

DATE: June 28, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2007-2008
Administrative Review of Certain Cased Pencils from the People's
Republic of China

SUMMARY

We have analyzed the case briefs of interested parties in the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"). As a result of our analysis, we have made certain changes in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments by parties:

- Comment 1: Appropriate Labor Rate
- Comment 2: Surrogate Values
 - a. Slats
 - b. Cores
 - c. Lacquer
- Comment 3: Correction of Clerical Errors: Use of Wrong Surrogate Value for Paperboard
- Comment 4: Separate Rate Calculation

BACKGROUND

On December 22, 2009, the Department of Commerce ("Department") published the preliminary results of this review in the Federal Register.¹ The following events occurred after the Department published the Preliminary Results. The Department issued supplemental questionnaires to the mandatory respondent, China First Pencil Co., Ltd. ("China First"), on December 28, 2009 and January 19, 2010, respectively; China First responded on January 11,

¹ See Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 68047 (December 22, 2009) ("Preliminary Results").

2010, and January 20, 2010, respectively. The Department also issued a supplemental questionnaire to Shanghai Three Star Stationery Industry Co., Ltd. (“Three Star”), the other mandatory respondent, on December 22, 2009 and received a response on December 29, 2009. China First and Three Star submitted post-preliminary surrogate value comments on January 12, 2010. On February 11, 2010, Beijing Fila Dixon Stationery Company Ltd. (“Dixon”) submitted a case brief and on February 19, 2010, China First, Three Star and Orient International Holding Shanghai Foreign Trade Co., Ltd. (“SFTC”) submitted a joint case brief.

On June 9, 2010, the Department notified parties that as a result of the recent decision in Dorbest Limited v. United States, No. 2009-1257,-1266 (Fed. Cir. May 14, 2010) (“Dorbest”) issued by the United States Court of Appeals for the Federal Circuit (“CAFC”), the Department would be reconsidering its valuation of the labor wage rate in this review. The Department placed export data on the record of the review and gave parties until June 14, 2010 to comment on the narrow issue of the labor wage value in light of the CAFC’s decision. On June 11, 2010, the Department placed additional export data on the record, and extended the deadline for parties to comment until June 16, 2010. On June 16, 2010, China First, Three Star and SFTC, submitted comments and additional data regarding the wage rate issue. The Department, on June 21, 2010, placed on the record further data regarding the wage rate issue. On June 23, 2010, China First, Three Star, and SFTC objected to the Department’s June 21, 2010 supplementation of the record with additional data regarding the wage rate issue because of expressed concerns regarding the timing of the supplementation relative to the Department’s statutory deadline for publishing final results.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating the dumping margins: (1) we made changes to the surrogate value calculation for China First’s and Three Star’s labor costs; (2) we changed the surrogate value for slats, using slat prices from “Paper and Stationery”² instead of U.S. prices for basswood lumber from “Hardwood Market Report;” (3) we changed the surrogate value for cores, using core prices from “Paper and Stationery” instead of Indian import data from World Trade Atlas (“WTA”); (4) based on China First’s January 12 and 20, 2010 fifth and sixth supplemental questionnaire responses, we adjusted the supplier distances used in calculating freight costs from those used in the Preliminary Results; (5) we made corrections to certain ministerial errors made in the Preliminary Results relating to the paperboard surrogate value. For further details, see “Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: Shanghai Three Star Stationery Industry Co., Ltd.,” “Analysis for the Final Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: China First Pencil Co., Ltd.,” and “2007-2008 Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: Factor Valuation for the Final Results” memoranda, all dated May 28, 2010.

² “Pencil Industry in India – A Robust Future,” Divya Jha, in “Paper & Stationery Samachar” (Delhi November 2008), an Indian trade journal, attached as Exhibit SV-3A to China First and Three Star’s November 20, 2009 Surrogate Value submission (“Paper and Stationery”).

Comment 1: Appropriate Labor Rate

In the Preliminary Results, the Department followed the regression-based methodology described in 19 CFR 351.408(c)(3) to value the labor input for the subject merchandise. Subsequent to the Preliminary Results and to the submission of case briefs in this review, the CAFC found that the regression-based methodology does not comport with the statute because the calculation includes countries that were neither economically comparable to the PRC nor significant producers of comparable merchandise. See Dorbest. As a result of that decision, the Department placed additional factual information on the record and invited parties' comments. Specifically, we invited comment on the export values from a number of countries, as well as wage rates and gross national income ("GNI") per capita from 61 countries.

In their case briefs, China First, Three Star, SFTC, and Dixon argued that the Department should value labor using the Indian-specific wage on the record instead of using regression analysis described in 19 CFR 351.408(c)(3). Because we are not relying on the regression-based methodology for these final results, we do not address the arguments made by these respondent parties in their case briefs. Instead, we turn to their post-Dorbest comments.

In those comments, China First, Three Star, and SFTC argue that none of the data placed on the record by the Department is useful for valuing labor and they recommend instead that the Department use information from the primary surrogate country, India. China First, Three Star, and SFTC note that the Department determined that India was a significant producer of comparable merchandise and selected India as the primary surrogate country for the PRC in this review. See Surrogate Country Memo.³ According to China First, Three Star and SFTC, 19 CFR 351.408(c)(2) directs that the Secretary normally will value all factors in a single surrogate country; the Department prefers to derive surrogate values from the primary surrogate country if useable data exists for that country;⁴ the Department itself has stated that "{a}ll the proposed surrogate value sources ... are from India, ... no factual evidence has been submitted ... which would require the selection of another country;"⁵ and, the Department concluded that India was the most appropriate surrogate country due to the reliability of its data.⁶

China First, Three Star, and SFTC further contend that the data placed on the record by the Department after Dorbest are not appropriate for valuing labor because they do not conform to the two requirements set forth by section 773(c)(4) of the Tariff Act of 1930, as amended ("the Act"), i.e., to use data from market economy countries that are at a comparable level of economic development and that are significant producers of comparable merchandise. China First, Three

³ See Memorandum to the File, from Alexander Montoro and Joseph Shuler, "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 ("Surrogate Country Memo").

⁴ Respondents reference Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (Feb. 11, 2003), and accompanying Issues and Decision Memorandum at Comment 7; Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (Apr. 13, 2009), and accompanying Issues and Decision Memorandum at Comment 5A.

⁵ See Surrogate Country Memo, at 4.

⁶ See Preliminary Results, 74 FR at 68048.

