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June 2, 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 Preliminary Results of Antidumping  
Duty New Shipper Review: Certain Cased Pencils from the  
People's Republic of China

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## I. SUMMARY

We are conducting a new shipper review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period of review (POR) December 1, 2014, through May 31, 2015. We preliminarily find that a sale of subject merchandise, exported by Wah Yuen Stationery Co., Ltd. and produced by Shandong Wah Yuen Stationery Co., Ltd. (collectively, Wah Yuen), the new shipper in this review, has been made at below normal value (NV).

## II. BACKGROUND

On December 28, 1994, the Department published in the *Federal Register* the antidumping duty order on certain cased pencils from the PRC.<sup>1</sup> Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received a timely request for a new shipper review of the order from Wah Yuen.<sup>2</sup> On June 22, 2015, the Department issued a letter to Wah Yuen requesting that it correct certain deficiencies in its initial request.<sup>3</sup> On June 29, 2015, Wah Yuen submitted a timely response to the Department's request.<sup>4</sup> Subsequently, we determined that Wah Yuen's request for a new shipper review met the threshold requirements for initiation and,

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<sup>1</sup> See *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 2, 1994).

<sup>2</sup> See Letter from Wah Yuen, "*Certain Cased Pencils from the People's Republic of China: Request for New Shipper Review and Notice of Appearance*," dated May 29, 2015 (Wah Yuen NSR request).

<sup>3</sup> See Letter from Dana S. Mermelstein, regarding the opportunity to correct deficiencies, dated June 22, 2015.

<sup>4</sup> See Letter from Wah Yuen, "*Certain Cased Pencils from the People's Republic of China: Supplemental Request for New Shipper Review*," dated June 29, 2015 (Wah Yuen supplemental NSR request).



therefore, on August 7, 2015, we initiated a new shipper review of Wah Yuen.<sup>5</sup> On January 11, 2016, we extended the due date for the preliminary results of the new shipper review by 120 days to no later than May 26, 2016.<sup>6</sup> On January 27, 2016, Enforcement and Compliance (E&C) exercised its discretion to toll all E&C deadlines for four business days due to the closure of the Federal Government.<sup>7</sup> Consequently, the deadline for the preliminary results of this new shipper review is now June 2, 2016.

### **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, 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.

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<sup>5</sup> See *Cased Pencils From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 80 FR 47469 (August 7, 2015).

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Mary Kolberg, International Trade Compliance Analyst, re: "Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty New Shipper Review," dated January 11, 2016.

<sup>7</sup> See Memorandum to The Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, re: "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm "Jonas," dated January 27, 2016.

## IV. DISCUSSION OF THE METHODOLOGY

### Statutory and Regulatory Framework

As outlined in section 751(a)(2)(B) of the Act and 19 CFR 351.214, the new shipper review provisions require that the entity making a request for a new shipper review must document and certify, among other things: (A) the date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which the exporter or producer first shipped the merchandise for export to the United States; (B) the volume of that and subsequent shipments; and (C) the date of the first sale to an unaffiliated customer in the United States.<sup>8</sup> If these requirements, among others, are met, the Department will initiate a new shipper review to determine whether the new shipper is eligible for an individual weighted-average dumping margin.<sup>9</sup> Further, an exporter or producer must request a new shipper review within one year of the date of the first entry (or if appropriate, first shipment for export to the United States).<sup>10</sup>

As mentioned above, on August 7, 2015, the Department initiated a new shipper review of Wah Yuen. During the review, Dixon submitted comments which questioned Wah Yuen's eligibility for a new shipper review, based on the requirements of 19 CFR 351.214(b)(2)(iv)(C).<sup>11</sup> Dixon submitted data compiled by a third party, Import Genius, in an effort to demonstrate that Wah Yuen had been shipping subject merchandise to the United States prior to the POR.<sup>12</sup> On February 29, 2016, Wah Yuen responded to Dixon's comments, claiming that it has met the requirements set forth in the Department's regulations to qualify as a new shipper and had not shipped subject merchandise at any point during the period of investigation or in subsequent review periods.<sup>13</sup> Wah Yuen claims that the Import Genius data refer to non-subject merchandise that it shipped to the United States.

