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Beverly L. Milkman,

Executive Director.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-827]

Certain Cased Pencils From the People's Republic of China: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: On January 26, 1998, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China covering the period December 1, 1996 through November 30, 1997.

We are now rescinding this review in part with respect to respondents who had no shipments of the subject merchandise during the period of review. We are basing our preliminary results on "facts available" for those companies that did not respond to our questionnaire. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries during the period.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Dulberger or Wendy Frankel, Antidumping/Countervailing Duty Enforcement Group II, Office Four, Import Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-5505 and 482-5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to the regulations set forth at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Period of Review

The period of review (POR) is December 1, 1996 through November 30, 1997.

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension 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 this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

On December 28, 1994, we published an antidumping duty order (see *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994)) (*Pencils Order*) which stated that imports of the two producer/exporter combinations identified in the less-than-fair-value (LTFV) investigation had margins of zero. We stated in the *Pencils Order* that we would exclude from the order imports of subject merchandise that are sold by China First Pencil Company, Ltd. (China First) or Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong) "and manufactured by the producers whose

factors formed the basis for the zero margin" (59 FR at 66910). Those exporter/producer combinations were identified in the order as: (1) China First/China First, and (2) Guangdong/Shanghai Three Star Stationery Industry Corporation (Three Star).

In response to our notice of opportunity to request administrative review for this third POR, the petitioner, the Writing Instrument Manufacturers Association, Pencil Section (WIMA), requested, by letter dated December 29, 1997, that the Department conduct an administrative review of China First, Guangdong, Three Star, and others. (See Letter from WIMA to the Department, December 29, 1997 (WIMA Request Letter) at 2).

On January 26, 1998, the Department published a notice of initiation of an administrative review of China First, Guangdong, Three Star, and 38 other potential producers/exporters named by the petitioner in its review request (63 FR 3702). On February 13, 1998, we sent a questionnaire to each of the companies for which the petitioner requested a review, including China First, Guangdong, and Three Star. We also sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation requesting its assistance in transmitting the questionnaire to companies for which we lacked complete addresses. Several of the questionnaires were returned to the Department by the carrier service as undeliverable due to incorrect or insufficient addresses. After soliciting assistance from the U.S. Embassy in Beijing, we re-sent those questionnaires in April and May 1998 to the proper addresses.

With respect to China First, pencils both produced and exported by China First were originally excluded from this order. See *Pencils Order* at 66910. However, pursuant to litigation brought to challenge the Department's final determination in the original investigation (*Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625 (November 8, 1994) (*Pencils Final Determination*)), the Department issued a remand determination which was subsequently affirmed by the U.S. Court of International Trade (CIT). See *Writing Instrument Manufacturers Ass'n Pencil Section, et al., v. United States*, 984 F. Supp. 629 (CIT 1997) (*Writing Instrument Manufacturers*). In this remand determination, the Department determined, among other things, that merchandise exported and produced by China First is, in fact, covered by the order. On November 13, 1997, the CIT

affirmed the Department's remand determination. On December 11, 1997, the Department published its notice of court decision. See *Notice of Court Decision: Certain Cased Pencils from the People's Republic of China*, 62 FR 65243 (December 11, 1997) (*Notice of Court Decision*).¹

On March 13, 1998, China First and Guangdong responded to the Department's February 13, 1998 questionnaire. Guangdong stated that it had "sold no subject merchandise to the United States" during the POR. See Letter from Guangdong to the Department (March 13, 1998) at 2. China First stated that it had "sold no subject merchandise manufactured by any other producer to the United States," (i.e., a producer other than China First), during the POR. See Letter from China First to the Department (March 13, 1998) (China First Letter) at 4. At the same time, China First and Guangdong requested that the Department terminate its review of these companies, arguing that they were excluded from the antidumping duty order. See Letter from Guangdong to the Department (March 13, 1998) and Letter from China First to the Department (March 13, 1998). We received no comment on the respondents' request from the petitioner.

After due consideration, we decided that it was appropriate to continue our review of China First and Guangdong, concerning producers other than those specified in the order as excluded

¹ In its *Notice of Court Decision*, the Department stated:

On November 13, 1997, the CIT affirmed the Department's remand determination. In its decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a (e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending "conclusive" court decision. The CIT's decision in *Writing Instrument Manufacturers* on November 13, 1997, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement. Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until a "conclusive" court decision. In addition, pursuant to the affirmed remand results, China First is no longer excluded from the antidumping duty order issued in this case (*Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994)). Therefore, liquidation shall be suspended on entries, or withdrawals from warehouse, for consumption of the subject merchandise from China First effective ten days from the date of the decision in *Writing Instrument Manufacturers*. Absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final LTFV determination and the antidumping duty order on certain cased pencils from the PRC to reflect the Department's remand results.

exporter/producer combinations, in accordance with our practice in previous reviews of this order. See *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 62 FR 46945, 46946 (September 5, 1997).

We note that China First also stated in its March 13, 1998 letter that it made no entries of China First-produced merchandise between November 23, 1997 and November 30, 1997. See China First Letter at 3. As we stated in our *Notice of Court Decision*, we instructed the U.S. Customs Service (Customs) to commence suspension of liquidation of any such merchandise effective November 23, 1997 pending issuance of a final and conclusive court decision on this matter. When there is a final and conclusive court decision, the Department will publish an amended final determination and an amended antidumping duty order, as appropriate. Because the Department has not yet published an amended order with respect to entries of merchandise both produced and exported by China First, the Department currently lacks authority to conduct an administrative review of any such entries.

