

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 16, 2009.

**William D. Chappell,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-30330 Filed 12-21-09; 8:45 am]

**BILLING CODE 3510-22-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

**DATES:** *Effective Date:* December 22, 2009.

**SUMMARY:** The Department of Commerce ("the Department") has preliminarily determined that the respondents in this review, for the period December 1, 2007, through November 30, 2008, have made sales of subject merchandise at less than normal value. 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. The Department intends to issue the final results no later than 120 days from the publication date of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro or Joseph Shuler,

AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0238 and (202) 482-1293, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 28, 1994, the Department published in the **Federal Register** an antidumping duty order on certain cased pencils ("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, 2008, the Department published a notice of opportunity to request an administrative review of this order covering the period December 1, 2007, through November 30, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 9, 2008, in accordance with 19 CFR 351.213(b), Shandong Rongxin Import and Export Co., Ltd. ("Rongxin"), a foreign exporter/producer, requested that the Department review its sales of subject merchandise. On December 31, 2008, the following exporters/producers requested reviews of themselves, in accordance with 19 CFR 351.213(b): China First Pencil Co., Ltd. ("China First"), Shanghai Three Star Stationery Industry Co., Ltd. ("Three Star"), and Orient International Holding Shanghai Foreign Trade Corporation ("SFTC"). On December 31, 2008, the petitioners<sup>1</sup> requested a review of the following companies: China First (including subsidiaries Shanghai First Writing Instrument Co., Ltd. ("Fusite"); Shanghai Great Wall Pencil Co., Ltd. ("Great Wall"); and China First Pencil Fang Zheng Co., Ltd. ("Fang Zheng")); Three Star; Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation ("Guangdong Stationery"); Rongxin; Tianjin Custom Wood Processing Co., Ltd. ("Tianjin Wood"); Beijing Dixon Stationery Company Ltd. ("Dixon"); and Anhui Import & Export Co., Ltd. ("Anhui I&E").

On February 2, 2009, the Department published a notice of initiation for this administrative review covering the companies listed in the requests received from the interested parties

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

named above. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). On July 14, 2009, we extended the time limit for the preliminary results in this review until December 15, 2009. See *Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 36164 (July 22, 2009).

#### Scope of the Order

Imports covered by the 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.

#### Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known

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

On February 5, 2009, the Department released CBP data showing entries of the subject merchandise during the period of review ("POR") under administrative protective order ("APO") to all interested parties having an APO, and invited comments regarding the CBP data and respondent selection. The Department did not receive comments from any interested parties. On February 25, 2009, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters. See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Yasmin Nair, International Trade Compliance Analyst, AD/CVD Operations, Office 1, "Selection of Respondents for the Antidumping Duty Review of Certain Cased Pencils from the People's Republic of China," February 25, 2009. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected China First and Three Star as mandatory respondents.

The Department issued antidumping duty questionnaires to China First and Three Star on February 26, 2009. China First submitted the Section A Questionnaire Response on April 9, 2009, the Section C Questionnaire Response on April 27, 2009, and the Section D Questionnaire Response on May 12, 2009. Three Star submitted the Section A Questionnaire Response on April 9, 2009, the Section C Questionnaire Response on April 27, 2009, and the Section D Questionnaire Response on May 13, 2009. The Department issued supplemental questionnaires to China First and Three Star between July 2009 and November 2009. Both companies timely filed their responses to those supplemental questionnaires.

#### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Brake Rotors From the People's Republic of China: Final Results and Partial*

*Rescission of the 2004–2005 Administrative Review and Notice of Rescission of 2004–2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country and Surrogate Values

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's factors of production ("FOPs"), to the extent possible, valued in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined that India, Indonesia, the Philippines, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Susan H. Kuhbach, Director, Office 1, March 27, 2009. On July 29, 2009, the Department invited the interested parties to comment on surrogate country selection and surrogate value data. See the Department's Letter to All Interested Parties, "Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Request for Comments on Surrogate Country and Surrogate Value Selection," July 29, 2009. No parties provided comments with respect to selection of a surrogate country or surrogate values.

As explained above, we determined that India is comparable to the PRC. Furthermore, India is a significant producer of comparable merchandise. See Memorandum from Alexander Montoro to the File, "2007–2008 Antidumping Duty Administrative Review on Certain Cased Pencils from the People's Republic of China: Selection of a Surrogate Country," December 15, 2009. Finally, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. In this instance, India has publicly available, reliable data. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, March 1, 2004.

Therefore, because India is at a comparable level of economic development to the PRC, is a significant producer of comparable merchandise, and has publicly available and reliable data, we have selected India as the primary surrogate country for this review. The Department notes that India has been the primary surrogate country in past segments of this case.

#### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(c) of the Act. Accordingly, 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). See, e.g., Department Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, April 5, 2005; see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) ("Diamond Sawblades").

It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. See, e.g., *Diamond Sawblades*, 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) ("Silicon Carbide"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to

determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

In addition to the two mandatory respondents, the Department received separate rate applications or certifications from the following three companies: Dixon, Rongxin, and SFTC. The three remaining respondents for which a review was requested did not submit either a separate-rate application or certification. Consequently, Guangdong Stationery, Tianjin Wood, and Anhui I&E have not satisfied the criteria for separate rates for the POR and are considered as being part of the PRC-wide entity.

In its separate rate application, Dixon reported that it is owned wholly by an entity located and registered in an ME country (*i.e.*, the United States). Thus, because we have no evidence indicating that Dixon is under the control of the PRC government, a separate-rate analysis is not necessary to determine whether it is independent from government control, and we determine Dixon has met the criteria for the application of a separate rate. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 29080, 29081 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001) (where the respondent was wholly owned by a company located in Hong Kong), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001); and *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) (where the respondent was wholly owned by persons located in Hong Kong).

### Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with 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 Sparklers*, 56 FR at 20589. The evidence provided by China First, Three Star, Rongxin, and SFTC supports a preliminary finding of *de jure* absence of government control.

China First and Three Star have placed on the administrative record a copy of their business licenses. China First additionally submitted a copy of its articles of association on the record of this administrative review. None of these documents contain restrictions with respect to export activities.

In their respective separate rates certifications, SFTC and Rongxin certified that during the POR: (1) As with the segment of the proceeding in which the firm was previously granted a separate rate ("previous Granting Period"), there were no government laws or regulations that controlled the firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by any level of government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; and (5) PRC government laws and legislative enactments applicable to SFTC and Rongxin remained the same as in the previous Granting Period. SFTC attached copies of its business license and foreign trade operator registration form to its separate rate certification to document the absence of *de jure* government control. Rongxin attached copies of its business license to its separate rate certification to document the absence of *de jure* government control.

In prior cases, we have found an absence of *de jure* control 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*"). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we determine that the evidence on the record supports a preliminary finding of absence of *de jure* government control for China First, Three Star, SFTC, and Rongxin.

### 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.

China First and Three Star have 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 China First (and its affiliates) and Three Star have demonstrated a *de facto* absence of government control of their export functions and they are both entitled to separate rates.

The Department also conducted a separate rates analysis for SFTC and

Rongxin. SFTC certified the following: (1) There was no government participation in setting export prices; (2) the firm had independent authority to negotiate and sign export contracts; (3) the firm had autonomy from all levels of government in making decisions regarding the selection of management; (4) SFTC did not submit the names of its candidates for managerial positions to any governmental entity for approval; and (5) there were no restrictions on the use of export revenue. In our analysis of the information on the record, we found no information indicating the existence of government control of SFTC's export activities. See SFTC's submission of March 4, 2009. Consequently, we preliminarily determine that SFTC has met the criteria for the application of a separate rate.

*Rongxin certified the following:* (1) The 10 largest shareholders of the firm and all of their shareholders had no significant relationship with a PRC state asset management company or the PRC national government or its ministries/agencies; (2) there was no government participation in setting export prices; (3) the firm had independent authority to negotiate and sign export contracts; (4) the firm had autonomy from all levels of government in making decisions regarding the selection of management; (5) Rongxin did not submit the names of its candidates for managerial positions to any governmental entity for approval; and (6) there were no restrictions on the use of export revenue. In our analysis of the information on the record, we found no information indicating the existence of government control of Rongxin's export activities. See Rongxin's submission of March 4, 2009. Consequently, we preliminarily determine that Rongxin has met the criteria for the application of a separate rate.

#### **Application of Facts Available to China First**

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record, or if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information in a timely matter or in the form or manner requested subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts

otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

In calculating freight costs for certain FOPs, we are limited to the lesser of the weighted average actual distance between the supplier and the respondent, or the distance between the respondent and the port. See *Sigma Corporation v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997) (“*Sigma*”). In its May 12, 2009, Section D Questionnaire Response, China First reported that six facilities were engaged in the production of subject merchandise. In its response, China First provided the distance between the facility and the closest port for two of these factories, Great Wall and China First. See Section C Questionnaire Response at 18. It did not provide the distance to the port for Fusite, Shanghai Glamor Chemistry Co., Ltd. (“Glamor”), China First Pencil Huadian Co., Ltd. (“Huadian”), and Fang Zheng. At page 18 of the April 9, 2009 Section A Questionnaire Response, China First reported the locations of these all six of its facilities, including the four for which we do not have reported distances. Three of these facilities are located in the same cities as the Great

Wall and China First factories. Therefore, for these three facilities, we are assigning the same distance to port as was reported by China First for the Great Wall and China First factories. For the remaining facility, we are relying on the greater distance (as reported for the Great Wall factory) as the distance to port for purposes of calculating supplier distance for these FOPs. We intend to issue a supplemental questionnaire following these preliminary results to solicit specific information about the distances to port for these facilities. See Memorandum from Joseph Shuler, Analyst, Office 1, to the File, “Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: China First Pencil Company, Ltd, December 15, 2009 (“China First Preliminary Calculation Memorandum”).

