

69 FR 29266, May 21, 2004

A-570-827
POR: 12/01/2001-11/30/2002
Public Document
AD/CVD GII04: MZ/CZ/PS

May 12, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2001-
2002 Antidumping Duty Administrative Review of Certain Cased
Pencils from the People's Republic of China

Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of certain cased pencils from the People's Republic of China (PRC). As a result of our analysis, we have made changes, including corrections of certain inadvertent ministerial errors in the preliminary margin calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for these final results.

Below is the complete list of issues for which the Department of Commerce (the Department) received comments and rebuttal comments from interested parties:

- Comment 1: The Appropriate Surrogate Value for Pencil Cores
- Comment 2: Whether China First Pencil Co. Ltd. (CFP)/Three Star Stationery Industry Corp. (Three Star) Reported U.S. Sales Made by Another PRC Entity
- Comment 3: The Appropriate Surrogate Source For Financial Ratios
- Comment 4: Ministerial Errors
- Comment 5: Whether Three Star Reimbursed Certain U.S. Customers for Dumping Duties
- Comment 6: Whether the Department Should Continue to Treat CFP and Three Star as a Single Entity for Antidumping Duty Purposes
- Comment 7: How to Treat Certain Sales With Two Sales Invoices
- Comment 8: Whether CFP's Dumping Margin Applies to its Subsidiaries

Background

On January 13, 2004, the Department published the preliminary results of the antidumping duty administrative review of certain cased pencils from the PRC. See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 69 FR 1965 (January 13, 2004) (Preliminary Results). The period of review (POR) is December 1, 2001 through November 30, 2002. After providing interested parties an opportunity to comment on the Preliminary Results, on February 17, 2004, the respondents, CFP/Three Star, Orient International Holding Shanghai Foreign Trade Co. Ltd. (SFTC), and Shandong Rongxin Import & Export Co., Ltd. (Rongxin), and the petitioners¹ submitted case briefs to the Department. On February 23, 2004, the aforementioned interested parties submitted rebuttal briefs to the Department. Rongxin requested a public hearing but withdrew its request on April 14, 2004. No other interested party requested a public hearing.

Discussion of the Issues

Comment 1: The Appropriate Surrogate Value for Pencil Cores

The respondents argue that the Department should value pencil cores using Eximkey data² or the price quotes and price lists that they submitted rather than the Monthly Statistics of the Foreign Trade of India (MSFTI) because the MSFTI data are unreliable and significantly overstate the surrogate value of pencil cores. Specifically, the respondents claim that the MSFTI data for Harmonized Tariff System (HTS) item number 9609.2000 (Pencil Leads Black/Colored) are not reliable because the data are based, at least in part, on entries of non-pencil core articles such as color pens, jumbo pencils, complete math sets, and items described as “baby cycle,” “small knife,” and “funny pen/pencil.” The respondents base this claim on the fact that Eximkey data identify the above items as merchandise imported under HTS item number 9609.2000. Additionally, the respondents contend that the MSFTI data appear to be aberrant because when non-pencil core articles are excluded from the Eximkey data, the resulting average unit value (AUV) of the Indian imports classified under HTS item number 9609.2000 is \$ 0.15 per gross³ rather than the \$9.12 per gross surrogate value calculated by the

¹ The petitioners are Sanford LLP, Musgrave Pencil Company, Rose-Moon Inc., and General Pencil Company.

² The Eximkey data are a compilation of import statistics from Customs Houses at six major ports in India. The data are transaction specific and each entry includes a description of the merchandise being imported.

³ One gross is 144 pencils.

Department in the Preliminary Results using MSFTI data. In light of the Department's overarching mandate and consistent policy of selecting the best available data to value factors of production and disregarding unreasonable and aberrant surrogate values in the calculation of normal value, the respondents urge the Department to reject the MSFTI data for cores. See Shakeproof Assembly Components, Inc. v. United States, 268 F. 3d 1376, 1382 (Fed. Cir. 2001) in which the Court stated that "the purpose of the statutory provisions {sections 1677b(c)(1) and (4)} is to determine antidumping margins as accurately as possible." See, also, Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the PRC, 59 FR 55625, 55633 (November 8, 1994) in which the Department states that "although we have selected India as the appropriate surrogate country in this investigation, this does not mean that we are required to use those Indian factor values that we find to be aberrational"

On the other hand, the respondents claim that the Eximkey data cover the factor being valued and, according to CFP/Three Star and SFTC, are corroborated by other information on the record. Specifically, CFP/Three Star and SFTC claim that the Eximkey data are corroborated by the price lists they placed on the record which contain black pencil core prices ranging from \$0.19 to \$0.25 per gross and color core prices ranging from \$0.42 to \$0.50 per gross, prices that are comparable to the average value of \$0.15 per gross calculated from Eximkey data. Further, CFP/Three Star and SFTC assert that the Eximkey data are contemporaneous with the review period and are as reliable for purposes of the instant administrative review, as they were when the Department used the data in the 2000-2001 administrative review of the antidumping duty order on pencils from the PRC. Also, these respondents note that the entry quantities expressed in terms of number of boxes in Eximkey data can be converted to number of pieces using the box-to-pieces conversion from the 2000-2001 review. According to these respondents, this conversion ratio can be used because most of the boxes of pencils identified in the Eximkey data were imported by the company whose imports were used to calculate the conversion in the 2000-2001 review and there is reason to believe this importer changed its method of importing pencils.

Finally, the respondents maintain that if the Department continues to rely on MSFTI data to calculate a surrogate value for cores, it should exclude from that calculation aberrant data relating to imports from Japan, Singapore and Taiwan. CFP/Three Star and SFTC note that the surrogate value calculated for cores in the Preliminary Results was 443.221 Rupees (Rs.) per kilogram whereas the individual AUVs calculated for imports from Japan, Singapore and Taiwan, using the MSFTI data, are significantly higher at 780.5 Rs., 568.0 Rs. and 577.83 Rs. per kilogram respectively.

