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August 31, 2017

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review, Preliminary Determination of No  
Shipments, and Partial Rescission: Certain Cased Pencils from the  
People's Republic of China; 2015-2016

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### Summary

In response to requests from interested parties, the Department of Commerce (the Department) is conducting this administrative review of the antidumping duty (AD) order on certain cased pencils (pencils) from the People's Republic of China (PRC) for the period of review (POR) December 1, 2015, through November 30, 2016.<sup>1</sup> The Department preliminarily determines that Tianjin Tonghe Stationery Industrial Co. Ltd. (Tianjin Tonghe) and the sole mandatory respondent, Ningbo Homey Union Co., Ltd. (Ningbo Homey), do not qualify for a separate rate and are, therefore, considered a part of the PRC-wide entity. We also preliminarily determine that Wah Yuen Stationery Co. Ltd. (Wah Yuen) and Shandong Wah Yuen Stationery Co. Ltd. (Shandong Wah Yuen) (collectively, the Wah Yuen entity), did not have shipments during the POR.<sup>2</sup> Finally, we are rescinding the administrative review with respect to Orient International

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*).

<sup>2</sup> The Department previously determined that Wah Yuen and Shandong Wah Yuen are affiliated and should be treated as a single entity, pursuant to section 771(33) of the Act and 19 CFR 351.401(f). See *Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 37573 (June 10, 2016), and accompanying Preliminary Decision Memorandum at 9-10, unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 74764 (October 27, 2016). In the absence of evidence indicating that the Department should reexamine its determination to collapse these two companies, we are continuing to treat Wah Yuen and Shandong Wah Yuen as a single entity for purposes of this administrative review.



Holding Shanghai Foreign Trade Co., Ltd. (Orient), and Shandong Rongxin Import & Export Co., Ltd. (Rongxin).

## Background

On December 28, 2016, Dixon Ticonderoga Company (the petitioner), requested that the Department conduct an administrative review of Rongxin, Wah Yuen, Tianjin Tonghe, and Shandong Wah Yuen.<sup>3</sup> On January 3, 2017, Orient requested a review of itself, and Prime Time Commerce, LLC (Prime Time), an importer, requested a review of its unaffiliated Chinese producer/exporter Ningbo Homey.<sup>4</sup> The Department published the *Initiation Notice* on February 13, 2017.<sup>5</sup> On February 16, 2017, Rongxin submitted a no-shipment certification.<sup>6</sup> On February 28, 2017, Prime Time submitted respondent selection comments arguing that the Department should select Orient as a mandatory respondent.<sup>7</sup> On March 10, 2017, Wah Yuen submitted a separate rate certification, and on March 15, 2017, Ningbo Homey submitted a separate rate application.<sup>8</sup>

On March 17, 2017, Orient withdrew its request for administrative review.<sup>9</sup> On March 30, 2017, we selected Ningbo Homey as the mandatory respondent in this review,<sup>10</sup> and on April 3, 2017, we issued Ningbo Homey the AD questionnaire.<sup>11</sup> On April 5, 2017, the petitioner withdrew its review request with respect to Rongxin.<sup>12</sup>

Ningbo Homey did not respond to the Department's AD questionnaire and on May 10, 2017, Prime Time submitted unsolicited new factual information purportedly in response to Sections C and D of the AD questionnaire the Department issued to Ningbo Homey. On May 22, 2017, pursuant to the Department's request, Wah Yuen submitted a supplemental separate rate certification.<sup>13</sup> On May 24, 2017, Prime Time requested that the Department choose Wah Yuen

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<sup>3</sup> See Letter from the petitioner, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated December 28, 2016.

<sup>4</sup> See Letters from Orient, "Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China, A-570-827," dated January 3, 2017; and Letter from Prime Time, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated January 3, 2017.

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See Letter from Rongxin, "Cased Pencils from the People's Republic of China: No Sales Certification," dated February 16, 2017.

<sup>7</sup> See Letter from Prime Time, "Cased Pencils from the People's Republic of China: Comments on CBP Data & Respondent Selection," dated February 28, 2017.