In order to determine whether Wah Yuen shipped subject merchandise prior to the POR, the Department issued Wah Yuen a supplemental questionnaire on April 15, 2016, asking for additional information and documentation regarding the Import Genius data.<sup>14</sup> Wah Yuen responded on May 2, 2016.<sup>15</sup> The Department reviewed Wah Yuen's response for each entry compiled by Import Genius and we find that that the vast majority of the entries represent shipments of pencils originating in countries other than the PRC or were shipments of merchandise other than cased pencils subject to this antidumping order, *i.e.*, erasers or sketch

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<sup>8</sup> See 19 CFR 351.214(b)(2)(iv)(A)-(C).

<sup>9</sup> See generally 19 CFR 351.214(b)(2).

<sup>10</sup> See 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(iv)(A)).

<sup>11</sup> See letter from Dixon, re: "Certain Cased Pencils from the People's Republic of China: Comments Concerning Wah Yuen Stationery Co. Ltd.'s First Supplemental Questionnaire Response," dated February 11, 2016.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> See letter from Wah Yuen, re: *Certain Cased Pencils from the People's Republic of China: Rebuttal Comments to Dixon's Comments on 1<sup>st</sup> Supplemental Response of Wah Yuen Stationery Co. Ltd.*," dated February 29, 2016 at 3.

<sup>14</sup> See letter from the Department to Wah Yuen, re: "New Shipper Review of the Antidumping Order on Certain Cased Pencils from the People's Republic of China: Third Supplemental Questionnaire," dated April 15, 2016.

<sup>15</sup> See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: 3rd Supplemental Questionnaire Response of Wah Yuen Stationery Co. Ltd.*," dated May 2, 2016.

sets. The remainder were shipments of subject merchandise that were made after the POR and after Wah Yuen's NSR request was made. We plan to request additional information regarding these shipments for the final results of this new shipper review.

### Bona Fides Analysis

Consistent with the Department's practice, we examined the *bona fides* of the sale in the new shipper review.<sup>16</sup> In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers, *inter alia*, such factors as: (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm's-length basis.<sup>17</sup> Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."<sup>18</sup> In *TTPC*, the Court of International Trade (CIT) also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,<sup>19</sup> and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.<sup>20</sup> Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a sale in a new shipper review so that a respondent does not benefit unfairly from an atypical sale and obtain a lower weighted-average dumping margin than the producer's usual commercial practice would dictate.<sup>21</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its margin calculations.<sup>22</sup>

Based on our analysis of the factors described above, and as discussed in detail, including a discussion of the relevant business proprietary information, in the accompanying memorandum,<sup>23</sup> we preliminarily find that Wah Yuen's U.S. sale is a *bona fide* transaction.

Based on this finding, the company's responses to the Department's questionnaires, and its eligibility for a separate rate (see section below), we preliminarily determine that Wah Yuen qualifies as a new shipper during this POR.

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<sup>16</sup> See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum (I&D Memo) at comment 1b.

<sup>17</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d, 1246, 1249-1250 (CIT 2005) (*TTPC*).

<sup>18</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying I&D Memo at New Shipper Review of Clipper Manufacturing Ltd.).

<sup>19</sup> See *TTPC*, 366 F. Supp.2d at 1250.

<sup>20</sup> *Id.* at 1263.

<sup>21</sup> See *New Donghua*, 374 F. Supp. at 1344.

<sup>22</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

<sup>23</sup> See Memorandum to James Maeder, Senior Office Director, Office I, "Bona Fides Nature of the Sale in the Antidumping Duty New Shipper Review of Cased Pencils from the People's Republic of China (PRC): Wah Yuen Stationery Co., Ltd." (dated concurrently with these preliminary results).

## Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME). 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. None of the parties to this proceeding contested NME treatment for the PRC. Therefore, for these preliminary results of the new shipper 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.<sup>24</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>25</sup> It is the Department's policy to assign all exporters of the merchandise subject to an antidumping order for an NME country 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 each company's exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity under the test established in *Sparklers*,<sup>26</sup> as amplified by *Silicon Carbide*.<sup>27</sup> However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* factors are not necessary to determine whether it is independent from government control.<sup>28</sup>

Wah Yuen reported that the Wah Yuen Stationery Co., Ltd. is a wholly foreign-owned, limited liability company incorporated in Hong Kong and owned by Hong Kong individuals.<sup>29</sup> Furthermore, the Wah Yuen Stationery Co., Ltd. owns 100 percent of its affiliated producer, the Shandong Wah Yuen Stationery Co., Ltd., located in Shandong Province, China, which, therefore, indicates that the PRC producer is wholly foreign-owned. Because both companies that comprise the collapsed entity Wah Yuen are wholly foreign-owned, further analysis of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control of its export activities and eligible for a separate rate.