The petitioners argue against valuing pencil cores using the Eximkey data because 1) a significant portion of the entries in the data are quantified in terms of number of boxes of cores and the quantity of cores contained in a box cannot be determined, and 2) the sizes of certain imported cores indicate that they are not cores used to produce cased pencils. Although the respondents submitted information from the 2000-2001 administrative review of pencils from the PRC, which was used in that review to calculate the quantity of cores contained in a box, the petitioners contend that this information should not be relied upon for several reasons. First, the petitioners contend that the box-to-pieces conversion

used in the 2000-2001 administrative review is based on boxes used for air shipments while the boxes of cores identified in the Eximkey data covering the instant POR were shipped by sea. The petitioners argue that there is no evidence on the record of this review that supports the respondent's assumption that the boxes used to ship cores by sea are the same size and capacity as those used to ship cores by air. Second, according to the petitioners, there is nothing on the record to indicate that one of the Indian importers of a significant quantity of cores, G.M. Pens Int'l Ltd. (GM), whose import volume for cores is expressed in terms of number of boxes in the Eximkey data, imported any cores other than mechanical pencil cores. The petitioners state that the quantity of mechanical pencil cores in a box tells us nothing about the quantity of cased pencil cores in a box, since cased pencil cores are longer and thicker than mechanical pencil cores.

In addition, the petitioners argue that the core dimensions noted in the Eximkey data for two of GM's imports and one of Saber Pens Pvt. Ltd.'s (Saber's) (another importer of a significant quantity of cores) imports are 0.7x50mm and 0.5x60mm, respectively. According to the petitioners, these dimensions indicate that the cores are for mechanical pencils (non-subject merchandise). With respect to the remaining import transactions for GM and Saber, for which the Eximkey data does not identify dimensions, the petitioners note that the value of these imports approximates the value of the imports with the dimensions listed, and thus these cores must also be of a size that is too small to be used in subject merchandise. Further, according to the petitioners, excluding the Indian imports by GM and Saber from the Eximkey data would still render the data unusable because the only viable remaining imports are those made by Hi Tech Writing Instruments (Hi Tech). The petitioners claim that Hi Tech's imports would not provide a reliable basis for calculating a surrogate value for cores because 1) there is no indication as to the size of the cores imported by Hi Tech, and 2) contrary to the Department's preference, these imports do not represent a range of prices in effect during the POR. The petitioners note that these imports are limited to four transactions of 1,400 gross each, all at the same price and they reflect the experience of a single company covering only two transactions in April and two undated transactions. In contrast, the petitioners point out that the MSFTI data are compiled from all Indian imports during the entire POR and reflect a range of prices in the surrogate country. Lastly, although the Department used Eximkey data to value pencil cores in the 2000-2001 administrative review of pencils from the PRC, the petitioners point out that unlike the Eximkey data for the instant POR, the Eximkey data for the 2000-2001 administrative review consists of a much larger number of entries of cores and a valid box-to-pieces conversion.

While the petitioners concede that the MSFTI data may include imports of merchandise in addition to pencil cores, they argue that there is nothing to indicate that the items described under HTS item number 9609.2000 in Eximkey data are the same as those declared to Indian Customs and reflected in MSFTI data. In fact, the petitioners note that the Eximkey data appears to be based on commercial invoices or bills of lading, rather than Indian Customs entry information. Further, the petitioners contend that any merchandise, other than pencil cores, included in the MSFTI data, that may be of a higher value than pencil cores, is offset by lower value items, such as small cores (*e.g.*, mechanical pencil cores).

Nevertheless, the petitioners state that if Department uses Eximkey data to calculate a surrogate value for graphite (black) cores, it should base the value of color cores on MSFTI data, net of the Eximkey data used to value the graphite cores.

Department's Position:

We agree with the petitioners' position that pencil cores should be valued using MSFTI data. In selecting publicly available surrogate values, the Department prefers to select values that are 1) for products as similar as possible to the input being valued, 2) representative of a range of prices in effect during the POR, and 3) based on transactions contemporaneous with, or closest in time to, the period under consideration. See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 43082 (July 21, 2003). Based on our review of the Eximkey data, we determine that these data are not representative of a range of prices in effect during the POR because, after excluding unusable entries from the data, only one entry remained potentially usable to value pencil cores. We considered the following Eximkey data to be unusable: 1) entries of non-pencil core articles, 2) entries of pencil cores from nonmarket economy (NME) countries and countries providing export subsidies, 3) entries of pencil cores for which quantities could not be reliably determined (entries for which quantities are stated in terms of "boxes" or "tubs"), and 4) an entry with an ambiguous product description ("Black Lead Pencil"). We did not rely upon the box-to-pieces conversion from the 2000-2001 administrative review, which was based on GM's imports by air, because it is not clear that this conversion applies to entries for other importers or applies to GM's entries for which the method of transportation is not specified. Thus the current situation contrasts with that found in the previous segment of this proceeding, in which the Department valued pencil cores using Eximkey data because the data consisted of numerous usable import transactions. Finally, we note that the Eximkey data on the record of the instant administrative review does not cover the full POR.

We did not value pencil cores using the Indian price lists proffered by CFP/Three Star and SFTC for the following reasons. First, one of the price lists provides export prices and covers only one month of the POR. The Department prefers to base surrogate values on domestic or import prices that are contemporaneous with the entire POR. Second, there is no evidence on the record that any sales of cores were made at the prices shown on the price lists. Third, the manufacturer's cover letter attached to the price lists indicates that raw material prices are "steady" or "going down" and that bank interest costs "have gone down from 16% to 12%," indicating that the prices may be in flux and the price lists may not be representative of the range of prices in effect during the POR. Fourth, the price lists cover prices offered by a single Indian core manufacturer, and thus the values included therein cannot be considered to be "broad and representative" (see the Preamble to the Department's regulations, which states that, "when compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country." See Antidumping Duties;

Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997)).

Thus, we turn to the MSFTI data on the record. Although the respondents have challenged the reliability of the data, noting that the MSFTI data for HTS category 9609.2000 (Pencil Leads Black/Colored) may include merchandise other than the pencil cores used by the respondents (*i.e.*, mechanical pencil leads), it is not clear that such data are based on imports of a diverse group of products such as pens, jumbo pencils, math sets, “baby cycle,” “small knife,” and “funny pen/pencil,” as claimed by the respondents. CFP/Three Star and SFTC base their claim regarding mis-classified imports on an analysis of Eximkey import data covering HTS category 9609.2000 for a period that is contemporaneous with the instant POR. As the petitioners note above, however, there is nothing on the record of the instant administrative review to indicate that the items described under the HTS item number 9609.2000 in the Eximkey data (collected by the Customs houses at six major Indian ports) are declared to Indian Customs and reflected in the MSFTI data without certain adjustments.

