

Zone 93, submitted an application to the Board for authority to expand FTZ 93 to include on a permanent basis the area within Temporary Site 1A (85 acres) located at the World Trade Park adjacent to Raleigh-Durham International Airport, and to replace existing Site 3 with a new Site 3 (240 acres) located at the Holly Springs Business Park in Holly Springs, North Carolina, within the Raleigh-Durham Customs port of entry (FTZ Docket 31–2003; filed 6/18/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 38010, 6/26/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 93 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of December 2003.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–827]

#### **Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China.

**SUMMARY:** The Department of Commerce (the Department) has preliminarily determined that sales by the

respondents in this review, covering the period December 1, 2001, through November 30, 2002, have been made at prices less than normal value (NV). In addition, we are rescinding this review with respect to Guangdong Stationery & Sporting Goods Imports & Export Co., Ltd. (GSSG) because GSSG withdrew its request for an administrative review in a timely manner and no other interested party requested a review of GSSG. Furthermore, we are preliminarily rescinding this review with respect to Tianjin Custom Wood Processing Co., Ltd. (TCW) because TCW reported, and the Department confirmed, that it made no shipments of subject merchandise to the United States during the period of review (POR). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** January 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Paul Stolz, Christopher Zimpo or Magd Zalok, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–4474, (202) 482–2747 and (202) 482–4162, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Period of Review**

The POR is December 1, 2001 through November 30, 2002.

##### **Background**

On December 2, 2002, the Department published in the **Federal Register** a notice of “Opportunity to Request Administrative Review” of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period December 1, 2001, through November 30, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 71533–34.

On December 27, 2002, in accordance with 19 C.F.R. §351.213(b), a PRC exporter, Shandong Rongxin Import and Export Co., Ltd. (Rongxin), and a PRC producer of pencils, Laizhou City Guangming Pencil-Making Co., Ltd., requested an administrative review of the order on certain cased pencils from the PRC. On December 30, 2002, the Writing Instrument Manufacturers Association, a trade association

composed of domestic pencil producers, and Sanford Corporation; Tennessee Pencil Company, Musgrave Pencil Company, Moon Products, Inc., and General Pencil Company (collectively, the petitioners), requested that the Department conduct an administrative review of exports of subject merchandise made by 12 producers/exporters.<sup>1</sup> In addition, on December 31, 2002, China First Pencil Company, Ltd. (CFP/Three Star<sup>2</sup>), Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC) and GSSG requested reviews of their exports of subject merchandise to the United States.

The Department published a notice announcing its initiation of an antidumping duty administrative review covering the exports of the above-referenced companies during the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003).

On January 15, 2003, we issued antidumping duty questionnaires to the exporters/producers subject to this review. In its February 21, 2003 response to the Department's questionnaire, TCW stated that it did not export subject merchandise to the United States during the POR. On February 26, 2003, within 90 days of publication of the notice of initiation for this review, GSSG withdrew its request for an administrative review. CFP/Three Star, SFTC and Rongxin submitted timely questionnaire responses. The remaining exporters/producers did not submit questionnaire responses and did not request that we extend the applicable deadlines for doing so.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act),

<sup>1</sup> The 12 producers/exporters covered by the petitioners' request are Rongxin, China First Pencil Company, Ltd./Shanghai Three Star Stationery Industry Corp., Orient International Holding Shanghai Foreign Trade Co., Ltd., Tianjin Custom Wood Processing Co., Ltd., Anhui Import/Export Group Corp., Beijing Light Industrial Products Import/Export Corporation, China National Light Industrial Products Import/Export Corp., Dalian Light Industrial Products Import/Export Corp., Liaoning Light Industrial Products Import/Export Corp., Qingdao Light Industrial Products Import/Export Corp., Shandong Light Industrial Products Imports/Export Corp., and Sichuan Light Industrial Products Import/Export Corp.

<sup>2</sup> In the final results of the 1999–2000 administrative review of the order on certain cased pencils from the PRC, the Department determined that CFP and Shanghai Three Star Stationery Industry Corp. (Three Star) are sufficiently intertwined to warrant treating these two entities as a single entity for purposes of our antidumping analysis. This combined entity is referred to herein as CFP/Three Star. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612, 48613 (July 25, 2002).

the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 19, 2003, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 31, 2003. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 51551 (August 27, 2003).

The Department is conducting this administrative review in accordance with section 751 of the Act.

### Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted 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 classified 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.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

### Preliminary Partial Rescission of Review

We are preliminarily rescinding this review with respect to TCW and Laizhou because they made no shipments of subject merchandise to the United States during the POR. The Department reviewed CBP data which indicate that these companies did not

export subject merchandise to the United States during the POR.