Star, and SFTC maintain that the Department has determined in this review that India, the Philippines, Indonesia, Colombia, Thailand and Peru are economically comparable to the PRC. Regarding the second requirement, China First, Three Star, and SFTC point to the legislative history of the provision to argue that in selecting a “significant producer” of comparable merchandise, the Department may consider whether the country is a significant net exporting country.⁷ They further point to Department practice to argue that the Department has previously determined “significant production” by relying on net exports.⁸ Based on data they submitted, China First, Three Star, and SFTC contend that of the six countries deemed economically comparable to the PRC in the Surrogate Country Memo, the information released by the Department shows wage rates for only two, India and Colombia and, of those two, only India is a net exporter of pencils. Further, for the other countries included in the information released by the Department, many do not have reported wage rates, but of those that do, none is a net exporter. Therefore, China First, Three Star, and SFTC argue, the Department should use India to value labor for these final results.

In this regard, China First, Three Star, and SFTC placed on the record wage rate data that are specific to the pencils manufacturing sector from India’s Annual Survey of Industries: Statistics on Employment and Labour Cost. China First, Three Star, and SFTC argue that selecting sector-specific data is in accord with precedence.⁹ Furthermore, according to China First, Three Star, and SFTC, in using data from this source the Department applied a labor-specific inflator taken from the 2009-10 Indian Labor Report (also placed on the record). China First, Three Star, and SFTC contend that this sector-specific labor rate is more accurate than any other potential surrogate value on record. However, if the Department declines to use these sector-specific data, China First, Three Star, and SFTC argue that the only other available and useable rate is the Indian labor rate taken from the International Labor Organization (“ILO”), and the Department should rely on that.

Department’s Position: As a consequence of the CAFC’s ruling in Dorbest, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For this final determination, we have calculated an hourly wage rate to use in valuing the PRC pencils producers’ reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

China First, Three Star, and SFTC argue that the Department should use an Indian wage rate to value labor. The Department disagrees. While information from a single surrogate country can reliably be used to value other factors of production (“FOPs”), wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide

⁷ Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁸ See Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002-2003 Administrative Review, 69 FR 65148 (November 10, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

⁹ See Allied Pacific Food (Dalian) Co., Ltd. v. United States, 587 F. Supp. 2d 1330 (CIT 2008); Final Results of Redetermination Pursuant to Court Remand: Frozen and Canned Warmwater Shrimp from the People’s Republic of China, (Dec. 22, 2009).

relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the wage rate spans from USD 0.41 to USD 2.08. See “Expected Wages of Selected Non-Market Economy (“NME”) Countries,” revised in December 2009, available at <<http://ia.ita.doc.gov/wages/index.html>>. Additionally, although both India and Guatemala have GNIs below USD 2,500, and both could be considered economically comparable to the PRC, India’s observed wage rate is USD 0.47, as compared to Guatemala’s observed wage rate of USD 1.14 – over double that of India. See “Expected Wages of Selected NME Countries,” revised in December 2009, available at <<http://ia.ita.doc.gov/wages/index.html>>. There are many socio-economic, political and institutional factors that cause the variance in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information with which to value labor for these final results, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo. Early in this review, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI. See 19 CFR 351.408(b). The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as “bookends” and then identified all countries with World Bank-reported per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these “bookends.” This resulted in 50 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100.

Regarding the second criterion of “significant producer,” the Department identified all countries which have exports of comparable merchandise (defined as HTS 960910) between 2007 and 2009. After screening for countries that had exports of comparable merchandise, we found that 27 of the 50 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009. We disagree with China First, Three Star, and SFTC that *only* net exporters or major exporters to the United States can be considered significant producers. The antidumping statute and regulations are silent in defining a

“significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 733(c) of the Act. Moreover, while the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”¹⁰ it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in Wooden Bedroom Furniture from the PRC¹¹, the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this review, the Department determines the following 27 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Algeria, Belize, Bolivia, Bosnia & Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Morocco, Namibia, Nicaragua, Paraguay, Peru, the Philippines, Sri Lanka, Thailand, Tunisia, and Ukraine.

Third, from the 27 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data “earnings,” if available and “wages” if not.¹² We used the most recent data within five years of the base year (2007) and adjusted to the base year using the relevant Consumer Price Index.¹³ Of the 27 countries that the Department has determined are

¹⁰ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

¹¹ See Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581, 9584 (March 3, 2010).

¹² The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006) (“Antidumping Methodologies”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

¹³ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered was bigger, relying on two years of data still provided a much larger pool than we have now from which the Department could calculate a labor value. Because the number of economies from which we may draw data is now smaller, the Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual

both economically comparable and significant producers of comparable merchandise, seven countries, *i.e.*, Algeria, Belize, Bolivia, Cape Verde, Morocco, Namibia, and Tunisia, were not used in the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.

The Department relied on data from the following countries to arrive at its wage rate in this final determination: Bosnia & Herzegovina, Colombia, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Nicaragua, Paraguay, Peru, the Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 20 countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

Comment 2: Surrogate Values

China First, Three Star, and SFTC argue that the Department should use industry- and input-specific, domestic Indian data to value slats, cores, and lacquer instead of data from "Hardwood Market Report" and WTA. China First, Three Star, and SFTC assert that "Paper and Stationery" values represent actual prices of pencil inputs used in the pencil-producing industry in the primary surrogate country, India, and that it is the Department's preference to select reliable, domestic data over import data when valuing FOPs.¹⁴ Additionally, China First, Three Star, and SFTC claim that it is the Department's preference to select surrogate values that are the most specific to the input in question. China First, Three Star, and SFTC argue that the source to value pencil slats in the Preliminary Results, the "Hardwood Market Report," contains data on basswood lumber that is neither specific to the slats used by the respondents nor to the pencil-producing industry. Additionally, China First, Three Star, and SFTC claim that for pencil cores, nearly 50 percent of WTA data contains imports that are not specific to cores and reflect extreme unit value variances (for cores and for lacquer).

China First, Three Star, and SFTC assert that the Department relies on prices from news articles and trade journals in ascertaining the appropriateness of surrogate values. China First, Three Star, and SFTC state that, in Frozen Shrimp from the PRC,¹⁵ the Department found the surrogate value for ice from a news article in the publication "Financial Press," which was specific to the seafood industry and more appropriate than WTA data. China First, Three Star, and SFTC note

basis.