Furthermore, in considering the reliability of the MSFTI data, we followed the Department’s practice of determining whether the MSFTI data consists of low-volume imports from certain countries with per-unit values substantially different from the per-unit values of the higher quantity imports of that product from other countries. See Shakeproof Assembly Components Division of Illinois Tool Works, Inc., v. United States, 203 F. Supp. 2d 486, 492 (CIT 2000)

(in determining whether data are reliable, the Department’s practice is “to disregard small-quantity import data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries.”). Based on our review of the data, we excluded imports from certain countries from our calculations. See the Memorandum From The Team Regarding Surrogate Values for Factors of Production for the Final Results of the Administrative Review of Certain Cased Pencils from the People’s Republic of China, (May 12, 2004), which is on file in the Central Record Unit (CRU), room B-099 of the main Department of Commerce building. In addition, we excluded from our calculation any imports from countries which the Department has determined maintain broadly available, non-industry specific export subsidies which may benefit all exporters (those countries include South Korea, Thailand, and Indonesia). See Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People’s Republic of China, 67 FR 6482 (February 12, 2002) and Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People’s Republic of China, 68 FR 10685 (March 6, 2003) (and accompanying Issues and Decision Memorandum).

Based on the foregoing, we consider the MSFTI data to be reliable. Moreover, these data are contemporaneous with the POR. Therefore, for the final results of review, we valued black and color cores used in the production of subject merchandise based on MSFTI data, which we find to be the best information available on the record.

Comment 2: Whether China First Pencil Co. Ltd. (CFP)/Three Star Stationery Industry Corp. (Three Star) Reported U.S. Sales Made by Another PRC Entity

The petitioners urge the Department to exclude certain sales from CFP/Three Star's U.S. sales database because these sales were not made by Three Star but by another PRC entity. Because the PRC entity that made these sales is subject to the countrywide antidumping duty rate, the petitioners state that the sales in question should be assessed antidumping duties at the PRC-wide rate. The petitioners' comment contains additional information regarding these sales that is business proprietary; thus, the Department has summarized this information in a proprietary memorandum (*see* the business proprietary memorandum regarding "Interested Parties' Comments and Departmental Positions Containing Proprietary Information" from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration (Proprietary Memorandum) dated concurrently with this memorandum, which is on file in the CRU, room B-099 of the main Department of Commerce building.

CFP/Three Star argues that the Department should continue to include these sales in CFP/Three Star's sales database because Three Star produced the merchandise in question, sold it for export to the United States, invoiced the U.S. customer, and collected the respective payments from the U.S. customer. Moreover, CFP/Three Star adds that the Department verified Three Star's reported sales quantity and value (including several mistakenly unreported sales) and tied all of the reported sales, including the sales at issue, to Three Star's financial statements. Therefore, CFP/Three Star concludes that the Department should continue to include the sales at issue in CFP/Three Star's sales database. See the Proprietary Memorandum for additional information.

Department's Position:

We agree with CFP/Three Star. At verification, we reviewed sales and payment documents relating to the sales/exports in question and reconciled these documents to Three Star's books and financial statements. Three Star's sales/exports documents and books and records demonstrate that the sales/exports in question were ultimately made by Three Star. We cannot address certain aspects of the petitioners' and the respondent's arguments without referencing business proprietary information. Therefore, we have addressed these aspects of their arguments in the Proprietary Memorandum.

Comment 3: The Appropriate Surrogate Source For Financial Ratios

The petitioners argue that the Department should calculate surrogate financial ratios for factory overhead (overhead), selling, general and administrative expenses (SG&A), and profit using Asia Board Industries' (Asia Board) 2001-2002 annual report rather than the 1999-2000 annual report of Asia Wood International Corp. (Asia Wood)⁴ for the following reasons. First, the petitioners note that Asia Board's 2001-2002 annual report covers a period that is contemporaneous with the POR (*i.e.*, seven of the twelve months of the POR) while Asia Wood's 1999-2000 annual report covers a period

⁴ Asia Board is a Pakistani producer of wood boards. Asia Wood is a Philippine producer and exporter of a variety of products, including wood products.

prior to the POR. The petitioners contend that the Department's preference is to choose surrogate financial ratio data relating to the POR, if possible.⁵ Second, although the petitioners note that neither Asia Board nor Asia Wood produces pencils, they note that Asia Board is solely a manufacturing concern and it only manufactures wood products (hard board sheets). Thus, the petitioners claim that Asia Board's activities are similar to that of Chinese pencil producers in that it primarily sells only one product. In contrast, the petitioners point out that Asia Wood's 1999-2000 annual report did not identify the portion of its activities devoted to manufacturing versus other business pursuits, nor did it identify the mix of products that it manufactures. Also, the petitioners note that, unlike Asia Wood, Asia Board does not import, buy, or deal in many products (the petitioners note that the Department prefers to use data as specific to the merchandise under review as possible, see Honey Decision Memorandum at Comment 3). Third, the petitioners contend that Asia Board's 2001-2002 annual report is reliable because it has been audited and contains no anomalies. Finally, the petitioners argue that the use of a financial statement from a Pakistani company is appropriate because the Department has previously recognized Pakistan as a significant producer of pencils. See Certain Cased Pencils from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 59 FR 55625 (November 8, 1994).

Rongxin, on the other hand, argues that the Department should continue to base the surrogate financial ratios for overhead, SG&A, and profit on Asia Wood's financial statements because the hard board sheets produced by Asia Board require less processing than pencils, while the products manufactured by Asia Wood, such as furniture, cabinets, and crafts, like pencils, require several manufacturing processes. Because pencil slats are cut from sheets of board and further manufactured, Rongxin contends that the Department should use the financial statements of a company producing further manufactured wood products, and not the statements of a company producing semi-finished products.

CFP/Three Star and SFTC argue that the Department should continue to base the surrogate financial ratios on Asia Wood's financial statements because of 1) similarities between Asia Wood's operations and products and those of pencil manufacturers and 2) the poor financial condition of Asia Board. Specifically, CFP/Three Star and SFTC note that the manufacturing processes used, and the physical characteristics of the products produced, by Asia Wood are more similar to the processes and products of pencil producers than those of Asia Board. Additionally, these respondents contend that pencils and Asia Wood's products require assembly of various materials into finished products while Asia Board's product is simply cut wood which is produced without further assembly. These respondents also maintain that each pencil producer in this proceeding manufactures multiple products, requiring a substantial workforce, unlike Asia Board which has only 30 employees. With respect to

⁵ See Honey from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 62053 (Oct. 31, 2003), and accompanying Issues and Decisions Memorandum, at Comment 3 (Honey Decision Memorandum) and Barium Carbonate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 68 FR 46577 (Aug. 6, 2003), and accompanying Issues and Decisions Memorandum, at Comment 6.

