



A-570-827

NSR: 12/01/2014 – 05/31/2015

Public Document

AD/CVD I: MJK

October 20, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty New Shipper Review: Certain Cased Pencils
from the People's Republic of China

SUMMARY

We have analyzed the comments of the interested parties in the above-referenced antidumping duty new shipper review of cased pencils from the People's Republic of China (PRC), covering the period of review (POR) December 1, 2014, through May 31, 2015. The company subject to this new shipper review is Wah Yuen Stationery Co., Ltd. (Wah Yuen). Based on our analysis of the comments we received, we made changes to the margin calculations for these final results. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments and rebuttal comments by parties:

Comment 1: Whether Wah Yuen is Entitled to a New Shipper Review

Comment 2: Whether the Surrogate Value for Brokerage and Handling was Calculated Correctly

Comment 3: Whether Wah Yuen is Entitled to a By-Product Offset for Slat Scrap

Comment 4: Whether the Values for Alkyd Resin and Acrylic Resin were Calculated Correctly

Comment 5: Whether the Packed Weight of One Gross of Pencils Should be Adjusted by the Weight of the By-Product Scrap

BACKGROUND

The Department published the *Preliminary Results* on June 10, 2016.¹ On June 30, 2016, the Department notified parties that it was seeking additional information regarding Wah Yuen's

¹ See *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*.



shipments of subject merchandise, and, therefore, extending the deadline to submit case briefs until further notice.² On June 21, 2016, the Department requested entry documentation from U.S. Customs and Border Protection (CBP) for several shipments made by Wah Yuen.³ On July 18, 2016, the Department received the requested entry documentation from CBP.⁴ Subsequently, on July 22, 2016, the Department issued a letter to parties establishing the deadline for case and rebuttal briefs.⁵ On August 12, 2016, Dixon Ticonderoga Company (Dixon), the petitioner, and Wah Yuen submitted case briefs.⁶ On August 22, 2016, Wah Yuen submitted a rebuttal brief.⁷ On July 25, 2016, the Department extended the due date for the final results of the new shipper review to October 20, 2016.⁸

SCOPE OF THE ORDER

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

Shipper Review; 2014-2015, 81 FR 37573 (June 10, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See letter to All Interested Parties, re: “Antidumping Duty New Shipper Review: *Certain Cased Pencils from the People’s Republic of China: Extension of Deadline to Submit Case Briefs*,” dated June 30, 2016.

³ See Memorandum from James Maeder, Senior Director, Office I, Antidumping and Countervailing Duty Operations, Enforcement and Compliance, to Alexander Amdur, Director, AD/CVD/Revenue Policy & Programs, Office of International Trade, U.S. Customs and Border Protection, re: “Request for U.S. Entry Documents—Certain Cased Pencils from the People’s Republic of China—Customs Case No. A-570-827,” dated June 21, 2016.

⁴ See Memorandum to James Maeder, Office I from Wendy Frankel, Director, Customs Liaison Unit, re: “Request for U.S. Entry Documents – Cased Pencils from the People’s Republic of China (A-570-827),” dated July 18, 2016.

⁵ See letter to All Interested Parties, dated July 22, 2016.

⁶ See letter from Dixon, re: “Certain Cased Pencils from the People’s Republic of China, New Shipper Review NSR 12/01/2014-05/31/2015: Case Brief of Dixon Ticonderoga Company,” dated August 12, 2016 (Dixon’s case brief); see also letter from Wah Yuen, re: “Certain Cased Pencils from the People’s Republic of China: Administrative Case Brief of Wah Yuen Stationery Co. Ltd.,” dated August 12, 2016 (Wah Yuen’s case brief).

⁷ See letter from Wah Yuen, re: “*Certain Cased Pencils from the People’s Republic of China: Administrative Case Rebuttal Brief of Wah Yuen Stationery Co., Ltd.*,” dated August 22, 2016 (Wah Yuen’s Rebuttal Brief).