¹⁴ See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review, 63 FR 3085, 3087 (January 21, 1998); see also Bulk Aspirin from the People's Republic of China: Final Results of Antidumping Duty Review, 68 FR 6710, 6712 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁵ See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3a ("Frozen Shrimp from the PRC"). See also Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 75 FR 5952, 5962 (February 5, 2010); tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 74 FR 32539, 32544 (July 8, 2009).

that the comparable WTA data included both “snow and ice,” whereas data from “Financial Press” included only ice, and the ice value was for ice used by the seafood industry. Similarly, China First, Three Star, and SFTC assert that “Paper and Stationery” values are reflective of the precise inputs used by China First and Three Star in the production of pencils, *i.e.*, slats. In addition, China First, Three Star, and SFTC assert that “Paper and Stationery” is an industry-specific trade journal, not a general circulation newspaper, like “Financial Press,” and the inputs are more complex in the instant case, than the ice input in the Frozen Shrimp from the PRC case.

Department’s Position:

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. In addition, the Department’s criterion for selecting surrogate value information is based on certain requirements. First, surrogate values are normally based on publicly available information (“PAI”) and the Department considers several factors when choosing the most appropriate PAI, including quality, specificity, and contemporaneity.¹⁶ In addition, the Department also looks for surrogate values that are “representative of a range of prices in effect during the” period of review (“POR”) and information that includes numerous transactions.¹⁷ The Department also avoids using single-source information and prefers country-wide information such as government import statistics.¹⁸ Similarly, the Department has also stated that it is “the Department’s preference to use industry-wide values, rather than values of a single producer, whenever possible, because industry-wide values are more representative of prices and costs of all producers in the surrogate country.”¹⁹ Finally, the Department does not use price data that has inadequate supporting documentation and prefers to use tax-exclusive sources instead of tax-inclusive domestic prices.²⁰

In summary, our practice when selecting the best available information for valuing FOPs is to select surrogate values which are product-specific, representative of a broad market average,

¹⁶ See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 3; 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 1.

¹⁷ See Potassium Permanganate From the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 66 FR 46775 (September 7, 2001) and accompanying Issues and Decision Memorandum at Comment 16; see also 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 3.

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁹ See Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People’s Republic of China, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum at Comment 4.

²⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People’s Republic of China, 69 FR 34125 (June 18, 2004) and accompanying Issues and Decision Memorandum at 48; see also Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) and accompanying Issues and Decision Memorandum at 16.

publicly available, and contemporaneous with the POR.²¹ Stated differently, we attempt to find the most representative and least distortive market-based value in the surrogate country.²² We undertake this analysis of surrogate values on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.²³ There is no hierarchy for applying the above-stated principles. Thus, we must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” surrogate value is for each input.²⁴ Sometimes, we find that we are faced with choosing between two or more data sources where neither one completely fulfills the Department’s criteria for the selection of data sources. In these situations, it is the Department’s practice to choose the best and most representative source in spite of apparent imperfections. As the CIT has acknowledged: “Where Commerce is faced with the choice of selecting from among imperfect alternatives, it has the discretion to select the best available information for a surrogate value so long as its decision is reasonable.” Catfish Farmers of Am. v. United States, 641 F. Supp. 2d 1362, 1377 (Ct. Int’l Trade 2009).

Therefore, the Department will examine all the available slats, lacquer, and cores data contained on the record of this review, including “Paper and Stationery,” on a case-by-case basis in order to make a product-specific and case-specific decision as to what the best surrogate value is for each input. Each of the specific surrogate value sources and all related information are discussed in detail in Comments 2a, 2b, and 2c below.

Comment 2a: Surrogate Value for Slats

China First, Three Star, SFTC, and Dixon assert that the Department should value slats using “Paper and Stationery” as it gives a more accurate surrogate value than the “Hardwood Market Report.” China First and Three Star note that they buy pencil slats and not raw lumber,²⁵ so the relevant FOP is the slat and not raw lumber. China First, Three Star, and SFTC argue that the Department’s use of U.S. prices is not relevant, because neither Chinese lindenwood from which the respondents’ slats are made or American basswood are likely to be found in any potential surrogate country. Further, China First, Three Star, and SFTC assert that the Department should have addressed whether slat values were available in any of the potential surrogate countries, and they flatly dispute the Department’s statement with respect to slats in the Surrogate Country

²¹ See Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) and accompanying Issues and Decisions Memorandum at Comment 2.

²² See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People’s Republic of China, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

²³ See Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

²⁵ See China First Section D Questionnaire Response (“QR”) at 4 (May 12, 2009); Three Star Section D QR at 3 (May 13, 2009).

Memo that “{w}ith regard to India, the Department has obtained sufficient publicly available surrogate value information from WTA and other sources for the factors of production.”²⁶ China First, Three Star, and SFTC state that the only values for pencils slats contained on the record of this review are those reported in the “Paper and Stationery” article.

China First, Three Star, and SFTC assert that the Department’s directive in selecting surrogate values is to duplicate prices a company would pay for its inputs were it functioning in a market economy country.²⁷ The statute (at section 773(c)(4) of the Act) provides that the Department shall use prices in a market economy country that is at a level of economic development comparable to that of the NME country and a significant producer of comparable merchandise. China First, Three Star, and SFTC argue that, in this case, the Department chose India as the most comparable country and, therefore, the Department’s decision to select a surrogate value for the primary input in pencil production from the United States when a reliable value was available from India is in clear derogation of the mandate of section 773(c) of the Act. The Department cannot, according to China First, Three Star, and SFTC, reasonably reject the surrogate values for slats from India because none of the four factors enunciated in Globe Metallurgical 2004²⁸ to disregard values from the primary surrogate country is present here. China First, Three Star, and SFTC assert that the data are available, sufficiently contemporaneous, of good quality, derived from industry sources from an Indian trade journal specific to stationery products, and not aberrational because the article describes a pencil production process using slats of varying sizes, as do China First and Three Star. China First, Three Star, and SFTC assert that the Department has expressed its preference for surrogate values that are specific to the input in question.²⁹ China First, Three Star, and SFTC argue that values for American basswood lumber, derived from a published source in the United States, on the other hand, are not input-specific, are not from an appropriate source country, and do not duplicate the respondent’s production processes as if they were operating in a market economy setting.

China First, Three Star, and SFTC argue that the Department has placed undue emphasis on the selection of American basswood in the original investigation as the basis for using the “Hardwood Market Report” in the instant review. According to China First, Three Star, and SFTC, the Department’s decision to select a particular surrogate value must be based on substantial evidence that the value selected constitutes the best available information on the

²⁶ See Surrogate Country Memo at 4.

²⁷ See Mittal Steel Galati S.A. v. United States, 502 F. Supp. 2d 1295, 1309 (Ct. Int’l Trade 2007) (“Mittal Steel”).

²⁸ See Globe Metallurgical, Inc. v. United States, 350 F. Supp. 2d 1148, 1160 (Ct. Int’l Trade 2004) (“Globe Metallurgical 2004”). (“Commerce will disregard values from the primary surrogate country when it finds those values to be (1) unavailable; (2) not sufficiently contemporaneous; (3) of poor quality; or (4) otherwise unreliable, i.e., aberrational.”)