<sup>8</sup> See Letter from Wah Yuen, "Certain Cased Pencils from the People's Republic of China: Wah Yuen Stationery Co. Ltd. – Separate Rate Certification," dated March 10, 2017; and Letter from Ningbo Homey, "Cased Pencils from the People's Republic of China: Separate Rate Application of Ningbo Homey Union Co., Ltd.," dated March 15, 2017. In its submission, Wah Yuen reported that it is affiliated with Shandong Wah Yuen and Tianjing Tonghe, two of the companies listed in the *Initiation Notice*.

<sup>9</sup> See Letter from Orient, "Orient International Holding Shanghai Foreign Trade Co., Ltd.'s Withdrawal of Request for Review: Administrative Review of the Antidumping Order on Cased Pencils from the People's Republic of China," dated March 17, 2017.

<sup>10</sup> See Memorandum, "Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China, Respondent Selection," dated March 30, 2017.

<sup>11</sup> See Letter from the Department, "Request for Information," dated April 3, 2017.

<sup>12</sup> See Letter from the Dixon Ticonderoga Company, "Certain Cased Pencils from the People's Republic of China: Partial Withdrawal of Request for Administrative Review," dated April 5, 2017.

<sup>13</sup> See Letter from Wah Yuen, "Certain Cased Pencils from the People's Republic of China: Wah Yuen Stationery

as a second mandatory respondent based on information included in Wah Yuen's separate rate certification.<sup>14</sup> On May 25, 2017, Wah Yuen submitted an objection to Prime Time's request, and Prime Time responded to Wah Yuen's objection.<sup>15</sup> On June 9, 2017, we rejected from the record the unsolicited new factual information submitted by Prime Time.<sup>16</sup> Finally, on July 13, 2017, pursuant to the Department's request, Wah Yuen submitted additional information regarding its supplemental separate rate certification<sup>17</sup> and we sent an inquiry to CBP requesting information on any shipments by Wah Yuen to the United States during the POR.

### Scope of the Order

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

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

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Co. Ltd. – Separate Rate Certification – Supplemental Response,” submitted May 22, 2017, erroneously dated March 10, 2017 (Separate Rate Certification).

<sup>14</sup> See Letter from Prime Time, “Certain Cased Pencils from the People’s Republic of China: Request to Individually Examine Wah Yuen Stationery Co., Ltd., as a Mandatory Respondent,” dated May 24, 2017. Prime Time reiterated this request in its Letter to the Department, “Certain Cased Pencils from the People’s Republic of China: Request for Reconsideration, Renewal of Request to Select 2<sup>nd</sup> Mandatory, and Renewal of Out-of-Time Request for Extension of Time” dated August 3, 2017 (August 3<sup>rd</sup> Letter).

<sup>15</sup> See Letter from Wah Yuen, “Certain Cased Pencils from the People’s Republic of China: Wah Yuen Stationery Co. Ltd. – Objection to Prime Time’s Request to Individually Examine Wah Yuen As a Mandatory Respondent,” dated May 25, 2017; Letter from Prime Time, “Certain Cased Pencils from the People’s Republic of China: Response to Objection to Request to Individually Examine Wah Yuen Stationery Co., Ltd., as a Mandatory Respondent,” also dated May 25, 2017. See also, Letter from Prime Time, “Certain Cased Pencils from the People’s Republic of China: Out-of-Time Request for Extension of Time to Submit Respondent-Selection Comments,” dated May 25, 2017.

<sup>16</sup> See Letter from the Department, “Antidumping Duty Administrative Review of Certain Case Pencils from The People’s Republic of China: Rejection of Unsolicited New Factual Information,” dated June 9, 2017. In its August 3<sup>rd</sup> Letter, Prime Time requested that the Department reconsider this decision. However, as Prime Time’s arguments for reconsideration were not substantively different from those initially raised, we have no basis upon which to reconsider our decision.

<sup>17</sup> See Letter from Wah Yuen, “Certain Cased Pencils from the People’s Republic of China: Wah Yuen Stationery Co. Ltd. – Separate Rate Certification – 2<sup>nd</sup> Supplemental Response,” submitted July 13, 2017 (Separate Rate Addendum).

