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International Trade Administration
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December 5, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
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; 2012—2013

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, 2012, through November 30, 2013. The administrative review covers two exporters of subject merchandise, Shandong Rongxin Import & Export Co., Ltd. (Rongxin) and Shanghai Foreign Trade Co., Ltd. (SFTC). We preliminarily determine that Rongxin is not eligible for a separate rate and is therefore part of the PRC-wide entity. In addition, we preliminarily determine to rescind the review with respect to SFTC. Interested parties are invited to comment on these preliminary results. 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).

BACKGROUND

On December 28, 1994, the Department published in the *Federal Register* an antidumping duty order on certain cased pencils from the PRC.² On December 3, 2013, the Department notified interested parties of their opportunity to request an administrative review of orders, findings, or

¹See letter from Dixon Ticonderoga Company, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review" dated December 20, 2013, and letter from Orient International Holding Shanghai Foreign Trade Co., Ltd., "Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China" dated December 31, 2013.

²See *Antidumping Duty Order: Certain Cased Pencils From the People's Republic of China*, 59 FR 66909 (December 28, 1994).

suspended investigations with anniversaries in December 2013, including the antidumping duty order on pencils from the PRC.³ On December 20, 2013, the Dixon Ticonderoga Company (Dixon), a United States importer and manufacturer of subject merchandise, requested an administrative review of Rongxin.⁴ On December 31, 2013, SFTC, an exporter of subject merchandise, requested a review of its exports.⁵ Based on timely requests for an administrative review, on February 3, 2013, we initiated an administrative review of Rongxin and SFTC.⁶

In the *Initiation Notice*, we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. On February 5, 2014, we released the CBP data under Administrative Protective Order (APO)⁷ and received comments from SFTC alleging that the CBP data indicated that Chinese companies unrelated to SFTC were entering subject merchandise under SFTC's company-specific case number and were therefore benefiting from SFTC's company-specific cash deposit rate.⁸ We informed CBP of SFTC's allegations regarding the evasion of antidumping duty.⁹

On February 28, 2014, we issued the initial questionnaire to Rongxin and SFTC.¹⁰ On March 3, 2014, SFTC withdrew its request for review.¹¹ We received Rongxin's Section A questionnaire response on April 3, 2014 and its Sections C and D responses on April 21, 2014.¹² On July 10, 2014, Rongxin submitted surrogate value comments.¹³

On August 11, 2014, we extended the time period for issuing the preliminary results by 106 days until December 17, 2014.¹⁴ We issued supplemental questionnaires to Rongxin on September 18, 2014, and received Rongxin's response on October 16, 2014.¹⁵ On November 17, 2014, Rongxin submitted surrogate value comments.¹⁶

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 72636 (December 3, 2013) (*Opportunity to Request Administrative Review*).

⁴ See letter from Dixon, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated December 20, 2013.

⁵ 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, 2013.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 6147 (February 3, 2014) (*Initiation Notice*).

⁷ See Memorandum to the File, "Certain Cased Pencils from the People's Republic of China: Placing CBP Data on the record of this review," dated February 5, 2014.

⁸ See letter from SFTC, "Comments on CBP Data: Antidumping Duty Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the PRC," dated March 26, 2014.

⁹ See letter from the Department, "Certain Cased Pencils from the People's Republic of China," dated March 27, 2014.

¹⁰ See letters from the Department to Rongxin and SFTC dated February 28, 2014.

¹¹ See letter from SFTC, "Withdrawal of Request: Antidumping Duty Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the PRC," dated March 3, 2014 (SFTC Withdrawal).

¹² See letters from Rongxin, "Certain Cased Pencils from the People's Republic of China: Rongxin Section A Response," dated April 3, 2014 (RAQR) and "Certain Cased Pencils from the People's Republic of China: Rongxin Sections C & D Response," dated April 21, 2014 (RCDQR).

¹³ See letter from Rongxin, "Certain Cased Pencils from the People's Republic of China: Surrogate Values for the Preliminary Results" dated July 10, 2014.

¹⁴ See Memorandum "Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review," dated August 11, 2014.

¹⁵ See letter from the Department, "Administrative Review of the Antidumping Order on Certain Cased Pencils from

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, chinks, 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.

PARTIAL RESCISSION OF REVIEW

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the *Initiation Notice*. On March 3, 2014, SFTC timely withdrew its request for a review of its exports.¹⁷ Accordingly, the Department is rescinding this administrative review with respect to SFTC.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall

the People's Republic of China: First Supplemental Questionnaire," dated September 18, 2014 and letter from Rongxin, Certain Cased Pencils from the People's Republic of China: Rongxin First Supplemental Questionnaire Response," dated October 16, 2014 (R1SQR).

¹⁶ See letters from Rongxin, "Certain Cased Pencils from the People's Republic of China: Final Surrogate Value Submission," dated November 17, 2014

¹⁷ See SFTC Withdrawal.

remain in effect until revoked by the administering authority.¹⁸ 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

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.¹⁹ In the *Initiation Notice*, we notified parties of the application process by which exporters and producers may obtain separate rates.²⁰ 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*,²¹ as further developed in *Silicon Carbide*.²² If, however, the 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.²³

The Department continues to evaluate its practice with regard to the separate rates analysis in light of *Diamond Sawblades*, and our determinations therein.²⁴ 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

¹⁸ 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).

¹⁹ 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).

²⁰ See *Initiation Notice*, 78 FR at 72631.

²¹ 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*).

²² 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*).

²³ 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).

²⁴ 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.

that case, in which a government controlled entity had significant ownership in the respondent exporter.²⁵ 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 means 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. Accordingly, we have considered the level of government ownership where necessary.

Rongxin's Separate Rate Eligibility

We preliminarily determine that Rongxin is not eligible for a separate rate. The information underlying our determination is of a business proprietary nature and we have, therefore, analyzed Rongxin's separate rate information in a separate memorandum.²⁶

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 decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.²⁷

As explained in the Separate Rate Memorandum, the evidence provided by Rongxin does not support a preliminary finding of an absence of *de jure* government control.²⁸

²⁵ 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).

²⁶ See Department Memorandum, “Preliminary Separate Rate Analysis Memorandum for Shandong Rongxin Import & Export Co., Ltd.,” dated concurrently with this memorandum (Separate Rate Memorandum).

²⁷ See *Sparklers*, 56 FR at 20589.

²⁸ See Separate Rate Memorandum.

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.²⁹

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.

As explained in the Separate Rate Memorandum, the evidence provided by Rongxin does not support a preliminary finding of an absence of *de facto* government control.³⁰

PRC-Wide Entity

As we have determined not to grant Rongxin a separate rate, the Department considers Rongxin to be part of the PRC-wide entity. For the PRC-wide entity, we continue to use the PRC-wide rate of 114.90 percent.³¹

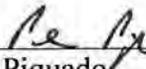
RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

12 DECEMBER 2014

(Date)

²⁹ 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).

³⁰ See Separate Rate Memorandum.

³¹ 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).