⁸ 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 Final Results of the Antidumping Duty New Shipper Review,” dated July 25, 2016.

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.

DISCUSSION OF THE ISSUES

Comment 1: Whether Wah Yuen is Entitled to a New Shipper Review

Dixon argues that Wah Yuen is not entitled to a new shipper review because CBP data on the record indicate that Wah Yuen entered subject merchandise before the period of review, thereby making it ineligible to be considered a new shipper under 19 CFR 351.214.⁹ Dixon contends that Wah Yuen's statement that it has no knowledge of certain entries of subject merchandise that appear in the CBP data because it did not file entry documentation as it does not ship on a delivered duty unpaid (DDU) or delivery duty paid (DDP) basis is insufficient in demonstrating that those entries are not Wah Yuen's. Dixon maintains that Wah Yuen has had the opportunity to consult with its customers regarding the source of these shipments, but has not done so and, therefore, has not demonstrated affirmatively that the entries are not from Wah Yuen.¹⁰

Dixon claims that Wah Yuen has not provided sufficient support for its statement that the CBP entries at issue are either pencils produced in a country other than the PRC or other non-subject merchandise. Dixon contends that Wah Yuen has not demonstrated that the additional entries for which the Department sought information in its fourth supplemental questionnaire were not of PRC origin. Dixon argues that, because Wah Yuen has stated that it cannot precisely match its entry documentation to the CBP data, Wah Yuen cannot be certain that the country of origin certificates that it provided for these additional entries were for the correct entries.¹¹

Dixon states that, even if Wah Yuen did locate the correct documentation and country of origin certificates, it remains unclear whether the merchandise should be considered as originating in a country other than the PRC, because it is unknown what production processes occurred outside of the PRC. Dixon alleges that Wah Yuen has failed to demonstrate on the record that these entries potentially underwent substantial transformation in a third country. Dixon concludes that, because Wah Yuen has failed to demonstrate on the record that these entries were of pencils originating or substantially transformed in Taiwan, as Wah Yuen claims, the Department must find that they were produced in the PRC.

Wah Yuen contends that it meets the regulatory criteria to qualify as a new shipper in this review.¹² Wah Yuen maintains that its sole sale of merchandise subject to this review to its U.S.

⁹ See Dixon's Case Brief at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Wah Yuen's Case Brief at 2.

customer is *bona fide*.¹³ According to Wah Yuen, the Department found the sale to be *bona fide* for the following reasons: (1) although the sale occurred in the latter part of the POR, the Department found this not to be unusual and that the timing of the sale did not indicate that it was made on a non-*bona fide* basis; (2) the sale is comparable in terms of both price and quantity to other entries of subject merchandise during the POR; (3) Wah Yuen and its customer did not incur any unusual or extraordinary expenses pursuant to the sale of the merchandise; (4) Wah Yuen's payment terms are normal and routine; and (5) the transaction was made on an arm's-length basis.

Wah Yuen argues that there is no factual evidence on the record to support Dixon's assertions that it shipped subject merchandise to the United States prior to its sale in the POR.¹⁴ Wah Yuen contends that it provided the necessary certifications affirming that it did not ship subject merchandise to the United States prior to the POR. Furthermore, Wah Yuen claims that it has provided complete sales documentation in response to each of Department's numerous requests for documentation involving alleged imports of subject merchandise entering the United States prior to the POR. Wah Yuen maintains that it has provided supporting sales documentation for each sale, which provides evidence that each of these shipments involved non-subject merchandise.¹⁵

Furthermore, Wah Yuen claims that Dixon's allegation that the CBP data reveal that it made entries of subject merchandise prior to the POR is factually incorrect.¹⁶ Wah Yuen claims that it has provided documentation that demonstrates that each of these entries was of non-subject merchandise.¹⁷ Wah Yuen concludes that the Department should continue to find that Wah Yuen's sale of subject merchandise to the United States is a *bona-fide* transaction.

