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January 2, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CPM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of 2010-2011
Antidumping Duty Administrative Review: Certain Cased Pencils
from the People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC) for the period of review (POR) December 1, 2010, through November 30, 2011. The Department has preliminarily determined that Beijing Fila Dixon Stationery Company, Ltd. a/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd., a/k/a Beijing Dixon Stationery Company, Ltd., and Dixon Ticonderoga Company (collectively, "Dixon") did sell subject merchandise in the United States at prices below normal value.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (Act).

Background

On December 30, 2011, Shandong Rongxin Import & Export Co., Ltd. ("Rongxin"), China First Pencil Co., Ltd. ("China First"), and Orient International Holding Shanghai Foreign Trade Co., Ltd. ("SFTC") requested an administrative review of their sales to the United States. On January 13, 2012, Dixon requested an administrative review of its sales to the United States. On January 31, 2012, the Department initiated an administrative review of certain cased pencils from the



PRC for the period December 1, 2010, through November 30, 2011.¹ On August 6, 2012, the Department issued a memorandum extending the time period for issuing the preliminary results by 120 days.² As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now January 2, 2013. See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy" dated October 31, 2012.

Scope of the Order

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

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 4759 (January 31, 2012) (*Initiation Notice*).

² See Department Memorandum, "Certain Cased Pencils from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated August 6, 2012.

weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

On February 14, 2012, the Department placed CBP data for the HTSUS number listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.³ The Department did not receive comments. Based on the CBP data and requests for review, the Department sent its antidumping duty questionnaire to Dixon, Rongxin, and SFTC on March 27, 2012.⁴

On May 1, 2012, Dixon submitted its response to Section A of the Department's questionnaire and on June 7, 2012 to Sections B and C. From August 20, 2012 through November 28, 2012, the Department sent and received supplemental questionnaires/responses from Dixon.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice.

On March 21, 2012, China First timely withdrew its request for review. On March 27, 2012, SFTC withdrew its request for, and, on March 30, 2012, Rongxin withdrew its request for review.⁵ China First, SFTC, and Rongxin have each qualified for a separate rate in prior segments of this proceeding.⁶ China First, SFTC, and Rongxin were the only companies, other than Dixon, that had requested a review of themselves. Accordingly, the Department is rescinding this administrative review with respect to China First, SFTC, and Rongxin in accordance with 19 CFR 351.213(d)(1).

Intent Not To Revoke

On January 13, 2012, Dixon requested revocation from the order as it pertains to its sales.⁷

Under section 751(d)(1) of the Act, the Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review. Under 19 CFR 351.222(b)(2),⁸ the

³ See Letter to All Interested Parties, dated February 14, 2012.

⁴ See Letters from the Department to Dixon, Rongxin, and SFTC, dated March 27, 2012.

⁵ See Letters from China First, SFTC, and Rongxin to the Department, dated March 21, 2012, March 27, 2012, and March 30, 2012, respectively.

⁶ See *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68047, 68049 (December 22, 2009) (finding China First and SFTC eligible for a separate rate), unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 75 FR 38980 (July 7, 2010); *Certain Cased Pencils From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 2337, 2340 (January 13, 2011) (finding Rongxin eligible for a separate rate), unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 76 FR 27988 (May 13, 2011).

⁷ See Letter from Dixon to the Department, dated January 13, 2012.

⁸ The Department recently published a final rule amending this section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that final rule does not apply to

Department may revoke an antidumping duty order in part if it concludes that (a) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (b) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping.

A request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (a) the company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (b) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (c) the agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1).

We preliminarily determine that Dixon's request does not meet all of the criteria under 19 CFR 351.222(e)(1) for revocation. With regard to the criteria of 19 CFR 351.222(b)(2), our preliminary margin calculations show that Dixon sold subject merchandise at less than normal value during the current review period. Therefore, we preliminarily determine that Dixon does not qualify for revocation from the order pursuant to 19 CFR 351.222(b)(2).⁹

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (NME) country.¹⁰ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 29875 (May 21, 2012). References to 19 CFR 351.222(b) in this memorandum thus refer to the Department's regulations in effect prior to June 20, 2012.

⁹ The Department preliminarily determines that Dixon has met all other necessary requirements except for the *de minimis* rate in the current administrative review.

¹⁰ *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

Separate Rate

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹¹ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹² It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹³ as amplified by *Silicon Carbide*.¹⁴ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (ME) country, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁵

Dixon submitted separate rate information and reported that it is wholly-owned by Dixon Ticonderoga Company which is located in the United States, *i.e.*, an ME country.¹⁶ Accordingly, as the Department has no evidence indicating that Dixon is under the control of the PRC, a separate rate analysis is not necessary.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOP), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act and our *Policy Bulletin*,¹⁷ in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national incomes (GNI) are comparable to the PRC in terms

¹¹ 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, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹² See *Initiation Notice*, 77 FR at 4759.