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<sup>24</sup> 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); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>25</sup> See *Initiation Notice*, 77 FR at 77018-19.

<sup>26</sup> 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*).

<sup>27</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>28</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>29</sup> See letter from Wah Yuen, re: "Certain Cased Pencils from the People's Republic of China: Initial Section A Questionnaire Response of Wah Yuen Stationery Co., Ltd.," dated September 28, 2015 at 5.

## Surrogate Country

In an antidumping duty proceedings involving an NME country, pursuant to section 773(c)(1) of the Act, the Department generally bases NV on the value of the NME producer's factors of production (FOPs). In accordance with section 773(c)(4) of the Act, in valuing the FOPs the Department uses, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are at the same level of economic development to that of the NME country and that are also significant producers of merchandise comparable to the subject merchandise. The Department has determined that Mexico, Romania, Bulgaria, South Africa, Ecuador, and Thailand are countries that are at the same level of economic development as the PRC.<sup>30</sup> Accordingly, unless we find that all of the countries determined to be at the level of economic development of the PRC are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, are unsuitable for use for other reasons, or we find that another country at the same level of economic development of the PRC is an appropriate surrogate, we will rely on data from surrogate country selection criteria.

On January 13, 2016, the Department requested comments from interested parties regarding the selection of a surrogate country and surrogate values.<sup>31</sup> On February 3, 2016, Dixon submitted its comments regarding surrogate country selection.<sup>32</sup> Dixon maintains that Thailand or Romania should be selected as the primary surrogate country in this review because they are significant producers of comparable merchandise and have readily available trade data that can be used to value the factors of production.<sup>33</sup>

Wah Yuen argues that the Department should consider Mexico as a potential surrogate country to be used in this review.<sup>34</sup> According to Wah Yuen, Mexico is at a comparable level of economic development as its 2014 per capita gross national income is \$9,980; China's is \$7,380 for the same year. Wah Yuen also claims Mexico is a significant producer of comparable merchandise and the largest exporter of cased pencils among the economically comparable countries on the Department's surrogate country list, as evidenced by its \$18,762,808 exports of merchandise under the HTS 9609.10 during the POR. Finally, Wah Yuen contends that Mexico has the best quality data available for valuing factors of production.<sup>35</sup>

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<sup>30</sup> See Memorandum to Dana Mermelstein, Program Manager, Office I, from Carole Showers, Director, Office of Policy, re: "Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China ("China")," dated December 14, 2015.

<sup>31</sup> See letter from the Department to All Interested Parties, re: "Certain Cased Pencils from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated January 13, 2016.

<sup>32</sup> See letter from Dixon, re: "Certain Cased Pencils from the People's Republic of China: Comments Concerning Surrogate Country Selection," dated February 3, 2016.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: Wah Yuen Stationery Co. Ltd. – Comments on Selection of Surrogate Country*," dated February 27, 2016 at 2.

<sup>35</sup> *Id.* at 3-4.

### *Comparable Level of Economic Development*

As stated above, the Department has determined that Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand are countries that are at the same level of economic development to that of the PRC in terms of *per capita* GNI during the POR.<sup>36</sup>

### *Producers of Identical or Comparable Merchandise*

While the statute does not define “significant” or “comparable” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.<sup>37</sup> Where there is no production information, the Department has relied upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.<sup>38</sup>

The merchandise covered in this review is included under HTS code 9609.10.00 (“Pencils and crayons, with leads encased in a rigid sheath”). Because world production data was not available, we analyzed exports using Global Trade Atlas (GTA) data for HTS code 9609.10.00. This analysis shows that Mexico exported a significantly larger volume of cased pencils during the POR under HTS code 9609.10.00 than Thailand or Romania.<sup>39</sup> Next we considered the availability of SV data.

### *Data Availability*

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, the Department selects the primary surrogate country based on data availability and reliability.<sup>40</sup> When evaluating SV data, the Department considers several factors including whether the SV data are publicly available, contemporaneous with the POR,

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<sup>36</sup> The Department relied on GNI data published in the World Bank Development Indicators database, located at <http://databank.worldbank.org/databank/download/GNIPC.pdf> (July 1, 2015).