Additionally, for certain factors of production, China First reported the distances, but we are unable to calculate a weighted-average distance because of differences in the reported units. Therefore, for these factors, we are using a simple average of the reported distances. See China First Preliminary Calculation Memorandum.

#### **Fair-Value Comparisons**

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the NV to individual export price (“EP”) transactions in accordance with section 777A(d)(2) of the Act. See “Export Price” and “Normal Value” sections of this notice, below.

#### **Export Price**

In accordance with section 772(a) of the Act, EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EPs for sales by China First and Three Star to the United States because the first sale to an unaffiliated party was made before the date of importation, and constructed export price methodology was not otherwise indicated. We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate.

For China First, movement expenses included expenses for foreign inland freight and foreign brokerage and handling.

For Three Star, movement expenses included expenses for foreign inland freight, foreign brokerage and handling, where applicable, and international freight, where applicable. Certain of these services were provided by an NME vendor and thus, for the reasons explained in the section below, we based the amounts of the deductions for those movement charges on values from a surrogate country.

For a detailed description of all adjustments, see China First Preliminary Calculation Memorandum; and Memorandum from Alexander Montoro, Analyst, Office 1, to the File, "Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Shanghai Three Star Stationery Industry Co., Ltd.," December 15, 2009.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. We calculated the inflation or deflation adjustments for those values using the wholesale price indices ("WPI") for India as published in the *International Financial Statistics* ("IFS") Online Service maintained by the Statistics Department of the International Monetary Fund at the Web site <http://www.imfstatistics.org>. See Memorandum from Alexander Montoro to File, "Factor Valuation for the Preliminary Results Memorandum," December 15, 2009 ("Factor Valuation Memorandum").

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a 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 where the presence of government

controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal ME 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 the respondents for materials, energy, labor, and packing.

#### Factor Valuations

In accordance with section 773(c)(3) of the Act, we calculated NV based on FOPs reported by the respondents for the POR. 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 contemporaneousness 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, except labor and utilities, using the India WPI as published in the IFS.

When relying on prices of imports into India as surrogate 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 Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies. Accordingly, it is reasonable to infer that exports to all markets from those 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), results unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006);

and *China Nat'l Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004).

In avoiding the use of prices that may be subsidized, the Department does not 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 relies on information that is generally available at the time of its determination. Therefore, we have not used prices from those countries in calculating the Indian import-based surrogate values. See Factor Valuation Memorandum.

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. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma*.

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 for December 2007 through November 2008.

(2) 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>2</sup> The U.S. lumber prices for basswood for the period December 1, 2006, through November 30, 2007 are published in the Hardwood Market Report. We adjusted this value, to account for inflation between the effective period and the POR. For further discussion, see Factor Valuation Memorandum. We received additional factors valuation information from China First regarding slats processing. See China First's Third

<sup>2</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 Mfrs. Ass'n, 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).

Supplemental Questionnaire Response, December 4, 2009. Because these factors are already accounted for in the pencil slats surrogate value, we are not incorporating them in the calculation methodology to avoid double-counting. This is consistent with the methodology used to value pencil slats in previous administrative reviews.

(3) We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. Those electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. See Factor Valuation Memorandum.

(4) We calculated the surrogate value for steam based upon the April 2007–March 2008 financial statement of Hindalco Industries Limited. See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 74 FR 10545 (March 11, 2009), and accompanying Issues and Decision Memorandum at Comment 4. See Factor Valuation Memorandum.

(5) For China First, we valued steam coal using data obtained for grade D non-long flame non-coking coal reported on the 2007 Coal India Data Web site. For Three Star, we valued steam coal using data obtained for grade B for non-long flame non-coking coal reported on the 2007 Coal India Data Web site. See Factor Valuation Memorandum.

(6) Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, we valued labor using the regression-based wage rate for the PRC published on Import Administration's Web site. The source of the wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. See *2009 Calculation of Expected Non-Market Economy Wages*, 74 FR 65092 (December 9, 2009), and see also *Expected Wages of Selected NME Countries* (revised October 2009) (available at <http://ia.ita.doc.gov/wages/index.html>) and Factor Valuation Memorandum. Since 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.

