

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1012]

**Expansion of Foreign-Trade Zone 92
Harrison, Jackson and Hancock
Counties, MS**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Gulfport Biloxi Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 92, submitted an application to the Board for authority to expand FTZ 92 (currently located at sites in Harrison County) to include nine new sites in Jackson and Hancock Counties, Mississippi, within the Pascagoula and Gulfport Customs ports of entry (FTZ Docket 1-98; filed 1/6/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 2660, 1/16/98) 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 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 92 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 5th day of January 1999.

Robert S. LaRussa,

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

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99-696 Filed 1-12-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-827]

**Certain Cased Pencils 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 September 11, 1998, the Department of Commerce (the Department) published the preliminary results and partial rescission of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (59 FR 66909 (December 28, 1994)), covering the period December 1, 1996, through November 30, 1997 (63 FR 48697). We gave interested parties an opportunity to comment on our preliminary results. We received one comment from the petitioners, the Pencil Section of the Writing Instrument Manufacturers Association and its members (domestic producers of pencils). We received no comments from respondents or other interested parties. Based on our analysis of the comment received, there are no changes to these final results of review from the preliminary results of review, where we determined the existence of a country-wide dumping margin of 53.65 percent for this period of review (POR).

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Jack K. Dulberger or Wendy Frankel, Antidumping/Countervailing Duty Enforcement Group II, Office Four, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230, telephone (202) 482-5505 and 482-5849, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Period of Review

The POR is December 1, 1996 through November 30, 1997.

Scope of the Review

The products covered by this review are certain cased pencils of any shape or dimension 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 this review are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-case crayons (wax), pastels, charcoals, and chalks. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Background

The antidumping duty order on pencils from the People's Republic of China (PRC) was published on December 28, 1994 (59 FR 66909). On September 11, 1998, the Department published in the **Federal Register** the preliminary results of its review of this order for the POR December 1, 1996 through November 30, 1997, (see 63 FR 48697) (Preliminary Results). In the Preliminary Results, we rescinded the review as to the companies which reported that they had no shipments of subject merchandise during the POR (i.e., China First Pencil Company, Ltd. (China First) and Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong)).

With respect to these companies, we confirmed, by conducting a data query of the U.S. Customs Service (Customs) database, (see Preliminary Results at 48698), that the only subject merchandise exported by the exporters China First and Guangdong, respectively, to the United States during the POR was merchandise excluded from the order (i.e., merchandise manufactured by the factories which received zero margins in the less-than-fair-value (LTFV) investigation).¹

¹ China First exports of merchandise produced by China First itself were originally excluded from this order. However, in litigation brought to challenge the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (November 8, 1994), the Department issued a remand determination which was subsequently affirmed by

Continued

Therefore, these final results apply only to the PRC-wide entity, which includes the remaining respondents in this review that did not reply to our questionnaire and demonstrate that they are entitled to a rate separate from the PRC entity. In response to an opportunity to comment on our preliminary results, the petitioners submitted one comment on October 13, 1998. We received no other comments from respondents or other interested parties.

Analysis of Comment Received

Comment

Petitioners assert that the Department's proposal to use the recalculated petition rate as the facts available (FA) is inappropriate. Petitioners argue that agency practice and the applicable statutory provisions require that the FA rate be both reliable and relevant. According to petitioners, the recalculated petition rate applied by the Department in the preliminary results fails to meet the reliability requirement because it is based on legal error.

According to the petitioners, in calculating the revised petition rate, the Department erred in failing to exclude data regarding certain U.S. wood prices which were untimely submitted, with the result that the recalculation of the "petition rate" was based on a fundamental procedural flaw, thus rendering the exporter-specific rates and the "PRC rate," which were premised on such recalculation, unreliable.

In the litigation arising from the LTFV investigation, the petitioners have alleged this error, among others, in an appeal currently pending in the U.S. Court of Appeals for the Federal Circuit. The petitioners further contend that if they obtain a favorable decision in this appeal, the recalculated "PRC rate" would be found by the court to be in error and thus render the Department's use of such rate illegal, in accordance with the ruling of *D&L Supply Co. v. United States*, 113 F.3d 1220 (Fed. Cir.

the U.S. Court of International Trade (CIT). See *Writing Instrument Manufacturers Ass'n Pencil Section, et al., v. United States*, 984 F.Supp. 629 (CIT 1997) (*Writing Instrument Manufacturers*). In this remand determination, the Department determined, among other things, that merchandise exported and produced by China First was, in fact, sold at less than fair value. Therefore, as we stated in the Preliminary Results, (see Preliminary Results at 48698, footnote 1), for entries of merchandise exported and produced by China First and entered on or after November 23, 1997, there has been suspension of liquidation pending final and conclusive disposition of the remand determination. See also the Department's *Notice of Court Decision: Certain Cased Pencils from the People's Republic of China*, 62 FR 65243 (December 11, 1997).