<sup>37</sup> See *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013) and accompanying Preliminary Decision Memorandum at 4-7, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013).

<sup>38</sup> See Policy Bulletin at 1-2; see also, e.g., *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 I&D Memo at Comment 7.

<sup>39</sup> See letter from Wah Yuen, re: “*Certain Cased Pencils from the People’s Republic of China: Wah Yuen Stationery Co. Ltd. – Comments on Selection of Surrogate Country*,” dated February 27, 2016 at 2.

<sup>40</sup> See Policy Bulletin 04.1.

representative of a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input.<sup>41</sup> There is no hierarchy among these criteria.<sup>42</sup> It is the Department's practice to consider carefully the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.<sup>43</sup>

Wah Yuen provided Mexican import data (sourced from GTA) for all material inputs; complete surrogate value data from the remaining countries is not on the record. Dixon did not provide surrogate value information. Accordingly, the Department preliminarily chooses Mexico as the primary surrogate country. For Mexico, we are able to obtain, from the import data reported by GTA, the required SVs for direct materials, packing materials, and byproducts. For labor, we are using the labor rates for Mexico as provided by Wah Yuen and used by the Department in its recent preliminary determination in *Hydrofluorocarbons from the People's Republic of China*.<sup>44</sup> The labor data are based upon the International Labor Organization's compensation of employees in the manufacturing sector in Mexico. The Department relied on publicly available data from the World Bank's "Doing Business 2016, Mexico" to calculate inland truck freight and domestic brokerage and handling (B&H) for the POR.<sup>45</sup>

Wah Yuen claimed it searched for publicly available financial reports from producers of subject merchandise from Mexico and the other countries listed in the Department's surrogate country selection memorandum, but was unable to locate any publicly-available reports.<sup>46</sup> As a result, Wah Yuen submitted the 2009 financial report for Amalgamated Specialties Corporation (AMC), a Philippine producer of school supplies, including pencils, crayons, ballpens, etc., which was used by the Department in the calculation of financial ratios during the 2010-2011 administrative review.<sup>47</sup> Dixon submitted no financial statements. Therefore, the financial statements of AMC are the only information on the record. Given the information on the record, the Department finds that the financial statements from AMC provide sufficient details to calculate the financial ratios required to calculate NV.<sup>48</sup> Although the Philippines is not on the list of potential surrogate countries which are at the same level of economic development as the PRC, it is the only data for pencil producers which is on this record. We have relied on this publicly available set of financial statements as the best available information for the calculation of surrogate financial ratios for this NSR.

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<sup>41</sup> See Policy Bulletin 04.1.

<sup>42</sup> See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying I&D Memo at Comment 1.

<sup>43</sup> See Policy Bulletin 04.1.

<sup>44</sup> See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and accompanying Surrogate Value Memorandum, dated January 21, 2016 at 8.

<sup>45</sup> See *Doing Business 2016 Measuring Regulatory Quality and Efficiency Economy Profile 2016 Mexico* (Doing Business 2016, Mexico), World Bank.

<sup>46</sup> See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: Wah Yuen Stationery Co., Ltd.-Initial Surrogate Value Submission*," dated March 8, 2016 at 7.

<sup>47</sup> *Id.* at SV-25.

<sup>48</sup> These ratios are factory overhead, selling, general, and administrative expenses, and profits.

## Affiliation and Single Entity Treatment

Pursuant to section 351.401(f)(1) of the Department's regulations, the Department will treat producers as a single entity or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is significant potential of manipulation of price or production.<sup>49</sup> In determining whether a significant potential for manipulation exists, section 351.401(f)(2) of the Department's regulations states that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms 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.<sup>50</sup>

Section 771(33) of the Act states that the following persons shall be considered to be affiliated or affiliated persons: (A) "members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants," (B) "any officer or director of an organization and such organization," (C) "partners," (D) "employer and employee," (E) "any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization," (F) "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person," or (G) "any person who controls any other person and such other person." Furthermore, section 771(33) of the Act states that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Based on Wah Yuen's response to our initial questionnaire, we find that the Wah Yuen Stationery Co., Ltd., a trading company, is affiliated with Shandong Wah Yuen Stationery Co., Ltd. (SWYSCL), a pencil producer.<sup>51</sup> Wah Yuen stated that the Wah Yuen Stationery Co., Ltd. wholly owns SWYSCL and that all major operational and strategic decisions concerning SWYSCL are handled by the majority shareholder of the Wah Yuen Stationery Co., Ltd.<sup>52</sup> Furthermore, the operations of the affiliated companies are intertwined as the Wah Yuen Stationery Co., Ltd. is the export arm for all merchandise produced by SWYSCL.<sup>53</sup> According to Wah Yuen, SWYSCL does not sell directly to the United States. Therefore, we are collapsing the Wah Yuen Stationery Co., Ltd. and SWYSCL and will treat them as a single entity.