(7) We derived ratios for factory overhead, depreciation, and selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2006–2007 financial statement of Triveni Pencils Ltd. ("Triveni"), an Indian producer of pencils, 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 is not distorted or otherwise unreliable. Reliance upon Triveni's financial statements is consistent with the 2006–2007 administrative review.

(8) We valued inland truck freight expenses using a per-unit average rate calculated from data on the following publicly accessible Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since the truck rate value is based on an annual per-unit rate and falls within the POR (August 2008 through July 2009), we are treating the derived average rate as contemporaneous. For rail freight, we used 2006–2007 data from the publicly accessible Web site [www.Indianrailways.gov.in/](http://www.Indianrailways.gov.in/) to derive, where appropriate, input-specific train rates on a rupees-per-kilogram per-kilometer basis ("Rs/kg/km"). Since the effective period for this rate falls within the POR, we have not inflated this rate.

(9) For any sale with reported international freight, we used a surrogate international freight value from [www.maerskline.com](http://www.maerskline.com). See Factor Valuation Memorandum.

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 Central Records Unit ("CRU") in Room 1117 of the main Department of Commerce building.

**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, 2007, through November 30, 2008:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd. (which includes subsidiaries Shanghai First Writing Instrument Co., Ltd.; Shanghai Great Wall Pencil Co., Ltd.; and China First Pencil Fang Zheng Co., Ltd.) .....	13.86
Shanghai Three Star Stationery Industry Co., Ltd. ..	62.06
Beijing Dixon Stationery Company Ltd. ....	37.96
Orient International Holding Shanghai Foreign Trade Corporation .....	37.96
Shandong Rongxin Import and Export Co., Ltd. ....	37.96
PRC-wide Entity <sup>3</sup> .....	114.90

As stated above in the "Separate-Rates Determination" section of this notice, Dixon, Rongxin, and SFTC qualify for a separate rate in this review. Moreover as stated above in the "Respondent Selection" section of this notice, we limited this review by selecting the largest exporters and did not select Dixon, Rongxin, and SFTC as mandatory respondents. Therefore, Dixon, Rongxin, and SFTC are being assigned dumping margins based on the calculated margins of mandatory respondents, in accordance with Department practice. Accordingly, we have assigned Dixon, Rongxin, and SFTC the simple-average of the dumping margins assigned to China First and Three Star.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable

<sup>3</sup> The PRC-wide entity includes Guangdong Stationery, Tianjin Wood, and Anhui I&E.

deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

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) no later than 30 days after publication of these preliminary results of review, 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 compact disk containing the public version of those comments. We will issue a memorandum identifying the date and time of a hearing, if one is requested.

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, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of this administration review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review.

China First and Three Star did not report entered values for their U.S. sales. Therefore, we calculated a per-unit assessment rate for each importer (or customer) by dividing the total

dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)—specific *ad valorem* ratios based on the estimated entered value. Where an importer-specific (or customer-specific) rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to liquidate that importer's (or customer's) entries of subject merchandise without regard to antidumping duties.

As noted above, Dixon, Rongxin, and SFTC qualified for separate-rate status, and will be assigned the simple-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. We will instruct CBP to assess antidumping duties on those companies' entries equal to the margins those companies receive in the final results, regardless of the importer or customer.

As explained above, the three remaining companies covered by this review, Guangdong Stationery, Tianjin Wood, and Anhui I&E, did not provide separate rate information. As a result, those three companies will be considered part of the PRC-wide entity, and their entries will be subject to the PRC-wide rate.

#### Cash Deposit Requirements

The following cash-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 further notice.

#### 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 15, 2009.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9-30410 Filed 12-21-09; 8:45 am]

BILLING CODE 3510-DS-P

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## CONSUMER PRODUCT SAFETY COMMISSION

### Establishment of a Public Consumer Product Safety Incident Database: Notice of Public Workshop

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Consumer Product Safety Commission ("Commission" or "CPSC") is announcing a two day staff-conducted public workshop to receive views from all interested parties on establishing a public consumer product safety incident database. The workshop, to be held on January 11 and 12, 2010 in Bethesda, Maryland, seeks input from stakeholders on five aspects of the public database: Data analysis and reporting; reports of harm; manufacturer notification and response; additional database content, and materially inaccurate information. Participation by members of the public is invited.

**DATES:** The workshop will be held from 9 a.m. to 4 p.m. on January 11 and 12, 2010, with a one hour break for lunch. Requests to make oral presentations and the written text of any oral presentation must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard time (EST) on January 4, 2010.