Department's Position

We continue to find that Wah Yuen is eligible for this new shipper review.

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and as outlined in 19 CFR 351.214(b)(2)(ii), applications for new shipper reviews require that the entity making a request for a new shipper review 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.¹⁸ 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).¹⁹ If these requirements, among others, are met, the Department will

¹³ *Id.*

¹⁴ *See* Wah Yuen's Rebuttal Brief at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* 19 CFR 351.214(b)(2)(iv)(A)-(C).

¹⁹ *See* 19 CFR 351.214(c) (referring to the date in 19 CFR 351.214(b)(2)(iv)(A)).

initiate a new shipper review to determine whether the new shipper is eligible for an individual weighted-average dumping margin.²⁰

Throughout the review, Wah Yuen repeatedly certified that it did not ship subject merchandise to the United States prior to the POR.²¹ Furthermore, the Department repeatedly has asked Wah Yuen for sales documentation regarding numerous entries. As discussed below, Wah Yuen has consistently been responsive to the Department's inquiries and has provided documentation for each of the entries for which we requested the documentation.

In response to Dixon submitting information it found on the website Import Genius, that Dixon contends demonstrates that Wah Yuen had made certain entries of subject merchandise prior to the POR, the Department issued Wah Yuen supplemental questionnaires requesting documentation for these pre-POR entries. Wah Yuen provided sales documentation for each entry, including purchase orders, country of origin certificates, commercial invoices, packing lists, and bills of lading. With this information, Wah Yuen demonstrated that the entries shown in Import Genius were all entries of non-subject merchandise.²²

The Department also requested that Wah Yuen provide documentation regarding the entries reported in the CBP data. Wah Yuen provided sales documentation including commercial invoices, packing lists, bills of lading, and country of origin certificates, that tied to the CBP data in terms of quantity, value, and importer name, for four of the six entries in the CBP data. The documentation provided by Wah Yuen established that these four entries in the CBP data were of non-subject merchandise, because they were pencils that were certified with a country of origin other than the PRC.²³

For the remaining two entries shown in the CBP data, which involved merchandise entering the United States prior to the POR, the CBP data itself is not conclusive as an indication that the entries represent subject merchandise shipped by Wah Yuen.²⁴ Wah Yuen reported and certified that it made no shipments of subject merchandise on or near the relevant dates for the value or the volumes shown in the CBP data. Wah Yuen provided the Department with documentation for various entries that entered around the dates of the entries in question. The documentation included entries for pencils originating in countries other than the PRC, as well as entries for non-subject merchandise, such as erasers, pencil sharpeners, or pencil leads. Wah Yuen stated that it conducted an exhaustive search of all of its shipments to North America and has no knowledge of the entries in the CBP data.²⁵ Wah Yuen's explanation for the discrepancy

²⁰ See generally 19 CFR 351.214(b)(2).

²¹ See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: Rebuttal Comments to Dixon's Comments on 1st Supplemental Response of Wah Yuen Stationery Co. Ltd.*," dated February 29, 2016 at 3; see also letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: 3rd Supplemental Questionnaire Response of Wah Yuen Stationery Co.*," dated May 2, 2016 at 3 (Wah Yuen's Third Supplemental Response).

²² See Wah Yuen's Third Supplemental Response at Attachment 2.

²³ See letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic of China: 4th Supplemental Questionnaire Response of Wah Yuen Stationery Co. Ltd.* at Exhibits 2-5.

²⁴ The CBP data is business proprietary and is discussed in the Final Calculation Memorandum.