¹³ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

¹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

¹⁵ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355 (September 13, 2007).

¹⁶ See Dixon's letter "Certain Cased Pencils from the People's Republic of China: Section A Response of Beijing Fila Dixon Stationery Company, Ltd." dated May 1, 2012, at 2-15 and cited exhibits (e.g., A-2 Capital Verification reports).

¹⁷ See Import Administration Policy Bulletin 04.I: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin*).

of economic development.¹⁸ The sources of the surrogate values (SV) we have used in this investigation are discussed under the “Normal Value” section below.

Dixon argues that the Department should consider India as a potential surrogate country to be used in this review.¹⁹ According to Dixon, India’s 2010 GNI was \$1,375 whereas the PRC’s GNI was \$4,260, and the countries identified by the Department had GNIs ranging from \$2,050 to \$6,100.²⁰ Dixon argues that the Department is not required to use a surrogate country that is at a level of economic development “most comparable” to the PRC and that, in consideration of the other factors the Department looks at when choosing a surrogate country, the difference in India’s and the PRC’s GNIs is negligible.²¹ Furthermore, Dixon argues that India is a significant producer of subject merchandise, a significant exporter of subject merchandise to the United States, offers quality factor price data, and that the Department has used India as the surrogate country in the previous administrative reviews of the order.²²

Economic Comparability

As explained in our Surrogate Country Memorandum, the Department considers Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of economic development. Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.²³

The Department has previously determined that India is less economically comparable to the PRC than the seven identified countries.²⁴ Consequently, we will not consider India as an appropriate surrogate country unless we are unable to find a more economically comparably surrogate country which satisfies all remaining criteria for selection.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the

¹⁸ See Department Memorandum, “Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Cased Pencils (“Pencils”) from the People’s Republic of China (“China”),” dated July 24, 2012 (Surrogate Country Memorandum).

¹⁹ See Letter from Dixon, “Certain Cased Pencils from the People’s Republic of China: Comments Addressing Selection of Surrogate Country,” dated September 14, 2012.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 4-5.

²³ See, e.g., *Certain Steel Wheels From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

²⁴ See *Hand Trucks and Parts Thereof From the People’s Republic of China: Preliminary Results of Antidumping Administrative Review*, 77 FR 1464, 1466 (January 10, 2012),

Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."²⁵ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.²⁶ Further, when selecting a surrogate country, the Act requires the Department to consider the comparability of the merchandise, not the comparability of the industry.²⁷ "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."²⁸ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis.

In other cases, however, where there are major inputs, *e.g.*, inputs that are specialized, dedicated, or used intensively, in the production of the subject merchandise (*e.g.*, processed agricultural, aquatic and mineral products) comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.²⁹

Further, the Act provides the Department discretion to examine various data sources for determining the best available information.³⁰ Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"³¹ it does not preclude reliance on additional or alternative metrics. In this case, because production data of comparable merchandise was not available, we analyzed exports of comparable merchandise from the seven countries, as a proxy for production data. We obtained export data using the Global Trade Atlas (GTA) for HTSUS 9609.10: Pencils And Crayons, With Leads Encased In A Rigid Sheath.

All of the countries identified in the Surrogate Country Memorandum had significant exports of merchandise falling under the HTS numbers included in the scope of the order. Because none of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

²⁵ See *Policy Bulletin* at 2.

²⁶ The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." See *id* at note 6.

²⁷ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

²⁸ See *Policy Bulletin* at 2.

²⁹ See *id* at 3.

³⁰ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

³¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988) (Conference Report).

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.³² The Department conducted an extensive search for SVs from the seven identified countries. With the one exception discussed below, the Department was able to find all the necessary surrogate values in Thailand. Moreover, Thailand was the only country from which we were able to obtain a usable financial statement. Therefore, we preliminarily determine that with respect to data availability, Thailand is superior to the other identified potential surrogate countries.

The Department determines that Thailand is a reliable source for SVs because Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of identical and comparable merchandise, and has publicly available and reliable data. Consequently, the Department has selected Thailand as the primary surrogate country for this review.³³

With respect to slats, a primary FOP used by Dixon, we are not able to use Thai data because all of the slats imported into Thailand during the POR were from the PRC.³⁴ Therefore, the Department is preliminarily valuing slats using import statistics from Indonesia, another economically comparable, significant producer of pencils. Indonesia's imports of slats during the POR were from non-NME countries that do not have known export subsidies.³⁵

Date of Sale

Dixon reported that the date of sale was determined by the invoice issued by Dixon Ticonderoga Company to the unaffiliated United States customer.³⁶ As there is no evidence contrary to Dixon's claim, we have used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).³⁷

³² See *Policy Bulletin*.