Asia Board's poor financial condition, CFP/Three Star and SFTC note that Asia Board 1) lost nearly all of its original equity investments (which led to the company's inability to obtain bank loans, fund major repairs and replace machinery), 2) generated a negative cash flow of 5.5 million Rs. on 70 million Rs. of sales in the last year covered by the report, and 3) is on the verge of being de-listed from the local stock exchange. See Asia Board's Director's Report at page 4, Asia Board's Cash Flow Statement, pages 12-13, and Asia Board's Profit and Loss Statement, at page 10. CFP/Three Star and SFTC note that, in other proceedings, the Department has declined to use financial data to calculate surrogate financial ratios if the data includes anomalies or if poor financial performance or other conditions render the data anomalous. See, Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value, 68 FR 7765 (Feb. 18, 2003), and accompanying Issues and Decision Memorandum at Comment 4, in which the Department did not rely on a company's annual report because it covered an unusual period of 18 months, the company experienced a long strike affecting its manufacturing activities, and the company did not make a profit.

Finally, contrary to the petitioner's assertion, CFP/Three Star and SFTC argue that information on the record of this review indicates that Pakistan is not a significant producer of pencils, and in fact, may not produce pencils at all. Specifically, these respondents claim that if Pakistan were a pencil producing country, it would have exported pencils to the United States. Instead, the respondents' February 12, 2004, submission contains information indicating that Pakistan has not exported pencils to the United States during the POR. In contrast, these respondents point out that these same data indicate that both India and the Philippines continuously exported pencils to the United States during the POR.

Department's Position:

We agree with the respondents, in part. 19 C.F.R. §351.408 (c)(4) states that the Department will normally value manufacturing overhead, general expenses, and profit based on information from producers in the surrogate country. Section 773(c)(4) of the Tariff Act of 1930, as amended (the Act), indicates that surrogate countries are those countries that are at a level of economic development comparable to the NME country and significant producers of merchandise that is comparable to the subject merchandise. Although the Department identified Pakistan as a country that is at a level of economic development comparable to the PRC (see the memorandum from Jeffrey May, Director, Office of Policy, to Holly Kuga, Senior Office Director, regarding surrogate countries, dated March 3, 2003), there is no information on the record indicating that Pakistan was a significant producer of comparable merchandise during the POR. While the Department found Pakistan to be a significant producer of comparable merchandise in the underlying investigation in this proceeding, the investigation was conducted approximately 10 years ago. It would be inappropriate to continue to reach the same finding regarding Pakistan without timely information supporting that finding. Because the record in this review does not establish that Pakistan is an appropriate surrogate country, we have not calculated the surrogate factory overhead, SG&A, and profit ratios using Asia Board's financial statements.

Moreover, Asia Board's 2001-2002 financial statements note that the company was experiencing financial difficulties. Asia Board's 2001-2002 Director's Report states that "the company came under heavy liquidity burden due to repayment of the installments on bank loan. It was further mentioned that to bring the Company out of financial crisis, directors and associated person provided *interest-free* loan amounting to Rs. 20 Million in the year 1997-1998 which is still outstanding" (emphasis added). See Asia Board's Director's Report at page 4. The Rs. 20 million loan constitutes approximately 51 percent of Asia Board's financial liabilities at the end of fiscal 2001-2002. Because Asia Board's 2001-2002 financing costs (which we include in SG&A expenses) reflect this commercial anomaly (*i.e.*, an interest free loan), consistent with past practice it would be inappropriate to calculate the surrogate financial ratios using this company's financial statements. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001) and accompanying Issues and Decision Memorandum, at Comment 2, in which the Department stated that "Bangkok Steel's financial statement indicates that, in 1999, Bangkok Steel was in the middle of a debt restructuring, and had stopped debt and interest payments on some of its loans. ... We do not believe it is appropriate to use the financial statement of an insolvent company with an aberrational SG&A expense in our calculations."

Consequently, we have calculated the financial ratios using data from Asia Wood's 1999-2000 financial statements. Although these financial statements are not contemporaneous with the POR (December 1, 2001 through November 30, 2002), concerns over price changes between the period covered by Asia Wood's 1999-2000 fiscal year and the POR are mitigated by the fact that the Department bases surrogate factory overhead, SG&A expenses, and profit on ratios. See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 66 FR 48026 (September 17, 2001) and accompanying Issue and Decision Memorandum at Comment 18, in which the Department, in explaining its selection of surrogates for financial ratios, noted that "ratios render concerns of inflation and exchange rate changes significantly less important"

Comment 4: Ministerial Errors

A. Inland Freight

CFP/Three Star claims that in the Preliminary Results, the Department incorrectly relied upon a plant-to-port distance of 40 kilometers, rather than the 15 and 25 kilometers reported for CFP and Three Star, respectively, and then inexplicably multiplied the 40 kilometers by 1.4, thus increasing the distance used by 40 percent. CFP/Three Star claims that there is no rational explanation for such an adjustment, which was not made in the previous segment of this proceeding. CFP/Three Star requests that the Department correct these errors in the final results of review.

The petitioners did not comment on this issue.

Department's Position:

We agree with CFP/Three Star and have corrected these errors for the final results of review.

B. Programming Error

CFP/Three Star claims that the Department incorrectly wrote over control number (connum)A in CFP's factors of production file with the number 1 when it merged this file with the surrogate value and transportation files. CFP/Three Star requests that the Department correct this error in the final results of review.

The petitioners did not comment on this issue.

Department's Position:

We agree with CFP/Three Star and have corrected this error for the final results of review. In addition to the above error, we found that the program truncated the connums assigned to certain normal values. Because of this error, the U.S. sales prices that should have been compared to these normal values were not compared to them and not used to calculate the weighted-average dumping margin. For a detailed description of this programming error see the Calculation Memorandum for CFP/Three Star dated May 12, 2004. We have corrected this programming error for the final results of review.

