Prices and Taxes: Second Quarter 2003*, published by the International Energy Agency. We valued steam coal using the *Teri Energy Data Directory & Yearbook* (2004). We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR.
- (8) We valued steam using January–June 1999 Indian price data from the July 24, 2000 issue of *PR Newswire*. We adjusted this value, as appropriate, to account for inflation between the effective period and the POR.
- (9) We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's website at <http://ia.ita.doc.gov/wages>. The source of this wage rate data is the Yearbook of Labour Statistics 2003, International Labor Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (<http://laborsta.ilo.org>). The years of the reported wage rates range from 1998 to 2003. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.
- (10) We derived ratios for factory overhead, depreciation, and selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2003–2004 ("FY04") financial statement of Camlin Inc. ("Camlin"), an Indian producer of the subject merchandise, in accordance with the Department's practice with respect to selecting financial statements

for use in NME cases (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2. The Department prefers to derive financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable. In prior reviews of this product, the Department derived the surrogate financial ratios from the financial statement of Asia Wood International Corporation ("Asia Wood"), a Filipino producer of wood products (see e.g., *Prelim PRC Pencils 2003–2004 AR*, 70 FR at 76760, unchanged in *PRC Pencils 2003–2004 AR*, 71 FR 38366). However, we determined to use the FY04 financial statement of Camlin for purposes of the preliminary results of this review because: (a) India is our primary surrogate country; (b) Camlin is an Indian producer of the subject merchandise; and (c) Camlin's FY04 data, like Asia Wood's data, is equally contemporaneous with our POR. The copy of Camlin's FY04 financial report that the Department obtained appeared to be missing a few pages. However, we find Camlin's FY04 report to be more reliable and less distortive than Asia Wood's financial data because Asia Wood is not a producer of subject merchandise and is located in the Philippines. Moreover, we were able to obtain the omitted information in Camlin's FY04 financial report from Camlin's 2004–2005 ("FY05") financial report. The FY05 report contained certain relevant portions of Camlin's FY04 data. Taken together, these two financial statements provide complete financial data for Camlin's FY04 period.

Also, in accordance with the Department's current practice, although part of Camlin's FY05 period was contemporaneous with the POR, we did not use Camlin's FY05 financial data in deriving surrogate ratios because Camlin did not realize a profit during its FY05 period (see e.g., *Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 28274 (May 17, 2005), and accompanying *Issues and Decision Memorandum* at Comment 8; and *Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China*, 68 FR 46577 (August 6, 2003), and accompanying *Issues and Decision Memorandum* at Comment 6). Finally, we applied these ratios to the CFP–

Three Star collapsed entity's costs (determined as noted above) for materials, labor, and energy.

- (11) We used truck rates published at <http://www.infreight.com> to value freight services provided to transport: (a) the finished product to the port; and (b) direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We also used, where appropriate, 2003 train rates obtained from [www.Indianrailways.gov](http://www.Indianrailways.gov) and a July 1997 inland water rate published by the Inland Waterways Authority of India.

For further discussion of the surrogate values we used for these preliminary results of review, see the *Factor Valuation Memorandum*, which is on file in the CRU - Public File.

### Currency Conversion

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

### Preliminary Results of Review

We preliminarily determine that the following margins exist for the period December 1, 2004, through November 30, 2005:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd.(which includes its affiliates China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and Shanghai Three Star Stationery Industry Corp.) <sup>10</sup>	1.33
Pany Beijing Dixon Stationary Company, Ltd.	1.33
Shandong Rongxin Import & Export Co., Ltd.	1.33

<sup>10</sup>For this review, we consider China First Pencil Company, Ltd., China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and Shanghai Three Star Stationery Industry Corp. to constitute a single entity.

As stated above in the "Separate–Rates Determination" section of this notice, Dixon and Rongxin both qualify for a separate rate in this review. Moreover, as stated above in the "Background" section of this notice, we limited this review by selecting the largest exporters. As Section A respondents, Dixon and Rongxin will be assigned the weighted-average dumping margin based on the calculated margins of mandatory respondents which are not

*de minimis* or based on adverse facts available, in accordance with Department practice. See e.g., *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160, 9174 (February 28, 1997). Accordingly, we have assigned these two respondents the dumping margin assigned to the CFP-Three Star collapsed entity.

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations it performed for the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

#### Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. For the CFP-Three Star collapsed entity, we have calculated customer-specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these assessment amounts because there is no information on the record which identifies entered values or the importers of record for the CFP-Three Star collapsed entity's reported U.S. sales transactions. For Dixon and Rongxin (*i.e.*, respondents which are

being assigned the margin calculated for the CFP-Three Star collapsed entity), we will instruct CBP to assess antidumping duties on each of these company's entries equal to the margin these companies receive in the final results, regardless of the importer or customer.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment amounts, calculated as described above, on each of the applicable entries during the review period.

#### Cash Deposit Requirements

The following deposit requirements will apply to all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing the preliminary results determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-862]

#### Foundry Coke Products from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

**SUMMARY:** On August 1, 2006, the Department ("the Department") initiated a sunset review of the antidumping duty Order on Foundry Coke Products ("Foundry Coke") from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-year ("Sunset") Reviews*, 71 FR 43443 (August 1, 2006) ("*Sunset Initiation*"); see also *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From the People's Republic of China*, 66 FR 48025 (September 17, 2001) ("*Order*"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and lack of response from respondent interested parties, the Department conducted an expedited sunset review of the Order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations. As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

**EFFECTIVE DATE:** December 7, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Irene Gorelik at (202) 482-6905 or Juanita Chen at (202) 482-1904; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

#### Background

On August 1, 2006, the Department initiated a sunset review of the Order on