1997) (*D&L Supply*), which states "that it is improper for Commerce to continue to use, as the BIA [best information available] rate, an antidumping duty rate that has been vacated as erroneous."

Department's Position

We disagree with petitioners that the newly recalculated petition rate is an inappropriate basis for FA in this case. Where the Department must rely on FA because a respondent failed to cooperate to the best of its ability in responding to a request for information, section 776(b) of the Act authorizes the Department to make an inference adverse to the interests of that respondent in choosing FA. Section 776(b) of the Act also authorizes the Department to use as adverse FA information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. See also, Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870), providing that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA, at page 870, clarifies that the petition is "secondary information."

The Department, as indicated in the preliminary results of review, has decided to use the petition in the LTFV investigation as the basis for adverse FA. The Department "recalculated" the petition rate for the first time during the LTFV investigation. Later, in litigation arising out of that investigation, we requested that the CIT remand to us two issues for further consideration: (1) Basswood prices; and (2) valuation of slats and logs. In performing this remand, the Department revised certain calculations; these revisions led to a change in the recalculated petition rate (from 44.66 percent to 53.65 percent). This second recalculation of the petition rate was then affirmed by the CIT in *Writing Instrument Manufacturers*. We have therefore used this second recalculation petition rate as the basis of FA, rather than the original petition rate or the petition rate as adjusted by the Department in making its final LTFV determination. This decision is in accordance with the ruling by the U.S. Court of Appeals for the Federal Circuit in *D&L Supply*, which states that it is

inappropriate to use as FA a rate determined to be inaccurate. See *D&L Supply*, 113 F.3d at 1222. We have ignored rates found to be inaccurate and have used a rate that has been affirmed by the CIT. Thus, contrary to petitioners' argument, our selection of FA is appropriate.

We have determined that there is no evidence on the record of this case which would cause us to question the reliability of the newly recalculated petition rate. Petitioners' claims against this rate, which are based on evidence which is contained in the administrative record of the LTFV investigation, are not properly before the Department in this segment of the proceeding.

Final Results of the Review

Based on our analysis of this comment, we have determined that no changes to the preliminary results are warranted for purposes of these final results, and a margin of 53.65 percent exists for the PRC entity for the period December 1, 1996 through November 30, 1997. This rate applies to all exports of pencils from the PRC other than those produced and exported by China First (because China First's exports produced by China First were excluded from the order), those produced by Three Star and exported by Guangdong (because Three Star's exports produced by Guangdong were also excluded from the order), and those exported by Shanghai Foreign Trade Corporation (SFTC), an exporter which was previously determined to be entitled to a separate rate. The weighted-average dumping margin for the period December 1, 1996, through November 30, 1997 is as follows:

Manufacturer/producer/exporter	Weighted average margin percent
PRC Rate	53.65

Customs shall assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions concerning the respondent directly to Customs. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters (including China First (with respect to merchandise produced by anyone other than China First) and Guangdong (with respect to merchandise produced by anyone other than Three Star)), except for SFTC, will

be the rate indicated above; (2) for merchandise exported by SFTC, the cash deposit rate will continue to be the rate published in the final LTFV determination; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of their suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Upon completion of this review, we will direct Customs to assess an ad valorem rate of 53.65 percent against the entered value of each entry of subject merchandise during the POR for all firms except those firms excluded from the order or entitled to a separate rate.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return, destruction, or conversion to judicial protective order of APO materials is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)) and 19 CFR 351.221.

Dated: January 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-694 Filed 1-12-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-822, A-122-823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part

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

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada and determination to revoke in part.

SUMMARY: On July 10, 1998, the Department of Commerce ("the Department") published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover six manufacturers/exporters of the subject merchandise to the United States (three manufacturers/exporters of corrosion-resistant carbon steel and four manufacturers/exporters of cut-to-length carbon steel plate), and the period August 1, 1996, through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor (Dofasco, Inc. and Sorevco Inc. (collectively, Dofasco)); Eric Scheier (Continuous Colour Coat (CCC)); Lesley Stagliano (Algoma Inc. (Algoma)); Gideon Katz, (Gerdau MRM Steel (MRM)), A.J. Forsyth and Co., Ltd. (Forsyth) and Stelco, Inc. (Stelco) corrosion resistant); Laurel LaCivita (Stelco plate); or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act

(URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Background

On July 10, 1998, we published in the **Federal Register** (63 FR 37320) the preliminary results of the administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from Algoma, CCC, Dofasco, Stelco, and Forsyth, and from the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company). We have now completed these administrative reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate "classes or kinds" of merchandise: (1) Certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000,