³³ See also Department Memorandum, "2010-2011 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Preliminary Results," dated concurrently with this Preliminary Decision Memorandum (Prelim FOP Memorandum).

³⁴ See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 7 (applying the Department's practice of not using import data from NME countries when the Department relies upon import statistics for SV purposes).

³⁵ See Prelim FOP Memorandum at 5.

³⁶ See Dixon's Second Supplemental Questionnaire Response dated November 29, 2012 at 5.

³⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States by Dixon were made at less than NV, the Department compared the constructed export price (CEP) to NV, as described in the “U.S. Price – Constructed Export Price” and “Normal Value” sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.³⁸ In particular, the Department compared monthly, weighted-average CEPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

U.S. Price – Constructed Export Price

Dixon reported that all of its POR sales were CEP in accordance with section 772(b) of the Act. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States, net of billing adjustments, rebates and early payment discounts. Where appropriate, we adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling (U.S. brokerage and handling was reported as three “other transportation expense” categories), U.S. customs duties, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse to unaffiliated customers and U.S. inland shipment insurance in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. Specifically, we deducted, where appropriate, imputed credit expenses, applicable advertising expenses, commissions, royalties, repacking expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where foreign movement expenses, international movement expenses, or U.S. movement expenses were paid for in PRC currency (or the services supplied by PRC providers), we valued the services using SVs.³⁹ For those services provided by an ME provider and paid for in an ME currency, we used the reported expense.⁴⁰

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOPs methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

³⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

³⁹ See Prelim FOP Memorandum.

⁴⁰ *Id.*

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by Dixon for the POR, using Thai and Indonesian import data, and other publicly available Thai values. Specifically, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁴¹

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai and Indonesian import values, reported on a Cost, Insurance and Freight "CIF" basis, a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

With regard to the import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.⁴² Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁴³ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.⁴⁴ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an

⁴¹ See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁴² See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁴³ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁴⁴ See Conference Report, at 590; see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

NME country or a country with general export subsidies.⁴⁵ Therefore, we have not used prices from these countries either in calculating the Thai and Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.⁴⁶ Dixon reported raw material purchases sourced from and produced by ME suppliers and paid for in an ME currency during the POR. Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,⁴⁷ the Department uses the actual purchase prices to value the inputs. Information reported by Dixon demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies.⁴⁸ The information reported by Dixon also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 33 percent or more) from ME suppliers; hence, the Department has used Dixon's actual ME purchase prices to value these inputs.⁴⁹ Where appropriate, freight expenses were added to the ME price of the input.

The Department used Thai and Indonesian import statistics from the GTA to value the raw material inputs, certain energy inputs and packing material inputs that Dixon used to produce subject merchandise during the POR, except where listed below.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2012: Thailand* by the World Bank.⁵⁰

We used Thai transport information to value the freight-in cost of the raw materials. We valued truck freight expenses by averaging the rates charged by DX Innovation Co., Ltd., a Thailand freight logistics marketplace, as quoted at www.dxplace.com/price/list, and the distances to 74 destinations within Thailand.⁵¹

⁴⁵ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

⁴⁶ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁴⁷ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) (*Antidumping Methodologies: Market Economy Inputs*).

⁴⁸ See Dixon's Questionnaire Response, Section D at 15-16 and Dixon's First Supplemental Questionnaire Response at 14 and Exhibits D-43-1, D-43-2, D-43-3.1, D-43-3.2, D-43-3.3, D-44-a, and D-44-b.

⁴⁹ *Id.*

⁵⁰ See Prelim FOP Memorandum at Exhibit 2.

⁵¹ *Id.* at 8.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.⁵² In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).⁵³

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. To value the respondent's labor input, the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook. Chapter 6A data reflects all costs related to labor, including wages, benefits, housing, training, etc. Although the Department prefers to use data at the two-digit level because it is more specific to the industry being examined, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using total labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act.⁵⁴ For the preliminary results, the calculated industry-specific wage rate is 141.22 Baht/hour. A more detailed description of the wage rate calculation methodology is provided in the "2010-2011 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Preliminary Results" dated concurrently with this memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, the Department used the audited financial statements of D.T.C. Industries Public Company Limited., a Thai producer of ball point pens, erasers, wooden pencils, retractable pencils, highlighters, markers, and related stationery products.⁵⁵

Currency Conversion

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

⁵² See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

⁵³ See *id.*, 76 FR at 36093-94.

⁵⁴ See *id.*, 76 FR at 36094, n. 11; see also *Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Administrative Review*, 77 FR 40854 (July 11, 2012).

⁵⁵ See *id.* at Attachment 1.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

2 JANUARY 2013
(Date)