C. Per-Unit Slat Consumption

Consistent with the approach taken in prior segments of this proceeding, in the Preliminary Results, the Department valued Chinese lindenwood pencils slats using U.S. prices for basswood lumber. Basswood lumber prices are published in the Hardwood Market Report in U.S. Dollars per thousand board feet (mbf). However, the respondents reported the quantity of pencil slats consumed in production in terms of slat gross.⁶ Thus, in order to use the basswood lumber prices, the Department converted the reported number of slat gross to a cubic meter figure and then converted the cubic meter figure to an mbf figure. The respondents claim that the Department erred in making this conversion. Specifically, CFP/Three Star and SFTC state that the Department misread the dimensions of a standard seven-ply pencil slat⁷ that were reported in the section D questionnaire response as "183 mm

⁶ By definition, one gross of pencils (*i.e.*, 144 pencils) is produced from one slat gross.

⁷ In general, the number of ply indicate the number of pencils that can be produced from two slats (*e.g.*, two seven-ply slats yield seven pencils, and two eight-ply slats yield eight pencils). However, CFP/Three Star and SFTC claim that they can produce eight and sometimes nine pencils from a standard seven-ply slat and therefore their slat consumption is lower than that calculated by the

long and from 19 mm to 69.5 mm wide” to be 183 mm by 19 mm by 69.5 mm. According to these respondents, the actual thickness of a standard pencil slat is 4.6 mm rather than 19 mm. Therefore, CFP/Three Star and SFTC contend that the Department should calculate the cubic meters of a standard slat gross using the following dimensions: 183 mm by 4.6 mm by 19 mm. Moreover, CFP/Three Star and SFTC maintain that it is evident that there is an error in the Department’s calculation because the Department valued a kilogram of slats at \$0.32 and a slat gross at \$1.52 even though these values should be approximately the same given that the Department has verified that approximately one kilogram of slats is required to produce one gross of pencils.

Although Rongxin does not identify a specific error in the Department’s slat value calculation, it requests that the Department double-check its calculation noting that it reported essentially the same per-unit slat gross consumption in the instant and the previous review, however the surrogate value calculated in the instant review is nearly five times higher than the surrogate value calculated in the previous review. Rongxin contends that this increase cannot be attributable to increases in the cost of wood because the Department used a price of \$612.00/mbf to calculate a surrogate value for slats in the previous review and a price of \$333.00/mbf in the instant review, a decrease of almost 50%. Thus, Rongxin maintains that the Department made an error in calculating the surrogate value for pencil slats.

The petitioners claim that the Department’s calculation reflects the information reported by the respondents and follows its established methodology, a methodology that was approved by the Court in the remand determination in this proceeding. See Factors of Production Valuation/Analysis memorandum from the Team to the File, Preliminary Results of Administrative Review of Certain Cased Pencils from the People’s Republic of China (1999-2000 Review, December 31, 2001) and Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Administrative Review, 67 FR 48612 (July 16, 2002) (1999-2000 Pencils from the PRC). Thus, the petitioners maintain that there is no error.

Department’s Position:

We agree with the respondents, in part. We measured a number of standard seven-ply slats that we obtained at various verifications conducted in this proceeding and determined that standard seven-ply pencil slats are 4.6 mm thick, not 19 mm thick. Moreover, in its July 3, 2003 supplemental questionnaire response, Rongxin reported that it uses pencil slats that are 4.6 mm thick. Additionally, based on our inspection of the sample standard seven-ply slats, we agree with CFP/Three Star and SFTC that eight pencils can be produced from slats of this size. Specifically, we noted that some of the sample seven-ply pencil slats have been shaped on one side to form eight pencils. However, we have not calculated the surrogate value for pencil slats using the slat width suggested by CFP/Three

Department based on the assumption that seven pencils are produced from two standard seven-ply pencil slats.

Star and SFTC. The sample seven-ply slats are approximately 70 mm wide, which is consistent with the upper range of slat widths reported by the respondents. Thus, for the final results of review, we have calculated the surrogate value of pencils slats using a yield of eight pencils per seven-ply slat and slat dimensions of 183 mm by 4.6 mm by 69.5 mm.

Comment 5: Whether Three Star Reimbursed Certain U.S. Customers for Dumping Duties

At verification, Three Star reported (as a minor correction) a reduced gross unit price for certain U.S. sales. The reported price reduction was recorded on the invoices for these sales, and, when expressed as a percentage of the initial gross price, the percentage reduction is the same as the antidumping duty cash deposit rate. Although Three Star claimed not to have a reimbursement agreement with any customer, the petitioners note that Three Star was unable or unwilling to explain why the percentage of the reduction equals the cash deposit rate. Moreover, the petitioners note that the price reduction was requested by the U.S. customer. Thus, the petitioners argue that, on its face, the agreement between Three Star and the U.S. customer to reduce the price was a reimbursement agreement. Accordingly, the petitioners argue that the Department should base its margin calculations on the reduced U.S. price and address the reimbursement of antidumping duties in its liquidation instructions to U.S. Customs and Border Protection (CBP).

CFP/Three Star contends that the petitioners are mistaken because 1) there is no correlation between the observed price adjustment and the final antidumping duty liability, which was not known when the sales at issue were negotiated and 2) no subsequent reimbursement was promised, agreed to, or reflected in the transactions at issue. See the Proprietary Memorandum for additional information. Nonetheless, CFP/Three Star agrees that the revised U.S. prices, which it identified for these transactions at the beginning of verification, should be used to calculate Three Star's dumping margin.

Department's Position:

We agree with CFP/Three Star, in part. 19 C.F.R. §351.402(f)(1) instructs the Department to calculate export price or constructed export price by subtracting from the starting price the amount of any antidumping duty which the exporter or producer paid directly on behalf of the importer or reimbursed to the importer. In the past, the Department has found that even if duties have not been paid, an agreement to reimburse antidumping duties is a sufficient basis to apply the above cited regulation. See Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 48465, 48471 (September 13, 1996) in which the Department stated that the regulation requiring importers to certify that they have not entered into an agreement to be reimbursed antidumping duties indicates that an agreement to reimburse antidumping duties "is sufficient to trigger the regulation {(i.e., 19 C.F.R. §353.26 (currently 19 C.F.R. §351.402(f)(1))}." However, in the instant review, the evidence does not indicate that Three Star entered into an agreement to reimburse its U.S. customer for antidumping duties. See the Proprietary Memorandum for details. Therefore, in calculating the export price of Three Star's U.S. sales, we did

not make the adjustment described in 19 C.F.R. §351.402(f)(1) and this issue is moot. Nevertheless, in our calculations, we did reduce the starting gross unit price by the amount of the reported price reduction, in accordance with 19 C.F.R. §351.401 (c) which directs the Department to base export price on a price that is net of any price adjustments.

