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November 15, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Certain Cased Pencils from the
People's Republic of China: Preliminary Results of Antidumping
Duty Administrative Review and Partial Recession; 2014 - 2015

I. SUMMARY

In response to requests from interested parties,¹ the Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) for the period of review (POR) from December 1, 2014, through November 30, 2015. The administrative review covers five exporters of subject merchandise, Shandong Rongxin Import & Export Co., Ltd. (Rongxin), Wah Yuen Stationery Co. Ltd. and its affiliate Shandong Wah Yuen Stationery Co. Ltd. and its claimed affiliate, Tianjin Tonghe Stationery Co. Ltd. (collectively, Wah Yuen),² and Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC). We preliminarily determine that Rongxin is not eligible for a separate rate and, therefore, is part of the PRC-wide entity. We are rescinding the review with respect to Wah Yuen and SFTC.

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

¹See letter from Dixon Ticonderoga Company, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated December 30, 2015 (Dixon's Request for Administrative Review); see also letter from SFTC, "Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China," dated December 31, 2015.

²The Department found Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. to be affiliated and treated them as a single entity. See *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 37573 (June 10, 2016), and accompanying Preliminary Decision Memorandum at 9-10, unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 74764 (October 27, 2016). The Department has not made an affiliation finding between Wah Yuen Stationery Co. Ltd. and Tianjin Tonghe Stationery Co. Ltd.

subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless extended, we will issue the final results within 120 days from the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On December 28, 1994, the Department published in the *Federal Register* an antidumping duty order on certain cased pencils from the PRC.³ On December 1, 2015, the Department notified interested parties of their opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in December 2015, including the antidumping duty order on pencils from the PRC.⁴ On December 31, 2015, the Dixon Ticonderoga Company (Dixon), a U.S. importer and manufacturer of subject merchandise, and a petitioner in the original investigation, requested an administrative review of Rongxin and Wah Yuen.⁵ On December 31, 2015, SFTC, an exporter of subject merchandise, requested a review of its exports.⁶ Based on these timely requests, on February 9, 2016, we initiated an administrative review of Rongxin, Wah Yuen, and SFTC.⁷

In the *Initiation Notice*, we stated that we intended to select respondents based on CBP data for U.S. imports during the POR. On March 11, 2016, we released the CBP data to interested parties under Administrative Protective Order (APO)⁸ and received comments from Rongxin on March 16, 2016, and March 21, 2016.⁹ On March 25, 2016, we received comments from SFTC.¹⁰

SFTC timely withdrew its request for an administrative review on March 30, 2016. On May 5, 2016, Dixon timely withdrew its request for an administrative review of Wah Yuen.¹¹

On July 1, 2016, we issued the initial questionnaire to Rongxin.¹² On July 25, 2016, we extended the time period for issuing the preliminary results by 75 days until November 15, 2016.¹³

³ See *Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994).

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 75078 (December 1, 2015) (*Opportunity to Request Administrative Review*).

⁵ See Dixon's Request for Administrative Review at 1.

⁶ See letter from SFTC, "Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China," dated December 31, 2015.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Review*, 81 FR 6832 (February 9, 2016) (*Initiation Notice*).

⁸ See Memorandum to the File, "Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China: Release of Customs and Border Protection (CBP) Data," dated March 11, 2016.

⁹ See letter from Rongxin, re: "Cased Pencils from the People's Republic of China: Comments on CBP Import Data," dated March 16, 2016; see also letter from Rongxin, re: "Cased Pencils from the People's Republic of China: Clarification of March 16, 2016 Letter Regarding Quantity and Value Sold by Rongxin in POR," dated March 21, 2016.

¹⁰ See letter from SFTC, "Comments on Issues Raised by the CBP Data: Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China," dated March 25, 2016.

¹¹ See letter from SFTC, "Withdrawal of Request for Review: Administrative Review of the Antidumping Order on Cased Pencils from the People's Republic of China," dated March 30, 2016; see also letter from Dixon, re: "Certain Cased Pencils from the People's Republic of China: Partial Withdrawal of Request for Administrative Review," dated May 5, 2016.

We received Rongxin's response to section A of the questionnaire (*i.e.*, the section related to general company information) on August 5, 2016, and its responses to sections C and D (*i.e.*, the sections relating to U.S. sales and factors of production, respectively) on August 23, 2016.¹⁴ On September 16, 2016, Rongxin submitted surrogate country comments.¹⁵

III. SCOPE OF THE ORDER

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

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

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

IV. 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. SFTC and Dixon timely withdrew their requests for an administrative review on March 30, 2016, and May 6, 2016, respectively. Accordingly, the

¹² See letter from the Department to Rongxin dated July 1, 2016.

¹³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review," dated July 25, 2016.

¹⁴ See letters from Rongxin, "Certain Cased Pencils from the People's Republic of China: Rongxin Section A Response," dated August 5, 2016 (RAQR) and "Certain Cased Pencils from the People's Republic of China: Rongxin Sections C and D Responses," dated August 23, 2016 (RCDQR).

¹⁵ See letter from Rongxin, "Cased Pencils from the People's Republic of China: Surrogate Country Comments," dated September 16, 2016.

Department is rescinding this administrative review with respect to SFTC and Wah Yuen (which includes its affiliate, Shandong Wah Yuen Stationery Co. Ltd. and claimed affiliate, Tianjin Tonghe Stationery Co. Ltd.).

V. DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (NME) country.¹⁶ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.¹⁷ None of the parties to this proceeding contested NME treatment for the PRC. Therefore, for the preliminary results of this review, we treated the PRC as an NME country and applied our current NME methodology, in accordance with section 773(c) of the Act.

Separate Rate

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁸ In the *Initiation Notice*, we notified parties of the application process by which exporters and producers may obtain separate rates.¹⁹ The process requires exporters to submit a separate rate application (SRA) and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

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*,²⁰ as further developed in *Silicon Carbide*.²¹ If, however, the

¹⁶ See *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at the Background section

¹⁷ See *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review*, 71 FR 26736, 26739 (May 8, 2006), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006).

¹⁸ See *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); see also *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 (*Diamond Sawblades*) (May 22, 2006).

¹⁹ See *Initiation Notice*, 78 FR at 72631.

²⁰ 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*).

²¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).

Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.²²

The Department continues to evaluate its practice with regard to the separate rates analysis in light of *Diamond Sawblades*, and our determinations therein.²³ In particular, we note that in litigation involving the *Diamond Sawblades* proceeding, the U.S. Court of International Trade (CIT) found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.²⁴ Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding, in and of itself, demonstrates that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

a) *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments

²² See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

²³ See Remand Memorandum, "Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China," dated (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See, e.g., *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.²⁵

As explained in the Separate Rate Memorandum, the evidence provided by Rongxin supports a preliminary finding of an absence of *de jure* government control.²⁶

b) Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.²⁷ The Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates.

In the previous administrative review of Rongxin, for the POR December 1, 2012, through November 30, 2013, the Department concluded that Rongxin was not entitled to a separate rate, because its majority shareholder, Shandong International Trade Group (SITG), was owned by a government entity, the State-owned Assets Supervision & Administration Commission (SASAC).²⁸ In the instant review, Rongxin continues to maintain that its majority shareholder, SITG, was owned by a government entity for the majority of the POR. However, in this review, Rongxin claims that SITG was owned by the Commerce Department of Shandong Province.²⁹ Rongxin reports that during the current POR, specifically in November 2015, the Commerce Department of Shandong Province sold its interest in SITG to private owners,³⁰ thus eliminating the majority and controlling shareholding by the government.

Prior to the November 2015 change in the ownership of SITG, the facts that underlie the Department's separate rate analysis are similar to those from the prior review. Rongxin reported that the company is owned by its shareholders and one shareholder, SITG, owned more than 50

²⁵ See *Sparklers*, 56 FR at 20589.

²⁶ See Memorandum to The File from Mary Kolberg, International Trade Compliance Analyst, re: "Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China: Preliminary Separate Rate Analysis Memorandum for Shandong Rongxin Import & Export Co., Ltd.," dated concurrently with this memorandum (Separate Rate Memorandum).

²⁷ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

²⁸ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China; 2012-2013," dated April 30, 2015.

²⁹ See letter from Rongxin, re: "Cased Pencils from the People's Republic of China: Rongxin Section A Response," dated August 5, 2016 (RAQR) at A-3.

³⁰ *Id.*

percent of Rongxin.³¹ According to Rongxin, the shareholders, via the “general meeting” select the members of the board of directors, and the management is selected by the board of directors.³² Rongxin claims that SITG had only one vote in selecting the members of the board of directors, despite its majority shareholding. Rongxin states that this establishes that SITG had no control over the selection of the majority of the board of directors or in the decision-making process of the board of directors.³³ However, as we concluded in the prior review and in other proceedings, where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself demonstrates that the government exercises, or has the potential to exercise, control over the company’s operations.³⁴ Thus, there is no basis for determining that Rongxin’s U.S. sales made prior to the purchase of SITG by a private company are entitled to separate rate treatment.

The purchase of SITG by a private company during the POR constitutes new information that could require the Department to revisit the determination that Rongxin is not entitled to a separate rate, and further, to consider whether it is appropriate to calculate a separate rate for Rongxin, based on sales to the United States after the November date on which majority ownership in SITG passed from the government to a private entity. However, the Department analyzed and considered the invoice dates as the date of sale, as Rongxin claimed is appropriate.³⁵ The U.S. sales database provided by Rongxin shows that the company made no sales to the United States in November 2015 (the last month of the POR, and the month in which the sale of SITG to a private company occurred).³⁶ Thus, there are no U.S. sales that the Department could use for purposes of calculating a margin were the Department to find Rongxin eligible for a separate rate. Therefore, we cannot calculate a separate rate for Rongxin that reflects the absence of *de facto* government control. Accordingly, we preliminarily find that, for Rongxin’s sales during the POR, Rongxin is not entitled to a separate rate.

VI. PRELIMINARY RESULTS OF REVIEW

Because Rongxin has not established its eligibility for a separate rate, the Department preliminarily determines that Rongxin will continue to be considered part of the PRC-wide entity.³⁷ For the PRC-wide entity, we continue to use the PRC-wide rate of 114.90 percent.³⁸

³¹ *Id.* at A-2.

³² *Id.* at A-2 and A-8.

³³ *Id.* at A-2 and A-3.

³⁴ See *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 26897 (May 11, 2015), and accompanying Issues and Decision Memorandum at Comment 1.

³⁵ See RCDQR at 14-15.

³⁶ See letter from Rongxin, re: “Cased Pencils from the People’s Republic of China: Rongxin Sections C and D Responses,” dated August 22, 2016 at C-2.

³⁷ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

³⁸ See *Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People’s Republic of China*, 67 FR 59049 (September 19, 2002).

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

X

Paul Piquado
Assistant Secretary for Enforcement and Com...