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 METHODOLOGY

### Partial Rescission of Review

As noted above, Orient withdrew its request for review of itself, and the petitioner withdrew its request for a review of Rongxin. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw their request within 90 days of the date of publication of the notice of initiation. Accordingly, and because we received no other requests for review of these companies, the Department is rescinding this review, in part, with respect to Orient and Rongxin. As such, only Ningbo Homey, the Wah Yuen entity, and Tianjin Tonghe remain under review.

### Preliminary Determination of No Shipments

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR to notify the Department within 30 days of publication of the notice.<sup>18</sup> As noted, Wah Yuen filed a separate rate certification and asserted that it had an export to the United States during the POR. However, entry and sales documentation included in Wah Yuen's Separate Rate Certification (*e.g.*, CBP form 7501) indicated that Wah Yuen's reported sale in fact did not enter during the POR.<sup>19</sup> In its Separate Rate Addendum, Wah Yuen confirmed that it did not have shipments during the POR.<sup>20</sup> Accordingly, we requested that CBP alert the Department if it had information contrary to Wah Yuen's claim.<sup>21</sup> We did not receive a response from CBP contradicting Wah Yuen's no-shipment claim.

Based on this information, the Department preliminarily determines that the Wah Yuen entity had no shipments to the United States during the POR.<sup>22</sup> Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review, in part, but we intend to complete the review with respect to the Wah Yuen entity, and issue appropriate instructions to CBP based on the final results of the review.<sup>23</sup>

### NME Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the Department. The Department considers

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<sup>18</sup> See *Initiation Notice*.

<sup>19</sup> See Separate Rate Certification at Exhibit S-1.

<sup>20</sup> See Separate Rate Addendum.

<sup>21</sup> See CBP Message Number 7195303, dated July 14, 2017.

<sup>22</sup> Because we preliminarily determine that the Wah Yuen entity had no shipments during the POR, we note that Prime Time's requests that the Department select Wah Yuen as a mandatory respondent are moot.

<sup>23</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011) (*Assessment Notice*).

the PRC to be an NME country.<sup>24</sup> Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### Separate Rates

There is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.<sup>25</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>26</sup> 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*,<sup>27</sup> as amplified by *Silicon Carbide*.<sup>28</sup> However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>29</sup>

Tianjin Tonghe, which Wah Yuen reported was an affiliate,<sup>30</sup> did not submit a separate rate application nor was one submitted on its behalf by Wah Yuen. In addition, as noted above, Ningbo Homey did not respond to the AD questionnaire. Although Ningbo Homey filed a separate rate application, the Department's Section A questionnaire requests separate rate information from respondent companies that is necessary to determine whether Ningbo Homey operated free of *de jure* and *de facto* government control. Moreover, per the separate rate criteria, exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents must respond to all parts of the questionnaire in order to be eligible for separate rate status.<sup>31</sup> Because Tianjin Tonghe did not

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<sup>24</sup> For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

<sup>25</sup> See, e.g., *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); and *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>26</sup> See *Initiation Notice*.

<sup>27</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>28</sup> *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*), and 19 CFR 351.107(d).

<sup>29</sup> See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sale at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

<sup>30</sup> See Separate Rate Certification at 2. Wah Yuen also reported that Tianjin Tonghe neither produced nor exported subject merchandise to the United States and that it was therefore not seeking a separate rate for Tianjin Tonghe. The Department has not made an affiliation determination regarding Wah Yuen and Tianjin Tonghe.

<sup>31</sup> See *Initiation Notice*, 82 DR at 10458 ("For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents").

submit a separate rate application and because Ningbo Homey was selected as a mandatory respondent and did not respond to all parts of the questionnaire, neither company is eligible for a separate rate. Therefore, we consider Tianjin Tonghe and Ningbo Homey to be part of the PRC-wide entity.

Finally, because no review was requested of the PRC-wide entity,<sup>32</sup> the pre-existing PRC-wide rate of 114.90 percent will apply to Tianjin Tonghe's and Ningbo Homey's entries of subject merchandise into the United States during the POR.<sup>33</sup>

### Recommendation

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

9/1/2017

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Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

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<sup>32</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>33</sup> See *Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2014-2015*, 81 FR 83201 (November 21, 2016), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review 2014-2015*, 82 FR 24675 (May 30, 2017), and accompanying Issues and Decision Memorandum.