²⁹ See Glycine From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) and accompanying Issues and Decision Memorandum at Comment 3 (“Glycine from the PRC Final Results”); see also First Administrative Review of Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3d (“Activated Carbon from the PRC Final Results”).

record.³⁰ Further, China First, Three Star, and SFTC note that the Department does not have substantial evidence supporting the use of American basswood prices on the record of the instant review. China First, Three Star, and SFTC assert that the Department must address the appropriateness of the use of basswood prices within the current review and may not simply rely on the acceptance and use of American basswood data from prior reviews with different factual circumstances.

China First, Three Star, and SFTC state that the Department, in supporting the use of American basswood in the Preliminary Results, noted that in the original investigation it found Chinese lindenwood and American basswood to be virtually indistinguishable.³¹ China First, Three Star, and SFTC note that in the original investigation, the Department was valuing logs, as China First and Three Star both produced their own slats at that time, and lumber values for one producer who purchased slats. China First, Three Star, and SFTC assert that the Department has never before had surrogate slat values available to it in the history of this case. China First, Three Star, and SFTC assert that the slat prices in “Paper and Stationery” represent the Indian surrogate value for the precise input used by China First and Three Star, whereas the American basswood prices represent a far higher value for a less comparable product—lumber. In addition, according to China First, Three Star, and SFTC, the Department must manipulate the lumber value based on various assumptions to derive a slat value.

China First, Three Star, and SFTC argue that the Department failed to recognize that: basswood lumber is not specific to pencil-making; there is no evidence that pencils are made from the basswood that is addressed in the “Hardwood Market Report;” and the United States is not a significant producer of comparable merchandise. China First, Three Star, and SFTC assert the source of the data contained in the “Hardwood Market Report” is not identified with sufficient specificity to make it reliable. China First, Three Star, and SFTC contend that the Department must choose surrogate values that best emulate the experience of the NME producer if it were operating in a market economy.³² Because of the presence of a reliable data source from the primary surrogate country and the lack of specificity and reliability of American basswood data, China First, Three Star, and SFTC argue that the Department must value slats using “Paper and Stationery” prices.

China First, Three Star, and SFTC argue that if the Department continues to value slats using lumber prices from the “Hardwood Market Report,” then it should use the least distorting of these ‘distorted’ data in order to avoid creating additional inaccuracies in the calculation of the respondents’ dumping margins. China First, Three Star, and SFTC claim that the Department recognized that the FOPs for processing slats accounted for a significant share of total output³³

³⁰ See Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319, 1325 (Ct. Int’l Trade 2008). See also United States Steel Co. v. United States, Slip. Op. 2009-152 (Ct. Int’l Trade, December 30, 2009).

³¹ See “Memorandum to the File from Alexander Montoro, Joseph Shuler, and Yasmin Nair 2007-2008 Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: Factor Valuation for the Preliminary Results Memorandum” (Dec. 15, 2009) at 6; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People’s Republic of China, 59 FR 55625, 55629 (November 8, 1994) (“Pencils Final Determination of LTFV”).

³² See Nation Ford Chemical Co. v. United States, 166 F.3d 1373, 1377-78 (Fed. Cir. 1999).

³³ See China First’s Third Supplemental QR (November 13, 2009) at Exhibit 3S-1.

because it required China First to provide the FOPs for producing slats.³⁴ China First, Three Star, and SFTC argue that it is the Department's practice to consider inputs as part of overhead, rather than an FOP, only when they are small in value relative to the total cost of manufacturing.³⁵ Because China First reported the FOPs for slats processing, China First, Three Star, and SFTC assert that the Department must use these data, absent a finding that slats processing is an insignificant input. Moreover, China First, Three Star, and SFTC argue that the Department should not value the input using the price for kiln-dried, finished wood as an equivalent process to kiln-drying is included in slats processing FOPs. Accordingly, China First, Three Star, SFTC, and Dixon argue the Department should use unprocessed lumber, or green basswood values from the "Hardwood Market Report." Otherwise, China First, Three Star, SFTC, and Dixon add, if the Department insists on using kiln-dried "Hardwood Market Report" values then, at a minimum, the Department should use contemporaneous values from the source that China First and Three Star submitted in their post-preliminary surrogate value submission.

Department's Position:

We agree with the respondents that slat prices from the "Paper and Stationery" article should be used to value slats in the final results of this review. Since the original investigation, including the most recently completed administrative review and in the Preliminary Results of the instant review, the Department valued lindenwood pencil slats, used by China First and Three Star, with publicly available, published U.S. prices for American basswood lumber.³⁶ The U.S. lumber prices for basswood that we used in the Preliminary Results are from "Hardwood Market Report" for the period December 1, 2006 through November 30, 2007, for Northern 4/4 kiln-dried basswood for grades 1 and 2 Common. These data were placed on the record by the petitioner in the previous review. We inflated the "Hardwood Market Report" basswood prices from the previous review to account for inflation between the effective period and the POR because we did not have access to updated prices for these grades.

First, we acknowledge that we erroneously stated in the last review that there were slat prices in the original investigation that we declined to use. In the Pencils 06-07 Final Results, the Department stated:

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.

³⁴ See China First's Third Supplemental QR at 1.

³⁵ See Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 3887, 3893-94 (January 27, 2004). See also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 27 ("OTR Tires from the PRC").

³⁶ See, e.g., Certain Cased Pencils from the People's Republic of China from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009) and accompanying Issues and Decision Memorandum at Comment 4a ("Pencils 06-07 Final Results").