Comment 6: Whether the Department Should Continue to Treat CFP and Three Star as a Single Entity for Antidumping Duty Purposes

In the 1999-2000 administrative review in this proceeding, the Department determined that CFP and Three Star were sufficiently intertwined to warrant treating the companies as one entity and assigning the combined entity a single antidumping duty rate. That determination was based, in part, on a document⁸ issued in January 1997 by Shanghai Light Industry Holding Group (SLI)⁹ requiring CFP and Three Star to merge.¹⁰ In the instant review, the Department continued to treat CFP and Three Star as one entity, requesting that CFP/Three Star provide sales and factors of production information in connection with the request for an administrative review of CFP,¹¹ and calculating a single rate for the combined entity in the Preliminary Results. CFP/Three Star argues that treating it as a single entity, which the Department did without any analysis, discussion, or even finding in the instant review, has no basis in fact or law.

CFP/Three Star recites the following record information in support of its position: 1) a certified statement from SLI that, to its knowledge, CFP and Three Star did not merge. According to SLI, it learned that the “suggested” merger (*i.e.*, the merger described in order 005) could not legally take

⁸ A document entitled the "Order of Shanghai Light Industry Holding (Group), Order # (1997) 005" (order 005).

⁹ SLI is an arm of the Shanghai municipal government and is charged with maintaining and increasing the value of state-owned assets in the process of privatization. SLI, as trustee, owns 100 percent of Three Star and 33 percent of CFP.

¹⁰ Other record information noted by the Department in making its decision includes, Three Star’s annual yearbook report to governmental authorities which identifies CFP as the owner of Three Star (a statement that CFP and Three Star claimed was erroneous), data indicating that CFP had a contract to assume “indirect advising responsibility” for Three Star, CFP’s internal newspaper which characterized Three Star as a CFP subsidiary or department, and trade fair photographs which indicate that CFP’s and Three Star’s products may have been marketed together.

¹¹ CFP/Three Star notes that Three Star provided the requested information under protest, noting that no party requested an administrative review of Three Star and thus, Three Star requested that the Department rescind the review with respect to its sales. See CFP/Three Star’s and SFTC’s case brief dated February 17, 2004 at pages 7 and 8.

place without the approval of CFP's board of directors and the board opposed the merger; 2) SLI noted that the contract under which CFP provided indirect administrative guidance to Three Star ended on December 31, 2000; 3) a letter from Zhong Lun Law Firm, in which, after investigating the alleged merger between CFP and Three Star, the firm concluded that order 005 does not conform with China's current law, CFP was not obligated to comply with order 005, CFP has not taken any of the legal steps necessary to effectuate order 005,¹² and CFP and Three Star have not invested in one another; 4) none of the managers, board members, or legal representatives of CFP or Three Star is affiliated or connected with the other company, 5) CFP had no managerial interaction, and only minimal commercial interactions, with Three Star (Three Star noted that, in the past, it had borrowed money at commercial interest rates in arm's length transactions from CFP); and 6) CFP did not coordinate its prices, share customer or supplier information, or share operating or business plans with any other exporters or producers in the PRC.

Additionally, CFP/Three Star notes that, at verification, it provided Department officials with accounting documents that demonstrated that 1) there were practically no transactions between CFP and Three Star; 2) the companies are not intertwined through sharing sales or production information, facilities or employees, and 3) the companies are not in a position to manipulate one another's price or production decisions. However, CFP/Three Star notes that after spending several hours reviewing these documents, the Department deemed these documents to be "new information" and declined to accept the documents, despite the fact that these documents are precisely the type of supporting information routinely accepted by the Department at verification. CFP/Three Star further maintains that, at verification, Department officials instead reviewed CFP's and Three Star's accounts receivables and accounts payables in connection with certain factors issues and, by "negative implication," verified that there were minimal commercial transactions between CFP and Three Star.

Further, CFP/Three Star contends that a legal analysis of the situation supports its position. First, CFP/Three Star notes that the relationships indicating affiliation, which are described in sections 771(33)(A) through (E) and (G) of the Act, do not apply in this case. Second, CFP/Three Star argues that even if CFP and Three Star were affiliated, there is no basis for collapsing them. According to CFP/Three Star, the Department must consider a number of factors before taking the exceptional step of collapsing two companies. In Nihon Cement Co. v. United States, 17 CIT 400 (1993) (Nihon), the Court of International Trade (CIT) noted that the Department has collapsed companies if 1) the companies are closely intertwined; 2) transactions take place between the companies; 3) the companies have similar types of production equipment; and 4) the companies are capable, through their sales and production operations, of manipulating prices or affecting production decisions. For example, CFP/Three Star states that in Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47639 (September 10, 1997), the Department collapsed two companies after finding common ownership, a

¹² CFP claims that its board of directors rejected the idea of a merger with Three Star and never even voted on the merger.

broad overlapping of the two companies' boards of directors (three of the four overlapping directors jointly managed the two companies), and inter-company transactions. However, CFP/Three Star points out that the Department's practice is not to collapse related parties except in unusual circumstances where the relationship between the companies is such that there is a strong possibility (or a significant potential) rather than a mere possibility for manipulation of price or production.¹³ Citing the CIT's decisions in Nihon and FAG Kugelfischer George Schafer KGaA v. United States, 932 F. Supp. 315 (CIT 1996)(FAG Kugelfischer), CFP/Three Star emphasizes just how unusual it is to collapse companies by pointing out that the Court has found the evidence for collapsing two companies lacking even when the companies had overlapping owners and boards of directors (Nihon) and even where the companies were wholly owned by a parent company (FAG Kugelfischer). Here, CFP/Three Star asserts that there is no intertwining of CFP and Three Star as the facts demonstrate that CFP and Three Star operate as distinct entities, obviating the ability of one company to manipulate the other company's prices or affect that company's production decisions. CFP/Three Star asserts that, in the final results of review, the Department, relying upon the facts, must acknowledge that CFP and Three Star are separate companies, rather than relying upon its erroneous prior decision to collapse CFP and Three Star.