### Final Partial Rescission of Review

In addition, we are rescinding this review with respect to GSSG because this company withdrew its request for review and no other interested party requested a review of GSSG. Pursuant to 19 C.F.R. §351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice announcing initiation of the requested review. GSSG withdrew its request for review within the 90 day time limit. Accordingly, we are rescinding the administrative review of GSSG's exports of subject merchandise for the period December 1, 2001, through November 30, 2002, and will issue appropriate assessment instructions to CBP.

### Verification

As provided in section 782(i) of the Act, during August and September 2003, the Department conducted a verification of CFP/Three Star. During the verification of CFP/Three Star, the Department followed standard procedures in order to test the information submitted by the respondent. These procedures include on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are in the report: Verification of the Questionnaire Responses of China First Pencil Co., Ltd./Shanghai Three Star Stationery Industry Corp. in the 2001 - 2002 Administrative Review of Certain Cased Pencils from the People's Republic of China (Verification Report), the public version of which is on file in the Department's Central Records Unit, room B099, of the main Commerce building (CRU-Public File).

### Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to governmental control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that its export activities are sufficiently independent so that it should be granted a separate rate. Rongxin, CFP/Three Star and SFTC provided the separate rates information

requested by the Department and reported that their export activities are not subject to governmental control.

We examined the separate rates information provided by Rongxin, CFP/Three Star and SFTC in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test, which is used to determine whether an exporter is independent from governmental control, does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from governmental control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *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*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508 (May 6, 1991).

Rongxin, CFP/Three Star and SFTC reported that the merchandise under

review was not subject to restrictive stipulations associated with their export licenses (*e.g.*, pencils were not on the government's list of products subject to export restrictions or subject to special export licensing requirements). Rongxin, CFP/Three Star and SFTC submitted copies of their business licenses in their questionnaire responses. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, Rongxin, CFP/Three Star and SFTC submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of governmental control over the companies. Thus, the evidence on the record supports a preliminary finding of the absence of *de jure* governmental control based on: (1) an absence of restrictive stipulations associated with the business licenses of Rongxin, CFP/Three Star and SFTC; and (2) the applicable legislative enactments decentralizing control of PRC companies.

## 2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87 (May 2, 1994); see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Rongxin, CFP/Three Star and SFTC reported that they determine prices for

sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Moreover, Rongxin, CFP/Three Star and SFTC stated that they negotiated the price directly with their customers. Also, Rongxin, CFP/Three Star and SFTC claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that Rongxin, CFP/Three Star and SFTC have the authority to negotiate and sign contracts and other agreements. Further, Rongxin, CFP/Three Star and SFTC claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, Rongxin, CFP/Three Star and SFTC reported that they have autonomy in making decisions regarding the selection of management. Rongxin, CFP/Three Star and SFTC indicated that their selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of Rongxin, CFP/Three Star and SFTC.

Finally, Rongxin, CFP/Three Star and SFTC reported that they retain the proceeds of their export sales, and their management determines how to use profits. There is no evidence on the record with respect to Rongxin, CFP/Three Star and SFTC to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, the evidence on the record supports a preliminary finding of the absence of *de facto* governmental control based on record statements and supporting documentation showing that: (1) Rongxin, CFP/Three Star and SFTC set their own export prices independent of the government and without the approval of a governmental authority; (2) Rongxin, CFP/Three Star and SFTC have the authority to negotiate and sign contracts and other agreements; (3) Rongxin, CFP/Three Star and SFTC have adequate autonomy from the government regarding the selection of management; and (4) Rongxin, CFP/Three Star and SFTC retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Rongxin, CFP/Three Star and SFTC demonstrates an absence of governmental control, both in law and

in fact, with respect to their exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for purposes of these preliminary results, we are granting separate rates to Rongxin, CFP/Three Star and SFTC.

## Fair Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the export price (EP) to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

## Export Price

In accordance with section 772(a) of the Act, the Department calculated EPs for sales by Rongxin, CFP/Three Star and SFTC to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation and CEP methodology was not otherwise indicated. We made deductions from the net sales price for foreign inland freight and foreign brokerage and handling. Each of these services was provided by a NME vendor, and thus, as explained in the "Normal Value" section below, we based the deductions for these movement charges on values from a surrogate country.

For the reasons stated in the "Normal Value" section below, we selected India as the surrogate country. We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 63 FR 48184 (September 9, 1998). We identify the source used to value foreign inland freight in the "Normal Value" section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

## Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV

using a factors of production (FOP) methodology if: (1) the subject merchandise is exported from a NME country, and (2) available 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. 19 C.F.R. §351.408 sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and 19 C.F.R. §351.408(c).