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<sup>49</sup> See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

<sup>50</sup> See also, e.g. *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

<sup>51</sup> See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: Initial Section A Questionnaire Response of Wah Yuen Stationery Co. Ltd.*," dated September 28, 2015 (Section A Response) at 2 and Exhibit A-2.

<sup>52</sup> *Id.* at 2 and 4.

<sup>53</sup> *Id.* at 11.

Wah Yuen reported that it is affiliated with Tianjin Tonghe Stationery Industrial Co. Ltd. (TTSCCL), another producer of pencils in the PRC.<sup>54</sup> The affiliation occurs because the Wah Yuen Stationery Co., Ltd. and its affiliated producer, SWYSCL have a common shareholder with TTSCCL. The majority shareholder of Wah Yuen owns a percentage of Wah Yuen Trading Co. Ltd., a Hong Kong-owned trading company that owns a portion of TTSCCL.<sup>55</sup> Because Wah Yuen indicated that neither the Wah Yuen Stationery Co., Ltd. nor SWYSCL shares management with TTSCCL, we are not collapsing Wah Yuen and TTSCCL. Due to the business propriety nature of this information, for a more thorough analysis, *see* affiliation memorandum.<sup>56</sup>

## V. DATE OF SALE

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” In *Allied Tube*, the CIT noted that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”<sup>57</sup> Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>58</sup> This normally includes the price, quantity, delivery terms, and payment terms.<sup>59</sup>

In this review, Wah Yuen reported the invoice date as the date of sale, and consistent with 19 CFR 351.401(i), the Department preliminarily determines to use the invoice date as the date of sale, as there is no evidence on the record that material terms of sale were established on any other date.

## VI. COMPARISON TO NORMAL VALUE

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Wah Yuen’s sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the EP to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

### A. Determination of Comparison Method

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<sup>54</sup>See Section A Response. at 4.

<sup>55</sup>*Id.* at 5.

<sup>56</sup>See Memorandum to James Maeder, Senior Director, from Mary Kolberg, International Trade Compliance Analyst, re: “Cased Pencils from the People’s Republic of China-Affiliation of Wah Yuen Stationery Co., Ltd., Shandong Wah Yuen Stationery Co., Ltd. And Tianjin Tonghe Stationery Industrial Co. Ltd.,” dated concurrently with this memorandum.

<sup>57</sup>See *Allied Tube & Conduit Corp. v. United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

<sup>58</sup>See 19 CFR 351.401(i); *see also* *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

<sup>59</sup>See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) and accompanying I&D Memo at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) and accompanying I&D Memo at Comment 1.

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEP)) (the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of new shipper reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in new shipper reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>60</sup>

In recent investigations and reviews, the Department applied a “differential pricing” analysis to determine whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>61</sup> The Department finds the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this new shipper review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margins.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes, as appropriate. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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<sup>60</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying I&D Memo at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

<sup>61</sup> See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## **VII. RESULTS OF DIFFERENTIAL PRICING ANALYSIS**

For Wah Yuen, based on the results of the differential pricing analysis, the Department preliminarily finds that 0.00 percent of the value of the U.S. sale passes the Cohen's *d* test, and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for the U.S. sale to calculate the weighted-average dumping margin for Wah Yuen.

## **VIII. U.S. PRICE**

For the price to the United States, we used EP as defined in section 772(a) of the Act.

### Export Price

For Wah Yuen, in accordance with section 772(a) of the Act, "the term 'export price' means the price at which the subject merchandise first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." The Department defined the U.S. price of merchandise under consideration based on the EP for the sale reported by Wah Yuen. The Department calculated the EP based on the price at which merchandise under consideration was sold to the unaffiliated purchaser in the United States.

The Department made deductions, as appropriate, from the reported U.S. price for movement expenses (*i.e.*, foreign inland freight, domestic brokerage and handling, and international movement expenses). The Department calculated the EP based on the price at which merchandise under consideration was sold to the unaffiliated purchaser in the United States.