The petitioners contend that there is no factual or legal bases for revisiting the conclusion that CFP and Three Star should be treated as a single entity. First, the petitioners point out that CFP/Three Star's claim that order 005 was never implemented, ignores the facts on the record in the 1999-2000 administrative review which lead the Department to conclude that both companies were acting in accordance with the order. Specifically, the petitioners identify the following connections between the order and CFP/Three Star's actions: 1) the order calls for a capital reorganization of Three Star: CFP provided capital to Three Star through loans; 2) the order calls for CFP to take a leadership position over Three Star: CFP oversaw aspects of Three Star's operations and CFP's president was to assume executive authority over both companies; 3) consistent with the order, CFP was renamed as a group company and CFP and Three Star engaged in joint marketing efforts under the group company. According to the petitioners, the legal opinion from Zhong Lun Law Firm and the certified statement from SLI fail to explain why CFP and Three Star followed the mandates of an order that allegedly did not have to be followed and was rejected.

Second, the petitioners point out that, at verification, CFP/Three Star could not substantiate important aspects of SLI's certified statement. Namely, CFP could not provide minutes from board of director or shareholder meetings demonstrating that the order was rejected. SLI could not provide any correspondence concerning the rejection. The petitioners contend that the absence of any documentation regarding such an important matter strains credulity. Furthermore, despite the claims on the record that the agreement, under which CFP managed aspects of Three Star's operations, had

¹³ See Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992, 19089 (May 3, 1989).

expired, the petitioners note that CFP could provide no evidence that the agreement had expired and the Department could find no reference to a termination date in the agreement.

Lastly, the petitioners dismiss CFP/Three Star's legal arguments regarding collapsing, noting that when the Department found CFP and Three Star to be intertwined, it specifically stated that it was not engaging in a collapsing analysis. Thus, the petitioners contend that CFP/Three Star's legal arguments, and the new information concerning collapsing, which the Department properly rejected as untimely at verification, are beside the point. Because CFP/Three Star has provided no factual or legal bases for reconsidering the decision to treat these companies as one entity, the petitioners urge the Department to not disturb its prior decision on this issue.¹⁴

Department's Position:

We disagree with CFP/Three Star. In the 1999-2000 administrative review, the Department determined that CFP and Three Star were intertwined to the extent that it was appropriate to assign the combined entity a single dumping margin. The Department made this determination based on record evidence indicating that CFP and Three Star engaged in activities that are consistent with order 005. Order 005 indicates that CFP will have the "leadership position to enact the program of capital reorganization of the two factories" and specifies that CFP will manage Three Star. Consistent with this order, CFP made a series of loans to Three Star, was responsible for reviewing Three Star's financial statements, and performed certain advisory functions with respect to Three Star concerning safety, culture, and sanitation. Moreover, consistent with the directive in order 005 that CFP merge with Three Star and establish a group company, CFP changed its name from China First Pencil Co., Ltd. to China First Pencil Group Co., Ltd. Additionally, record evidence from the 1999-2000 administrative review indicates that CFP's president may have assumed responsibility for Three Star and CFP's and Three Star's products may have been marketed together. Although CFP/Three Star claimed, and continues to claim, that the merger order was rejected, the record evidence noted above indicates that CFP and Three Star were not functioning as entirely separate entities.

In the instant administrative review, CFP/Three Star provided a written legal opinion and a certified statement from SLI which state that a legal merger between CFP and Three Star did not occur.¹⁵

¹⁴ The petitioners also note that since Three Star is effectively part of CFP, a request to review CFP is also a request to review Three Star.

¹⁵ At verification, CFP/Three Star also attempted to submit information regarding transactions between CFP and Three Star. Although the Department's verifiers examined this information in order to determine whether the information was already on the record of the review, they did not test, nor did they substantiate the information. Because this factual information had not been specifically requested by the verifiers the Department properly declined to accept this information because it was untimely submitted.

While these documents address the question of whether a corporate merger of CFP and Three Star took place, they do not rebut the evidence indicating that CFP and Three Star are intertwined to the extent that they should be assigned a single antidumping duty rate. Moreover, at verification, CFP and SLI were unable to provide any evidence indicating that order 005 or the management agreement (*i.e.*, the agreement under which CFP advised Three Star with respect to safety, culture and sanitation) were revoked or that CFP's board of directors rejected order 005. See the memorandum from the Team to the File: Verification of the Questionnaire Response of China First Pencil Co., Ltd./Three Star Stationery Industry Corp. in the 2001-2002 Administrative Review of Certain Cased Pencils from the People's Republic of China, dated December 30, 2003 at page 18. Thus, the record evidence in the instant administrative review does not demonstrate that there has been a change in the relationship between CFP and Three Star such that the companies should no longer be treated as a single entity for our antidumping analysis.

Next, we turn to the analysis of CFP's and Three Star's relationship that we conducted in the 1999-2000 administrative review of the order. In that review, we noted that the regulatory framework for collapsing affiliated parties is difficult to apply in a NME country where all of the companies are presumed to be subject to governmental control. Hence, in finding CFP and Three Star to be one entity, we noted that we did not conduct, *per se*, a collapsing analysis.¹⁶ However, the Department recently noted that it finds the collapsing analysis instructive in determining whether exporters in an NME country should be combined as a single entity. See Final Results of Determination Pursuant to Court Remand - Hontex Enterprises Inc. d/b/a Louisiana Packing Company v. United States, Slip Op. 03-17, Ct. No. 00-00023 (CIT 2003). Since Three Star now exports subject merchandise to the United States, we have expanded the analysis of CFP's and Three Star's relationship that we conducted in the 1999-2000 administrative review.