In accordance with section 773(c)(3) of the Act, the FOPs utilized in producing pencils include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in one or more market economy countries that are (1) at a level of economic development comparable to that of the PRC, and (2) significant producers of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. In instances where Indian surrogate value information was not available, we relied on Indonesian, Philippine, and U.S. values as noted below. Indonesia and the Philippines are also comparable to the PRC in terms of per capita gross national product and the national distribution of labor, and are significant producers of comparable merchandise. See *Memorandum From Jeffrey May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement*, dated March 3, 2003, and *Memorandum from Paul Stolz to File*, dated December 30, 2003, which are in the CRU-Public File. We valued Chinese lindenwood, the type of wood used to produce pencils in the PRC, using publicly available, published U.S. prices for American basswood.<sup>3</sup>

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. However, if we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor, using the WPI for the appropriate surrogate country as published in *International Financial Statistics*. We valued the FOP as follows:

- (1) We valued Chinese lindenwood pencil slats using publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries. The U.S. lumber prices for basswood are published in the © 2002 *Hardwood Market Report* for the period December 2001 through November 2002.
- (2) We valued the following material inputs using Indian import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) for December 2001 through November 2002: Acetone, alkyds resin, beeswax, black cores, butanes, butyl ester, calcium carbonate, castor oil, color cores, cellulose, erasers, dibutyl ester, diluent, dyestuff, ethanol, ethyl ester, ferrules, foam grips, foil, formaldehyde, glitter, glue, graphite powder, hardening oil, heat transfer film, kaolin clay, key chains, lithopone, malice acid ester, methyl benzene, nitro-paint/lacquer, penetrating agent, pigment, plastic, printing ink, propylene, pyroxylin, sawdust/wood, soap, soft agent, stearic acid, sticker paper, talcum powder, titanium, toppers, velvet wrap, wax and dye.
- (3) In accordance with 19 C.F.R. §351.408 (c)(1), we valued lacquer and the input materials used by CFP/Three Star to produce erasers at acquisition cost because these inputs were purchased from a market economy supplier and paid for using a market economy currency. Although one of CFP/Three Star's production facilities purchased black cores, color cores,

and erasers from a market economy supplier using a market economy currency, we did not consider the acquisition cost reported for this facility in valuing cores, or erasers because CFP/Three Star based the reported acquisition cost on selected purchases rather than all purchases during the POR. Therefore, we valued the cores and erasers that were purchased by CFP/Three Star from a market economy supplier using MSFTI and Indonesian data, respectively, for December 2001 through November 2002. See the Verification Report at 16 for further details.

- (4) We valued the following packing materials using Indian import data from the MSFTI for December 2001 through November 2002: Cardboard cartons, master cartons, packing boxes, packing tape, pallets, paper labels, plastic boxes, plastic canisters, plastic shrink wrap, plastic straps, and polybags.
- (5) With respect to energy, we valued natural gas using Indonesian prices reported in *Energy Prices and Taxes, Quarterly Statistics (Third Quarter 2002)*, published by the International Energy Agency. We valued electricity using the 2002 industry/commercial category-wise average tariff for electricity (U.S. dollars/kWh) used by Indian industrial enterprises from the publicly available *Key World Energy Statistics (2002) (Energy Statistics)*, published by the International Energy Agency. We also valued diesel fuel and coal using the Indian value reported in *Energy Statistics*.
- (6) We valued water and steam using the Indian prices reported in *Second Water Utilities Data Book (1997)*, published by the Asian Development Bank.
- (7) In accordance with 19 C.F.R. §351.408(c)(3), we valued labor using a regression-based wage rate for the PRC listed in the Import Administration web site under "Expected Wages of Selected NME Countries." See <http://ia.ita.doc.gov/wages>.
- (8) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using the financial statements of Asia Wood International Corporation, a Philippine wood products producer. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a

<sup>3</sup> In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR

55625, 55632 (November 8, 1994). This methodology was upheld by the Court of International Trade. See *Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States*, Slip Op. 97-151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

- (9) We used the following sources to value truck and rail freight services provided to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We valued truck freight services using the 1999 rate quotes reported by Indian freight companies and used in the less than fair value antidumping investigation of bulk aspirin from the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR.

For further discussion of the surrogate values used in this review, see the *Memorandum From The Team Regarding Selection of Surrogate Values for Factors of Production for the Preliminary Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China*, (December 30, 2003), which is on file in the CRU-Public File.