²⁵ See Wah Yuen's third Supplemental Response 1-4 and Attachment 1; see also letter from Wah Yuen, re: "*Certain Cased Pencils from the People's Republic: Administrative Case Rebuttal Brief of Wah Yuen Stationery Co. Ltd.*,"

between CBP data and its own records is that there is a disconnect between the actual transactions identified and the process by which the customs documentation required for entry are completed. Wah Yuen maintains that, prior to the sale under review in the new shipper review, it did not ship or sell pencils to the United States on a delivered, duty paid basis and, therefore, has never been responsible for customs entry or clearance documentation. Wah Yuen claims that in its normal course of business, it negotiates and makes a sale to the United States on either an FOB or CIF basis and that either the customer, the customer's designated importer, or the customer's designated broker are responsible for completing all entry documentation.²⁶ Furthermore, Wah Yuen stated that, since 1997, its company officials have reviewed each and every sale to the United States of non-subject merchandise to ensure that no pencils of Chinese origin have been shipped or sold to the United States.²⁷

In light of Wah Yuen's explanation and ability to document all but two of the entries at issue, and to demonstrate that they were of non-subject merchandise, we do not find that the CBP data establish that Wah Yuen entered subject merchandise prior to the POR. Therefore, we do not find that Wah Yuen failed to document and certify the date on which subject merchandise that it exported was first entered into the United States or because it failed to request a new shipper review within one year of the date of the first entry, such that Wah Yuen would be ineligible for a new shipper review. Moreover, Wah Yuen's explanations concerning the remaining two pre-POR entries at issue, and our own review of the proprietary CBP data concerning them, also lead us to the same conclusion.

Thus, we continue to find that Wah Yuen is eligible for a new shipper review. The Department employed a totality of circumstances analysis that requires a broad examination of all of the information on the record. As a result, we determined that the transaction under review is commercially reasonable and, therefore, Wah Yuen's sale is *bona-fide*.²⁸ Because we found the sale to be *bona-fide* and the record does not establish that Wah Yuen entered subject merchandise prior to the POR, for purposes of these final results, we find Wah Yuen to be eligible for the new shipper review.

Comment 2: *Whether the Surrogate Value for Brokerage and Handling was Calculated Correctly*

Dixon contends that the Department applied the incorrect surrogate value for domestic brokerage and handling.²⁹ Specifically, Dixon explains that the Department calculated the domestic brokerage expenses, reported under the DBROKU field in the database, incorrectly, because it used the surrogate value for truck costs instead of the surrogate value for brokerage costs in the brokerage and handling calculation.

dated August 22, 2016 at 3; *see also* letter from Wah Yuen, re: "Certain Cased Pencils from the People's Republic of China: Comments on CBP Data Released on April 14, 2016," dated April 27, 2016 (Wah Yuen's Comments on CBP Data) at 3-4 and Attachment 1.

²⁶ *See* Wah Yuen's Third Supplemental Response at 2-3.

²⁷ *See* Wah Yuen's Comments on CBP Data at 5.

²⁸ *See* Preliminary Decision Memorandum at 4.

²⁹ *See* Dixon's case brief at 3.

Department's Position

The Department agrees with Dixon and has corrected its calculation of the surrogate value for domestic brokerage and handling expenses, DBROKU, in the final results.³⁰

Comment 3: *Wah Yuen has not Provided Sufficient Documentation to Warrant a By-Product Offset for Slat Scrap*

Dixon claims that Wah Yuen did not provide evidence to demonstrate its eligibility for a by-product offset for slat scrap. Dixon states that Wah Yuen reported that there were no by-products or co-products produced as a result of the production of pencils sold to the United States in its questionnaire response. However, Dixon contends that, in the first supplemental questionnaire response, Wah Yuen added a "SLAT_SCRAP" field with a calculation of the claimed offset, and did not provide any explanation or data to support its calculation.

For support, Dixon cites to *Off-the-Road Tires From China*,³¹ in which the Department stated, "{t}he burden for demonstrating eligibility for a by-product offset rests with the party seeking the offset. In determining whether to grant by-product offsets for merchandise sold during the POR, the Department analyzes whether the record demonstrates production of the by-product during the POR and establishes commercial value for the by-product sold." Dixon contends that because Wah Yuen did not provide evidence supporting its scrap calculation and did not submit documentation demonstrating its sale of scrap, it has not met the evidentiary burden required by the Department.