### Value Added Tax

With respect to the calculation of EP, we included an adjustment for irrecoverable value added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.<sup>62</sup> The Department's methodology amounts to performing two basic steps: (1) determining the amount (or rate) of the

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<sup>62</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36483 (June 19, 2012) (Methodological Change for Implementation of Section 772(c)(2)(B) of the Act).

irrecoverable VAT tax on subject merchandise, and (2) reducing the U.S. price by the amount (or rate) determined in step one. Information placed on the record of this review by Wah Yuen demonstrates that the VAT rate during the POR was 17 percent and that there was a VAT rebate rate of nine percent applicable to exports of the merchandise under consideration.<sup>63</sup> In order to calculate a price net of VAT, we adjusted the reported U.S. price for Wah Yuen for the irrecoverable VAT.

## IX. NORMAL VALUE

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of the NME renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.<sup>64</sup>

## X. FACTOR VALUATIONS

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by Wah Yuen for the POR. The Department used Mexican import data, as published by GTA and information from other publicly available Mexican sources, in order to calculate SVs for its FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>65</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Mexican import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to SWYSCL's factory or the distance from the nearest port facility to the SWYSCL's factory where it relied on an import value, as appropriate. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir.1997).<sup>66</sup> Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.<sup>67</sup>

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<sup>63</sup> See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: Initial Section C&D Questionnaire Response of Wah Yuen Stationery Co., Ltd.*," dated October 13, 2015 at 35.

<sup>64</sup> See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)).

<sup>65</sup> See, e.g. *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying I&D Memo at Comment 2.

<sup>66</sup> See *Sigma Corp. v. United States*, 117 F.3d 1401,1407-08 (Fed. Cir. 1997).

<sup>67</sup> See Surrogate Value Memorandum.

Furthermore, with regard to the Mexican import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be dumped or subsidized. It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.<sup>68</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>69</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>70</sup>

Additionally, the Department disregarded data from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>71</sup>

The Department used Mexican Import Statistics as published by GTA to value the raw material, packing materials, and byproducts that SWYSCL used to produce subject merchandise during the POR.<sup>72</sup>

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<sup>68</sup> See Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), (unchanged) in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), (unchanged) in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008).

<sup>69</sup> See, e.g., *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013) and accompanying I&D Memo at 7-19; see also *Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011) and accompanying I&D Memo at 1; see also *Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014) and accompanying I&D Memo at 4; see also *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying I&D Memo at IV.

<sup>70</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying I&D Memo at Comment 7; *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying I&D Memo at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005) and accompanying I&D Memo at 4; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying I&D Memo at 17, 19-20.

<sup>71</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), (unchanged) in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

<sup>72</sup> See Surrogate Value Memorandum.

To value electricity, we used contemporaneous pricing data from the Mexican Ministry of Energy (SENER).<sup>73</sup> We did not inflate or deflate the rate cited in this article because it is contemporaneous with the POR.<sup>74</sup>

We valued water using data from the Mexican Comision Nacional del Agua 2014. We inflated the value based on the CPI index to make the values contemporaneous with the POR.

To value the freight-in cost of raw materials, we relied on *Doing Business 2016, Mexico* and applicable distances found in Google Maps at <http://maps.google.com>. The value for truck freight in *Doing Business 2016, Mexico* is publicly available and contemporaneous with the POR.

To value brokerage and handling, we used the information in the World Bank Group's *Doing Business 2016, Mexico*. The value is publicly available and contemporaneous with the POR.<sup>75</sup>

To value labor cost we used the labor rates used by the Department in its recent preliminary determination on *Hydrofluorocarbons from the PRC*, which were based on the International Labor Organization (ILO) Yearbook of Labor Statistics compensation of employees in the manufacturing sector in Mexico. The labor rates were from 2008 and, therefore, have been inflated using the CPI index to make the values contemporaneous with the POR.<sup>76</sup>

To value factory overhead, selling, general and administrative expenses, and profit, we used the 2009 financial statements from Amalgamated Specialties Corporation, a producer of school supplies, including pencils, and crayons, in the Philippines.<sup>77</sup>

## **XI. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Doing Business, 2016, Mexico* covers data for 2015.

<sup>76</sup> See Surrogate Value Memorandum.

<sup>77</sup> *Id.*

## **XII. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
(Date)