#### Use of Partial Facts Available

Section 776(a)(1) of the Act provides for the use of facts available if information needed by the Department to make a determination is not on the record. In this review, CFP/Three Star failed to report certain sales of subject merchandise. (See the Verification Report at 6). Because the necessary information regarding the unreported sales is not on the record, the Department has resorted to the use of facts available in order to calculate the dumping margin on these sales.

Pursuant to section 776(b) of the Act, when the Department uses facts available in reaching its determination, it may apply adverse inferences, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. We have preliminarily determined that the record in this review does not indicate that CFP/Three Star failed to act to the best of its ability to comply with a request for information. While preparing reconciliation documentation requested by the Department at verification, company officials

discovered that they failed to report a limited number of U.S. sales. Company officials explained that the omission occurred because the sales in question were made and invoiced shortly before the end of the POR but were posted in the company's accounting records for the period after the end of the POR. Given the limited number of transactions at issue and the level of cooperation received from company officials, we preliminarily determine that the use of an adverse inference in selecting from among the facts otherwise available is not warranted. As partial facts available, we preliminarily assigned to the unreported sales the weighted-average dumping margin calculated for CFP/Three Star's reported sales.

#### Use of Total Adverse Facts Available

Eight producers/exporters named in the notice of initiation of this review did not respond to the Department's antidumping duty questionnaire. Because these entities failed to demonstrate that they are entitled to a separate rate, we are treating them as part of a single PRC-wide entity. Given that the eight producers/exporters, which are part of the PRC-wide entity, did not respond to the Department's antidumping duty questionnaire, we have preliminarily determined that these entities did not act to the best of their abilities to comply with our request for information. Therefore, pursuant to section 776(a) and (b) of the Act, we are relying on adverse facts available to determine the dumping margin for the PRC-wide entity. Specifically, as adverse facts available, we have assigned to the PRC-wide entity, the highest dumping margin from any prior segment of this proceeding, 114.90 percent, which is the current PRC-wide rate.

#### Corroboration

Section 776(c) of the Act provides that when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See the Statement of Administrative Action (SAA), H.R. Doc. 103-316 at 870 (1994). Corroborate means that the Department will satisfy itself that the

secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, the SAA, at 869, emphasizes that the Department need not prove that the selected facts available are the best alternative information.

In this review, we are using, as facts available, the weighted-average dumping margin calculated for CFP/Three Star's reported sales and the highest dumping margin from this or any prior segment of the proceeding. The weighted-average dumping margin calculated for CFP/Three Star's reported sales is not considered secondary information because it is based on information obtained during the course of this review. Therefore, the Department is not required to corroborate this margin. The highest dumping margin from this or any prior segment of the proceeding is the current PRC-wide rate of 114.90 percent. This rate was calculated in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. See *Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 59049 (September 19, 2002). Therefore, the PRC-wide rate of 114.90 percent constitutes secondary information within the meaning of the SAA. See SAA at 870. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses, as facts available, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin if it was calculated from verified sales and cost data. The 114.90 percent PRC-wide rate is based on verified information provided by Kaiyuan Group Corporation in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. This rate has not been invalidated judicially. Therefore, we consider this rate to be reliable. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevancy of the margin selected as adverse facts available. Moreover, the selected margin is the rate currently applicable to uncooperative exporters. Thus it is appropriate to use

the selected rate as adverse facts available in the instant review.

### Preliminary Results of Review

As a result of our review, we preliminarily determine that the

following margins exist for the period December 1, 2001 through November 30, 2002:

Manufacturer/exporter	Margin (percent)
Shandong Rongxin Import and Export Co., Ltd. ....	87.49
China First Pencil Company, Ltd. /Shanghai Three Star Stationery Industry Corp. ....	26.52
Orient International Holding Shanghai Foreign Trade Co., Ltd. ....	30.43
PRC-Wide Rate .....	114.90

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 C.F.R. §351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 C.F.R. §351.309(c)(1)(ii) and 19 C.F.R. §351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

### Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We have calculated exporter-specific antidumping duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated exporter-specific assessment rates because there

is no information on the record which identifies the importers of record. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates, calculated as described above, on each of the importer's entries during the review period.

### Cash Deposit Requirements

The following deposit requirements will apply to all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. §351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-699 Filed 1-12-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-852]

### Creatine Monohydrate from the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On November 6, 2003, the Department of Commerce published the preliminary results of the 2002/2003 administrative review of the antidumping duty order on creatine monohydrate from the People's Republic of China. We gave interested parties an opportunity to comment on the preliminary results but received no comments. The final results do not differ from the preliminary results of review, in which we found that the respondent did not make sales in the United States at prices below normal value.

**EFFECTIVE DATE:** January 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4207.

**SUPPLEMENTARY INFORMATION:**