Finally, Dixon argues that, even if the Department grants Wah Yuen the offset, it should not value the scrap at a value *greater* than the non-scrap wood used to value the original slat material. Dixon reports that, in past reviews, the Department has capped the price of scrap at the price of the original input, citing *Frontseating Service Valves From China*,³² in which the Department used the surrogate value of brass bar and rod to value brass scrap.

Wah Yuen maintains that it never claimed or requested a by-product offset.³³ Wah Yuen contends that the Department's original questionnaire does not request or specify the manner in which scrap is to be reported. Wah Yuen claims that it reported the value for slat scrap solely in response to the Department's request to explain how Wah Yuen calculates its consumption of wood slats. Wah Yuen argues that it followed the Department's instructions in the supplemental questionnaire and reported its calculation methodology.

³⁰ See Memorandum to the File from Mary Kolberg, International Trade Compliance Analyst, re: Analysis for the Final Results of the Antidumping Duty New Shipper Review of Certain Cased Pencils from the People's Republic of China: Wah Yuen Stationery Co., Ltd. (Final Calculation Memorandum).

³¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*; 2011-2012, 78 FR 33341 (June 4, 2013) (*Off-the-Road Tires From China*).

³² See *Frontseating Service Valves From the People's Republic of China, 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012). (*Frontseating Service Valves From China*).

³³ See Wah Yuen's Rebuttal Brief at 7.

Department's Position

The Department has reviewed both Wah Yuen's original and supplemental questionnaire responses and agrees with Dixon. In its original questionnaire response, Wah Yuen stated that there were no by-products or co-products produced as a result of its production of pencils sold in the U.S. market.³⁴ In its first supplemental response, Wah Yuen did not provide an explanation of its calculation of wood scrap value when reporting its consumption of wood slats.³⁵ Wah Yuen did not provide an explanation for seeking an offset or demonstrate that the scrap was either sold or reused. Consistent with *Off-the-Road Tires*, Wah Yuen failed to demonstrate: (1) that production of the by-product occurred during the POR; and (2) the commercial value of the by-product. Therefore, we are denying Wah Yuen's request for scrap offsets and have revised our calculations accordingly.³⁶

Comment 4: *Whether the Values for Alkyd Resin and Acrylic Resin were Calculated Correctly*

Wah Yuen contends that that the Department made a clerical error with respect to the calculation of surrogate values for alkyd resin and acrylic resin. Wah Yuen claims that the Department did not multiply the factor of production values for these two inputs by their respective market economy purchase prices and then add the cost of freight to calculate the total surrogate values for each input.

Department's position:

We agree with Wah Yuen and have corrected these values in the final results.³⁷

Comment 5: *Whether the Packed Weight of One Gross of Pencils Should be Adjusted by the Weight of the By-Product Scrap*

Wah Yuen claims that the Department did not properly calculate the packed weight of one gross of pencils. Wah Yuen contends that the Department calculated the packed weight, PKDWT, by adding all of the FOP values of direct materials and packing materials. However, Wah Yuen maintains that this does not account for the weight of scrap, which is not part of the finished good and, thus, should not be part of the packed weight of one gross of pencils. Wah Yuen argues that the Department should subtract the weight of the wood by-product from the packed weight to derive a total weight that accurately reflects the weight of one packed gross of pencils.

³⁴ 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 56.

³⁵ See letter from Wah Yuen, re: "Certain Cased Pencils from the People's Republic of China: 1st Supplemental Questionnaire Response of Wah Yuen Stationery Co. Ltd.," dated February 1, 2016 at D-8.

³⁶ See Final Calculation Memorandum.

³⁷ *Id.*

Department's Position

Because we are denying Wah Yuen's request for a scrap offset in the final results, as discussed in Comment 3 above, we are not adjusting the packed weight of one gross of pencils by the by-product scrap.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margin for the reviewed company in the *Federal Register*.

Agree _____

Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

(Date)