The Department determined in the initial investigation that comparability of wood is a necessary factor in deciding the surrogate value for lindenwood slats.³⁷ In other words, the Department established a preference for wood type over a slat-specific price when selecting a surrogate value for Chinese lindenwood. In the Pencils Final Determination of LTFV, the Department stated that, “we find that jelutong value inappropriate because our research indicates that, although jelutong is used in pencil production, it is an entirely different genus of wood.” Additionally, jelutong was determined to be a tropical soft timber while lindenwood is a temperate hardwood. The Department also concluded that the fact that these two types of wood are used to make pencils, does not mean they are comparable in quality and value. Thus, the Department found that American basswood was more comparable to lindenwood than jelutong and declined to use jelutong wood slat prices as a surrogate value for lindenwood slats. The Department used U.S. basswood prices because comparable hardwood prices were not available for any of the surrogate countries.³⁸

We have reviewed the Pencils Final Determination of LTFV³⁹ and the related Remand Results,⁴⁰ and we have found that there were no slat prices in the original investigation that we declined to use. Although wood type remains an important consideration in our surrogate value selection,⁴¹ the Department did not establish in the investigation “a preference for wood type over a slat-specific price when selecting a surrogate value for Chinese lindenwood” as the Department concluded in the Pencils 06-07 Final Results because there were no available slat prices on the record of the investigation. Unlike the current and more recent review periods, when China First and Three Star purchased slats instead of lumber, China First and Three Star purchased lumber and produced their own slats at the time of the original investigation.⁴²

What distinguishes our decision in these final results from the decision regarding slats in the Pencils 06-07 Final Results, is that we now have additional information on the record of the current review regarding the grade descriptions of hardwood lumber, such as basswood. This information shows that basswood prices previously relied upon to value slats are for a higher quality wood than would be used to produce pencils. China First and Three Star have provided contemporaneous 2007-2008 basswood prices from “Hardwood Market Report” in their

³⁷ See Pencils Final Determination of LTFV.

³⁸ Pencils 06-07 Final Results at Comment 4a.

³⁹ Id.

⁴⁰ See Writing Instrument Manufacturers Association, Pencil Section, et al., v. The United States Department of Commerce and China First Pencil Company, Inc., et al., Ct. Int’l Trade Court No. 95-01-00081,” Nov. 13, 1997 (“Remand Results”).

⁴¹ See Remand Results; Writing Instrument Mfrs. Ass’n, Pencil Section v. U.S. Dep’t. of Commerce, 984 F. Supp. 629, 636-38 (Ct. Int’l Trade 1997), aff’d 178 F.3d 1311 (Fed. Cir. 1998).

⁴² See China First Section D QR at 4 (May 12, 2009); Three Star Section D QR at 3 (May 13, 2009).

November 20, 2009 Surrogate Value Submission. The prices in this submission are for grade 2B.⁴³ China First and Three Star have also placed on the record an article called “Understanding Hardwood Lumber Grading” from the National Hardwood Lumber Association (“NHLA”).⁴⁴ This article explains each of the grades of hardwood lumber, such as those found in “Hardwood Market Report.” According to this article, grade 1C is a standard furniture grade lumber and grade 2C is the standard grade for cabinet, millwork, and other uses requiring medium to short cuttings.⁴⁵ These are the two grades we have been averaging for use in the slats surrogate value in past reviews, as well as in the Preliminary Results. Grade 2B is described as the same as 2C, except that stain and other sound defects are admitted in the clear cuttings, and it is an excellent paint grade.⁴⁶ In response to the Department’s supplemental questionnaire, Three Star indicated that the equivalent grade of American basswood lumber to the Chinese lindenwood used in its pencil production was grade 3 common or below.⁴⁷ Three Star also reported that it purchases lindenwood slats in widths from two-ply to eight-ply and that these slats are rectangular pieces of wood, approximately 183 mm long, from 19 mm to 69.5 mm wide.⁴⁸ Three Star stated that, based on a review of the grading rules and the process used to grade lumber in the NHLA article, pencils slats are not lumber, since even the largest, and, therefore, the highest grade, slats purchased are only approximately three inches wide by seven inches long (69 mm X 183 mm).⁴⁹ The NHLA article states that the minimum board size for common grade lumber (1C, 2A/B common, 3A common, and 3B common) is 3 inches by 4 feet.⁵⁰

Based on the analysis above of the hardwood lumber grades and dimensions provided in the NHLA article on the record of this review, we find that the U.S. lumber prices for American basswood grades 1C/2C, which the Department used from “Hardwood Market Report” to value slats in the Preliminary Results and in the Pencils 2006-2007 Final Results represent a higher grade and, therefore, have a higher price, compared to the actual value of lumber than the lumber used to produce the slats purchased by China First and Three Star. Specifically, based on the record of this review, we conclude that the American basswood grades 1C/2C differ from the grades used to produce pencil slats because the article describes American basswood grades 1C/2C as being used for furniture, cabinets, or millwork. In addition, the reported dimensions for the slats used by China First and Three Star of 3 inches by 7 inches long, do not meet the minimum board size requirements for any of the hardwood lumber grades according to NHLA.⁵¹

⁴³ See “Certain Cased Pencils from the People’s Republic of China; Surrogate Value Submission of Publicly Available Information,” (“Surrogate Value Submission”) November 20, 2009, Exhibit SV-4.

⁴⁴ See Three Star’s October 7, 2009, Section D Supplemental QR at 7-8 and Exhibit SD-1 (“Three Star October 7 SQR”).

⁴⁵ Id. at Exhibit SD-1.

⁴⁶ Id.

⁴⁷ Id. at 7.

⁴⁸ Id. at 7.

⁴⁹ Id.

⁵⁰ Id. at Exhibit SD-1.

⁵¹ Id. at 7-8 and Exhibit SD-1.

This information from the NHLA, put on the record for the first time in this review, supports changing from the basswood lumber prices reported in the “Hardwood Market Report,” which were relied upon in prior reviews as the best available information for valuing the wood input.⁵²

In this review and the previous review, the respondents placed on the record the November 2008 “Paper and Stationery” magazine. This Indian magazine contained an article discussing the Indian pencil industry, and included prices for certain inputs used in the pencil production process, including slats, black and color cores, and lacquer. We declined to use the information provided in “Paper and Stationery” to value any inputs in the previous review for numerous reasons.⁵³ First, we could not analyze the comparability of the type of wood used in “Paper and Stationery.” Second, the data were not fully contemporaneous with the POR. The article describes slats prices as occurring in “mid-2007.” Third, we could not determine the range of transactions using the “Paper and Stationery” source and determine if these prices were represented in the entire country or region.

The respondents suggest that the Department should value slats in this review using prices from “Paper and Stationery” because it gives a more input-specific, as well as industry-specific, surrogate value than the American basswood prices listed in “Hardwood Market Report,” and the prices are from the primary surrogate country, India. China First and Three Star reported that they buy pencil slats and not raw lumber, so the relevant FOP to value is the slat and not raw lumber.

The Department continues to have the same concerns about “Paper and Stationery” as it did in the Pencils 2006-2007 Final Results. However, as explained above, record evidence specific to this administrative review raises doubts about continued reliance on U.S. basswood lumber prices to value slats. In accordance with section 773(c)(1) of the Act, as cited in the Department’s position to Comment 2 above, we have thoroughly reviewed “Paper and Stationery” and “Hardwood Market Report” in order to determine the best available information on the record to value this FOP. Weighing the record evidence, we determine that, despite its flaws, “Paper and Stationery” is the preferred data source because it values the slat input used in the pencil production process in the primary surrogate country, India. Such factors outweigh the fact that the prices are neither entirely contemporaneous nor do we know whether the prices represent a broad range of transactions. As China First, Three Star, and SFTC point out, the Department has previously stated in Glycine from PRC Final Results and Activated Carbon from the PRC Final Results its preference for surrogate values that are specific to the input in question.