On April 14, 1998, we sent a questionnaire to Jinan Pencil Factory (Jinan), a company named in WIMA's request (see WIMA Request Letter), setting original deadlines of May 8, 1998 for its Section A questionnaire response and May 29, 1998 for the remainder of its response. Jinan later requested, and we granted, several extensions of the deadline for submitting its response; ultimately, we granted Jinan an extension to June 30, 1998 for submitting its entire response. We granted these requests for extensions of the response deadlines in an attempt to accommodate Jinan, because of the communication complications we encountered with Jinan and its status as a first-time, *pro se* respondent, among other factors. (See Memorandum from Pencils Team Analyst to Holly A. Kuga, Senior Director, AD/CVD Enforcement, Group II, June 9, 1998; see also Letter from Holly A. Kuga, Senior Director, AD/CVD Enforcement, Group II, to Jinan Pencil Factory, June 18, 1998 (June 18, 1998 letter)). We expressly informed Jinan that June 30, 1998 would be its "absolute final deadline," due to the statutory time constraints for issuing these preliminary results of review, delays we had earlier encountered in sending questionnaires to respondents in the PRC, and the previous time extensions granted to Jinan. See June 18, 1998 letter. We also specified that any

information Jinan submitted after that date would be considered untimely and could result in our applying facts available (FA) for the preliminary results of this review for Jinan. *Id.* Because we received no questionnaire response from Jinan, we have determined that we must resort to FA for Jinan pursuant to section 776(a) of the Act. (See "Facts Available" section, below).

Rescission

In response to respondents' assertions of having sold no subject merchandise that entered the United States during the POR, we sought to determine whether, during the POR, China First exported pencils that entered the United States during the POR that were manufactured by producers other than China First, and whether Guangdong exported pencils that entered the United States during the POR that were manufactured by producers other than Three Star.

In order to make our determination, we conducted a query of the Customs database and found no information that contradicted the claim made by respondents that no subject merchandise manufactured by producers other than China First or Three Star was shipped by the exporters China First and Guangdong, respectively, to the United States during the POR. (See Decision Memorandum Regarding Whether China First and Guangdong Should be Considered Non-Shippers in this Review from Case Analyst to Holly Kuga, dated September 1, 1998). Based on this information, we have determined to rescind this review with respect to China First and Guangdong. See 19 CFR 351.213(d)(3).

Facts Available

Section 776(a)(1) of the Act mandates that the Department use FA if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use FA where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In this case, all of the named respondents, other than China First and Guangdong, failed to respond to the Department's questionnaire. Where the Department must base the entire dumping margin for a respondent in an administrative review on FA because that respondent failed to cooperate by

not acting to the best of its ability, section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing FA. Section 776(b) also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. Information from prior segments of a proceeding constitutes secondary information. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870) provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA, at page 870, clarifies that the petition is "secondary information."

As noted above, various exporters, including Jinan, of certain cased pencils from the PRC failed to respond to our questionnaire (see "Background" section of this notice). Therefore, we considered these exporters to have failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information. Therefore, we preliminarily decided to use adverse FA with respect to Jinan and all other non-responding exporters, in accordance with section 776(b) of the Act. See Memorandum from Pencils Team Analyst to Holly A. Kuga, Senior Director, AD/CVD Enforcement, Group II, July 18, 1998 (July 18, 1998 Memorandum) at 3. Further, these exporters, together with all other exporters that have not established they are entitled to a separate rate, are presumed to be under common government control and, therefore, receive a single PRC-wide rate. Consequently, we are basing the PRC-wide rate on adverse FA, in accordance with section 776(b) of the Act.

For the preliminary results of this review, we determine it appropriate to use, as adverse FA, the petition rate (which was the basis for the PRC-wide rate in the LTFV investigation), as amended by our August 1995 remand determination, of 53.65 percent. This is consistent with our decision in the amended final results of the first administrative review and the final results of the second administrative review of this order. See *Certain Cased Pencils From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative*

Review, 62 FR 36491 (July 8, 1997) (*Pencils Amended Final*); see also *Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 779 (January 7, 1998). Further, we determined this rate to be corroborated based on our analysis in the previous segment of the proceeding (see *Pencils Amended Final*, 62 FR at 36492). There is no new information in the record of the instant proceeding to lead us to re-examine this issue.

Accordingly, we are applying a single dumping rate—the PRC-wide rate established in the *Pencils Amended Final*—to all exporters in the PRC, except for China First and Guangdong, as discussed above, and Shanghai Foreign Trade Corporation, an exporter which was previously determined to be entitled to a separate rate and for which the petitioner did not request an administrative review.

The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide Rate	53.65

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice (see section 351.224(b) of the Department's regulations). In accordance with section 351.310(c) of the Department's regulations, any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. See sections 351.309 and 351.310 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We intend to issue assessment instructions to Customs for the exporters subject to this review based on the dumping rate stated above. The Department will issue appraisal instructions directly to Customs. Further, the following deposit

requirements will be effective upon publication of the final results of this administrative review for all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for all Chinese exporters, except for China First, Guangdong, and SFTC, will be the rate established in the final results of this review; (2) for merchandise exported by SFTC, China First (with respect to merchandise produced by anyone other than China First), and Guangdong (with respect to merchandise produced by anyone other than Three Star), the cash deposit rate will continue to be the most recent rate published in the determination or final results for that firm; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of their suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), section 777(i) of the Act (19 U.S.C. section 1677f(i)), and 19 CFR 351.221.

Dated: September 1, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-817]

Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review

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