Section 771(33)(F) of the Act provides that two or more persons directly or indirectly controlling, controlled by, or under common control with, any person, are affiliated. The Act goes on to state that a person shall be considered to control another person if that person is legally or operationally in a position to exercise restraint or direction over the other person. Evidence of actual control is not required; it is the ability to control that is at issue. See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27297-27298 (May 19, 1997). Moreover, the Department may consider control to arise from the potential for manipulation of price and production. See Certain Welded Carbon Standard Steel Pipe and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47638 (September 10, 1997). In the instant review, both CFP and Three Star overcame the presumption of common governmental control as it relates to their export activities. However, this does not rule out other types of common control. Record evidence from the 1999-2000 administrative review indicates that CFP and Three Star acted in concert with direction

¹⁶ See Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 37638 (July 19, 2001) and accompanying Issues and Decision Memorandum (1999-2000 Pencils from the PRC) at Comment 12.

given to them by SLI, the holder of 33 percent of CFP's shares and 100 percent of Three Star's shares (as trustee). See Issues and Decision Memorandum in 1999-2000 Pencils from the PRC. Specifically, following SLI's instructions, CFP took on the responsibility of reviewing Three Star's financial statements and, in fact, stamped those statements with its company seal. Additionally, pursuant to SLI's instructions, CFP began monitoring, evaluating, and advising Three Star with respect to certain aspects of its operations. Thus, the evidence indicates that SLI was operationally in a position to provide direction to both CFP and Three Star, companies which CFP portrayed as fierce competitors.¹⁷ Further, as noted above, record evidence from the 1999-2000 administrative review indicates that CFP and Three Star were not functioning as entirely separate entities. Given CFP's role in providing capital (through loans) and leadership to Three Star (with respect to certain aspects of its operations), the record indicates that Three Star was effectively becoming part of CFP. Finally, no evidence has been presented in this review to refute any of these findings. Therefore, by virtue of these control relationships, we consider CFP and Three Star to be affiliated with one another.

Pursuant to 19 C.F.R. §351.401(f), the Department will treat two or more affiliated producers as a single entity if those producers have 1) production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and 2) the Department concludes that there is a significant potential for the manipulation of price or production, as evidenced by the following, non-exhaustive list of factors: a) the level of common ownership, b) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and c) whether the firm's operations are intertwined such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. Although the above cited regulation focuses on affiliated producers, in a recent decision, the CIT found that applying the collapsing provision to NME exporters, rather than producers, is consistent with a "reasonable interpretation of the antidumping duty statute." See Hontex Enterprises Inc. d/b/a Louisiana Packing Company v. United States of America, Slip Op. 03-17, Court No. 00-00223 (CIT February 13, 2003) (Hontex). Further, in Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410, 10413-10414 (March 5, 2004) (Mushrooms from the PRC), the Department noted that "the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case." See Mushrooms from the PRC at pages 10410 and 10414; see also, Hontex, noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation.

As noted above, the record evidence in the instant administrative review does not demonstrate that there has been a change in the relationship between CFP and Three Star such that the companies are

¹⁷ See id.

now functioning as entirely separate entities. Moreover, the evidence in this proceeding regarding CFP's involvement in Three Star's operations (*e.g.*, providing capital to Three Star through loans, and monitoring, evaluating, and advising Three Star with respect to certain aspects of its operations), the movement of managers between the two companies, particularly in light of order 005,¹⁸ and the joint marketing of CFP's and Three Star's products, indicate that the companies' operations were intertwined such that Three Star was effectively part of CFP. Given this fact pattern, and the fact that Three Star is currently producing and exporting subject merchandise to the United States there is a significant potential for the manipulation of price or production (CFP produced subject merchandise through its subsidiaries). Therefore, we will continue to treat CFP and Three Star as a single entity for purposes of our antidumping duty analysis.

Comment 7: How to Treat Certain Sales With Two Sales Invoices

At verification, the Department discovered certain sales of pencils for which Three Star issued two of its invoices for each sale. The petitioners argue that the Department should base the U.S. price of the sales in question on the price for export to the United States. See the Proprietary Memorandum for details.

CFP/Three Star argues that this is a non-issue because, at verification, the Department found that the reported prices of the sales in question reconcile to the sales revenue that it received and recorded in its accounting records (see the verification report at 8). See the Proprietary Memorandum for additional information.

Department's Position:

We agree with both parties, in part. At verification, for each of the sales in question, the Department reconciled the reported price for export to the United States to Three Star's ledgers and financial statements. Therefore, consistent with the Preliminary Results, we have continued to base the U.S. price for these sales on the verified price for export to the United States. However, we have not used all of the sales in question in our analysis. We cannot address this issue in detail without referencing business proprietary information. Therefore, we have addressed this issue more fully in the Proprietary Memorandum.

¹⁸ See 1999-2000 Pencils from the PRC, and accompanying Issues and Decision Memorandum at Comment 2.

Comment 8: Whether CFP's Dumping Margin Applies to its Subsidiaries

CFP/Three Star contends that CFP's¹⁹ dumping margin should apply to CFP's subsidiaries because, throughout this proceeding, CFP has filed its questionnaire responses on behalf of itself and its consolidated subsidiaries whose production and sales data have been used to calculate CFP's dumping margins. CFP/Three Star claims that this approach is consistent with the Department's longstanding practice of naming all related enterprises whose data form the basis of the antidumping duty calculation. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002), wherein the Department assigned dumping margins to five different named respondents and their affiliates.

The petitioners state that there is no reason to comply with CFP/Three Star's request because 1) CFP is the exporter, not its subsidiaries, 2) even if CFP's subsidiaries were to export pencils to the United States, CFP would be considered the exporter for antidumping duty deposit purposes, and 3) CFP/Three Star has offered no rationale for treating CFP's subsidiaries as separate exporters, nor has CFP/Three Star demonstrated that such treatment is necessary to administer the antidumping duty order.

Department's Position:

In NME antidumping duty proceedings, the Department assigns company-specific dumping rates to exporters that have demonstrated that their export activities are not subject to governmental control. Although those rates are calculated using the exporter's U.S. sales and factors of production from the exporter's supplier(s), in contrast to market economy cases, in NME proceedings the Department typically assigns the dumping margin to the exporter that sold the subject merchandise and demonstrated that it was entitled to a separate rate. In its brief, filed after the preliminary results of review, for the first time on the record of this proceeding, CFP requested that the Department change its longstanding practice of assigning dumping margins to only NME exporting entities because CFP's subsidiaries produced the subject merchandise. After examining the record of this review, we have determined that there is insufficient information to justify changing the Department's longstanding practice in this segment of the proceeding. However, the Department is considering this issue for future administrative reviews. In the meantime, subject merchandise produced by CFP's subsidiaries and sold to the United States through CFP will receive CFP's dumping margin.

¹⁹ Although CFP argues that its dumping margin should apply to its subsidiaries, the Department has continued to treat CFP and Three Star as a single entity (see the Department's position to Comment 6) and thus the Department did not calculate a separate margin for CFP.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will calculate the final weighted-average dumping margins in accordance with these positions and publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree_____ Disagree_____ Let's Discuss_____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)