After weighing the available information on this record and analyzing “Paper and Stationery,” we agree with the respondents that “Hardwood Market Report” is not the best available information on the record of this review to value slats because record evidence establishes that a more input-specific surrogate value is available in the “Paper and Stationery” article. In addition, similar to the circumstances in Frozen Shrimp from PRC, a more industry-specific source, “Paper and Stationery,” is on the record and more appropriate than “Hardwood Market Report” because we can now determine that the “Paper and Stationery” article is more specific to

⁵² See, e.g., Remand Results; Pencils 06-07 Final Results at Comment 4a.

⁵³ See Pencils 06-07 Final Results at Comment 4a.

the pencil industry than “Hardwood Market Report.”⁵⁴ From our analysis of record evidence in this segment of the proceeding, the data from “Hardwood Market Report” represent U.S. lumber prices that we can no longer find to be the most input-specific or the most representative of the pencil production process compared to alternative data sources on the record. Additionally, the information on the record of the current review shows that basswood prices previously relied upon are for a higher quality wood than would be used to produce pencils.

Therefore, in calculating the surrogate value for slats in the final results, we have revised our preliminary results and used slat prices from “Paper and Stationery.”

Comment 2b: Surrogate Value for Cores

China First, Three Star, SFTC, and Dixon argue that the Department should also value pencil cores using prices in “Paper and Stationery.” China First, Three Star, and SFTC argue that the Department’s use of WTA data to value cores is in error because of the drastic import value variations in that data. China First, Three Star, and SFTC cite to Jinan⁵⁵ in which the CIT found that drastic average unit value differences in the WTA data, reinforced by the corroborating “trade intelligence” data showing that the tariff heading was overbroad, rendered the Department’s use of WTA data unsupported by record evidence. China First, Three Star, and SFTC state that the Department should follow this example and not value cores using WTA data because these data are not “reasonably representative” of the black and color cores used by the respondents in that the WTA data show substantial unit price variances. Moreover, China First, Three Star, SFTC, and Dixon assert that data from India Infodrive submitted on the record of this review demonstrate that a large percentage of the imports under the WTA tariff heading were not pencil cores.⁵⁶

China First, Three Star, SFTC, and Dixon claim that their analysis of WTA and India Infodrive data shows that the HTS category used to value cores, 9609.2000, contains a wide variety of high-priced items that are not pencil cores. China First, Three Star, and SFTC explain that the Department has established three conditions under which it will use India Infodrive data to further evaluate the legitimacy of import data: 1) there is direct and substantial evidence from India Infodrive reflecting the imports from a particular country; 2) a significant portion of the overall imports under the relevant HTS category is represented by the India Infodrive data;⁵⁷ and 3) distortions of the average unit value (“AUV”) in question can be demonstrated by the India Infodrive data. China First, Three Star, and SFTC claim that India Infodrive data meet these conditions. First, according to China First, Three Star, SFTC, and Dixon there is “direct and substantial evidence” that the India Infodrive data reflect the same imports in the WTA data because they have a similar quantity and value levels for imports from the same countries for the same HTS number. Second, China First, Three Star, SFTC, and Dixon note significant overlap

⁵⁴ See Frozen Shrimp from PRC at Comment 3.

⁵⁵ See Jinan Yipin Corp., Ltd. v. United States, 526 F. Supp. 2d 1347, 1378 (Ct. Int’l Trade 2007) (“Jinan”).

⁵⁶ See Surrogate Value Submission at 3 and Exhibit SV-3B.

⁵⁷ The respondents cite to Activated Carbon from the PRC Final Results where they claim that the Department found the India Infodrive data to represent a “significant portion” of the imports if there is an 80 percent or more overlap between the two data sources.

in the data reported in the two sources because there is only an eight percent difference in total value for the same HTS number. Third, China First, Three Star, SFTC, and Dixon assert the AUV of WTA data are “distorted” by non-subject imports. China First, Three Star, SFTC, and Dixon point to “numerous, high-priced, non-pencil core items imported under the ‘pencil cores’ tariff heading that account for nearly half of the WTA data.”⁵⁸ In addition, China First and Three Star claim to have placed on the record of the instant review various price lists that show there are many types of pencil leads with varying prices, which, while properly classified as pencil cores, are not similar to the cores input used by the respondents in pencil core production.

China First, Three Star, and SFTC additionally claim that, based on an analysis of India Infodrive data, WTA data are inflated by the cost of air freight while none of the inputs the respondents purchased transited via air. Specifically, China First, Three Star, and SFTC assert that 55 percent of the imports under the cores HTS number were shipped by air, and this is a far more expensive proposition than ocean shipping, one generally reserved for small and more valuable items requiring expedited delivery. Hence, China First, Three Star, and SFTC claim that the items transported via air shipment are not comparable to the pencils cores used by them for the production of pencils.

China First, Three Star, and SFTC argue that the Department should find that the values shown in the pencil industry-specific “Paper and Stationery” article represent the best available information for valuing cores. China First, Three Star, and SFTC contend that these data were corroborated by actual price lists of the only Indian producer of cores (the same producer whose prices are cited in “Paper and Stationery”).⁵⁹ China First, Three Star, and SFTC assert that data from this source also allow the Department to value black and color pencil cores separately, something not possible using the WTA data, thereby enhancing the accuracy of the calculation.

Department’s Position:

As noted in Comment 2 above, the Department reviews surrogate value information on a case-by-case basis and, in accordance with section 773(c)(1) of the Act, selects the best available information from the surrogate country to value the FOPs. For purposes of the final results of this review, we find that prices from “Paper and Stationery” represent the best available data with which to value black and color cores. In the most recently completed administrative review and in the Preliminary Results of the instant review, the Department valued black and color cores for Three Star and color cores for China First using WTA data. In the previous review, the Department declined to use “Paper and Stationery” to value cores because: 1) the Department could not determine if quoted prices represented actual transactions; 2) the source did not appear to be a regular industry survey of prices; 3) the source did not provide data regarding the total volume of sales; and 4) we could not determine if the prices excluded taxes. Instead, as it did in past segments of this proceeding, the Department used WTA data to value cores because, consistent with the Department’s surrogate valuation methodology, the WTA data reflect

⁵⁸ For example, the respondents contend that among the non-pencil core items are “paint marker,” “laundry marker,” “stationery set,” and “kids colour pen set.”

⁵⁹ See 19 CFR 351.308(d); Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

numerous transactions, represent a range of prices during the POR, are from a published source that is publicly available and are tax-exclusive.⁶⁰

China First and Three Star provided contemporaneous data from India Infodrive in their November 20, 2009 Surrogate Value Submission to show that the WTA data contain a significant amount of non-core merchandise.⁶¹ The CIT stated that the Department may use India Infodrive data if, among other conditions, a significant portion of the overall imports under the relevant HTS category is represented by the India Infodrive data.⁶² In Activated Carbon from the PRC Final Results, the Department relied on India Infodrive data to determine that the WTA HTS category for “Bituminous Coal” was inappropriately applied.⁶³ In LWTP from the PRC, the Department also relied on India Infodrive data to remove certain “mill-rejected paper” from the WTA HTS category.⁶⁴ In both cases, the Department relied on India Infodrive data to demonstrate that the WTA data were aberrational and had a distortive effect on the total AUV. In the instant case, we find that the overlap between India Infodrive data on the record and WTA data for HTS number 9609.2000, “Pencil Leads, Black/Coloured,” is more than 91 percent overall, and more than 98 percent for the countries we use in our surrogate valuation.⁶⁵ In addition, we find that almost half of India Infodrive data, for the countries we use in our surrogate valuation, represent items other than pencil cores (or pencil leads). Non-core items included are art studios, pencils, pencil boxes, paper clips, marker pens, chalk, laundry marker, paint marker, and permanent markers, among others.

Regarding the respondents’ argument that the WTA data are distorted because 55 percent of the imports under the cores HTS number were shipped by air, the India Infodrive data are not detailed or comprehensive enough to show whether Indian import statistics are unreasonably distorted due to charges for air freight.

As China First, Three Star, and SFTC point out, the Department has previously stated, in Glycine from PRC Final Results, and in Activated Carbon from the PRC Final Results, its preference for surrogate values that are specific to the input in question. After weighing the available information on the record and analyzing “Paper and Stationery,” we agree with the respondents that “Paper and Stationery” is the best available information on the record of this review to value cores. Although we continue to have the same concerns about “Paper and Stationery” identified in the most recently completed review,⁶⁶ we find that core values in “Paper and Stationery” are

⁶⁰ See, e.g., Pencils 06-07 Final Results at Comments 4 and 4b.

⁶¹ See “Certain Cased Pencils from the People’s Republic of China; Surrogate Value Submission of Publicly Available Information,” November 20, 2009, Exhibit SV-3B.

⁶² See Globe Metallurgical, Inc. v. United States, Slip Op. 09-37 at 5, 8 (Ct. Int’l Trade May 5, 2009) (“Globe Metallurgical 2009”).

⁶³ See Activated Carbon from the PRC Final Results at Comment 3c.

⁶⁴ See Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 9 (“LWTP from the PRC”).

⁶⁵ The countries we have excluded are the Republic of Korea, the PRC, and Thailand.

⁶⁶ See Pencils 06-07 Final Results at Comment 4b.

publicly available, sufficiently contemporaneous, industry-specific, and not aberrational. Meanwhile, record evidence specific to this segment of the proceeding—notably India Infodrive data—indicates that the HTS category covering cores includes the presence of a large amount of non-core items. In addition to containing non-core items, the WTA data have a combined price for black cores and color cores. On the other hand, “Paper & Stationery” contains separate prices for black and color cores, and these prices represent transactions from the only known Indian supplier of both black and color cores for the pencil industry. In arguments to the Department, the respondents explained that the production process and, consequently, cost, between black and color cores is entirely different.⁶⁷ Thus, based on the record of this review, “Paper and Stationery” values result in better input-specific prices for black and color core inputs. These facts, combined with the Infodrive analysis raising significant questions about the specificity of WTA data, outweigh the fact that reported prices in “Paper and Stationery” are neither entirely contemporaneous nor do they represent a broad range of transactions. Because cores are an important input in pencil production, valuing this input with a more industry-specific data source as established by record evidence in this segment of the proceeding enables the Department to calculate a more accurate dumping margin. Therefore, in calculating the surrogate value for cores in the final results, we have used core prices from “Paper and Stationery.”

What distinguishes our decision in these final results from the decision regarding cores in the Pencils 06-07 Final Results is that we now have additional information on the record—specifically Infodrive data—demonstrating distortions within the cores’ WTA HTS category, in terms of the breadth and quantity of non-pencil core items included in that category. These data, combined with the other factors listed above, have led us to conclude that, for this review, “Paper and Stationery” represent the best information available for valuing cores.

Comment 2c: Surrogate Value for Lacquer

China First, Three Star, and SFTC assert that the WTA data for lacquer are unreliable and not specific to the input in question, and the Department should value lacquer using the industry-specific value from “Paper and Stationery.” China First, Three Star, and SFTC note that lacquer is applied during the final stage of the pencil production process. China First, Three Star, and SFTC argue that, as explained in Jinan,⁶⁸ even if WTA data were the only data on the record, the Department must still make a determination that the WTA data are representative of the producers’ inputs. They indicate that the HTS category for lacquer in WTA contains “extreme prices variances,” which range from 128 Rs/kg for imports from the United Arab Emirates to 1,661 Rs/kg for imports from Panama, and these prices are 28 percent higher, on average, than the values that the respondents provided from the “Paper and Stationery” article for lacquer.

China First, Three Star, and SFTC further argue that the lacquer prices from “Paper and Stationery” are representative of the lacquer used in pencil production since they reflect the prices of a supplier of lacquer to pencil producers in India, and these prices represent the only domestic values on record for the input. China First, Three Star, and SFTC assert that this source

⁶⁷ See China First, Three Star, and SFTC February 19, 2010, Case Brief at 16.

⁶⁸ See Jinan, 526 F. Supp. 2d at 1377.

is industry-specific, input-specific, virtually contemporaneous, and represents an actual price that an Indian pencil producer would actually pay for lacquer. As a result, China First, Three Star, and SFTC argue that the Department should use the domestic prices from “Paper and Stationery” for lacquer.

Department’s Position:

We do not agree with China First, Three Star, and STFC’s argument that we should value lacquer using domestic data from “Paper and Stationery.”

As discussed in Comment 2 above, the Department uses the “best available information” in valuing FOPs. In this case, the respondents have presented no specific evidence or analysis that would substantiate their claim that WTA data for lacquer are aberrational. The Department’s position in the TRBs Memorandum is consistent with the 2008 final determination for OTR from the PRC and the 2007 final results for Shrimp from Vietnam, in which the Department determined it would not exclude higher import values, absent specific evidence that they were aberrational.⁶⁹ While it is well-established, as the respondents have argued, that the Department will not use unreasonable and aberrant surrogate values in the calculation of normal value and will examine all surrogate values for reasonableness, the Department does not consider the reasonableness of a surrogate value can be demonstrated solely by comparing how high or low it is relative to other unit values in the data. Unlike the new evidence presented in this review with respect to slats and cores, the respondents have presented no new evidence showing that the whole range of WTA values for lacquer are not representative of the market for lacquer in India.

The respondents have placed information on the record indicating the Indian import data for lacquer in WTA reflect a higher average price of 213.39 Rs/kg when compared to the reported lacquer prices of 150-160 Rs/kg in “Paper and Stationery.” The TRBs Memorandum, at Comment 6, highlights the Department’s practice of finding that the existence of higher prices does not necessarily indicate that the price data are distorted or misrepresented. Thus, as stated in Hangers Final Determination, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence the value is otherwise aberrational.⁷⁰ In the instant case, the respondents have only made an argument that the Indian import data for lacquer in WTA represent a higher average value compared to the domestic Indian lacquer prices in “Paper and Stationery.”

Thus, the respondents have only asserted that the WTA lacquer data represent a high price; absent other information that the surrogate value is unreliable, we have not benchmarked the WTA data for lacquer against the “Paper and Stationery” lacquer prices put on the record,

⁶⁹ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6 (“TRBs Memorandum”); OTR from the PRC, at Comment 9; Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 4 (“Shrimp from Vietnam”).

⁷⁰ See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 4 (“Hangers Final Determination”).

consistent with past practice.⁷¹ In addition, we found several drawbacks to the lacquer prices in “Paper and Stationery.”⁷² The lacquer prices come from a single producer, and as a result only represent that producer’s sales instead of sales from multiple producers. Furthermore, it is unclear if these prices reflect actual transactions, a characteristic that the Department prefers in selecting surrogate values. It also cannot be determined from the lacquer data in “Paper and Stationery” whether the manufacturer produces or sells lacquer or if its lacquer prices are based on its own sales or countrywide transactions throughout India.

As a result, the lacquer data in “Paper and Stationery” do not meet the Department’s selection requirements for surrogate value information as outlined in Comment 2 above. Because the respondents have not substantiated their claim with record evidence placed on the record of this administrative review that the WTA data are aberrant for lacquer, the Department continues to find that the WTA data comport with the Department’s standards and practices for surrogate valuation including the preference for publicly available price information that reflects numerous transactions from a market economy, has supporting documentation, and is tax-exclusive. Therefore, the Department will continue to use the approach it has taken in the Preliminary Results and prior administrative reviews and value lacquer using WTA data for the final results of this review.

Comment 3: Correction of Clerical Errors: Use of Wrong Surrogate Value for Paperboard

China First and Three Star assert that they reported using paperboard and cardboard boxes as packing inputs in their questionnaire responses.⁷³ China First, Three Star, and SFTC argue that the Department should apply the surrogate value submitted by the respondents, from HTS number 4810.92, which specifically covers paperboard, to China First’s and Three Star’s reported paperboard factors,⁷⁴ instead of the value used for the Preliminary Results, from HTS number 4819.1010, which is described as “Boxes of Paper & Paper Board.”⁷⁵

Department’s Position:

We agree with the respondents’ assertion that the Department should have valued “paperboard” using HTS number 4810.92. This was due to a clerical error, and we will apply the correct surrogate value of 50.38 rupees per kg in these final results.

Comment 4: SFTC and Dixon’s Separate Rate Calculation

SFTC asserts the separate rates companies should be assigned the weighted-average of China

⁷¹ See LWTP from the PRC at Comment 10 (“...{w}here a party provides sufficient evidence on the record to suggest that a particular surrogate value is aberrational or otherwise inappropriate for use, the Department examines appropriate benchmarks to test the reliability of that value”).

⁷² See “Paper and Stationery” at 54; Pencils 06-07 Final Results at Comment 4b.

⁷³ See China First’s Section D QR at D-17; Three Star’s Section D QR at D-14.

⁷⁴ See China First’s and Three Star’s Revised Surrogate Value Submission of December 4, 2009 at Exhibit 3.

⁷⁵ See Preliminary Surrogate Value Memo at 7.

First's and Three Star's rates. SFTC argues that section 735(c)(5) of the Act provides that the all-others rate shall be equal to the weighted-average of the weighted-average margins of the exporters or producers individually investigated, excluding any zero or de minimis margin.

Dixon and SFTC assert that, if the Department calculates de minimis rates for the two mandatory respondents to this administrative review, then Dixon and SFTC should be assigned a de minimis rate. They assert the Department has given separate rates companies the average of the rates of the mandatory respondents that received zero or de minimis margins.⁷⁶ Dixon argues that to do otherwise would be punitive.⁷⁷ SFTC asserts that section 735(c)(5)(B) of the Act states that if all investigated producers or exporters receive zero or de minimis margins, the Department may use any reasonable method to establish the all-others rate, including averaging the weighted-average margins of the companies individually investigated. Dixon notes that the SAA at 873 recognizes that the Department may use other methods if averaging the calculated margins results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers.⁷⁸ Dixon asserts that this would be the most reasonable method of calculating its margin.

Department's Position:

In these final results, the Department will calculate SFTC's and Dixon's separate rate margin using a simple average of China First's and Three Star's dumping margins. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and de minimis rates and rates based entirely on adverse facts available, and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents.⁷⁹ Notwithstanding this practice, we have not calculated the rate for the separate rates respondents by weight-averaging the rates of China First and Three Star, because doing so risks disclosure of proprietary information. Specifically, because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not

⁷⁶ See 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, 9173 (February 28, 1997) ("Brake Rotors LTFV").

⁷⁷ See, e.g., Chaparral Steel Co. v. United States, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990) (recognizing the antidumping law as a remedial statute).

⁷⁸ See Brake Rotors LTFV, 62 FR at 9173.

⁷⁹ See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review, 73 FR 8273 (February 13, 2008) unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008).

inadvertently revealed.⁸⁰

Although Dixon and SFTC assert that if the Department calculates de minimis rates for the two mandatory respondents into this administrative review, then Dixon and SFTC should be assigned a de minimis rate, we have not determined a de minimis rate for both respondents. Therefore, this issue is moot.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date

⁸⁰ See, e.g., Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352, 6353 (February 9, 2010).