

"Dr. Zhou" signed for the delivery on May 17, 2006. The undersigned concludes, BIS submitted evidence to establish delivery of the notice of the Charging Letter was constructively refused on or around December 17, 2006 and that BIS properly served notice of the Charging Letter in accordance with Section 766.3 of the Regulations.

Section 766.6(a) of the Regulations provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter" initiating the administrative enforcement proceeding. To date, Zhou has not filed an answer to the Charging Letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the Charging Letter, and hereby determine that those facts establish that Zhou committed one violation of Section 764.2(d), one violation of Section 764.2(b), and one violation of Section 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. *See* 15 CFR 764.3 (2001–2002). Because Zhou caused the export of microwave amplifiers, items controlled by BIS for national security reasons for export to China, BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security⁴ that Zhou's export privileges be denied for twenty years.

BIS suggested this sanction because Zhou's role in conspiring to export amplifiers to China, as well as his role in ordering amplifiers for export to China, represents a significant harm to U.S. national security. BIS further argued that Zhou knowingly engaged in conduct prohibited by the Regulations by conspiring to, and causing the export of microwave amplifiers to China with knowledge that a violation of the Regulations would occur. The items involved in this unlicensed export—microwave amplifiers—required a license for export to China for national security reasons. Accordingly, BIS asserted that Zhou's actions represented a significant potential harm to the essential national security interests protected by U.S. export controls.⁵ Furthermore, BIS believes that the recommended denial order is particularly appropriate in this case, since

⁴ Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

⁵ *See* 15 CFR Part 766, Supp. No. 1, III, A. (Stating that a denial order may be considered even in matters involving simple negligence or carelessness, if the violation(s) involves "harm to the national security or other essential interests protected by the export control system," if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty * * *) (emphasis added).

Zhou failed to respond to the Charging Letter filed by BIS, despite evidence indicating that Zhou received actual service of the Charging Letter. Finally, BIS believes that the imposition of a twenty-year denial order is particularly appropriate in this case since BIS would likely face difficulties in collecting a monetary penalty, as Zhou is not located in the United States. In light of these circumstances, BIS believes that the denial of Zhou export privileges for twenty years is an appropriate sanction.

On this basis, I concur with BIS and recommended that the Under Secretary enter an Order denying Zhou's export privileges for a period of twenty years. Such a denial order is consistent with penalties imposed in similar cases. *See In the Matter of Mark Jin a/k/a Zhongda Jin et al*, 66 FR 40,971 (Aug. 6, 2001) (affirming the recommendation of the ALJ that a twenty-five year denial order was appropriate where the respondent knowingly exported items to China without a license and defaulted on the BIS charging letter); *In the Matter of Petrom GmbH International Trade*, 70 FR 32,743 (June 6, 2005) (affirming the recommendations of the ALJ that a twenty year denial order and a civil monetary sanction of \$143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); *In the Matter of Adbulmir Mahdi*, 68 FR 57,406 (Oct. 3, 2003) (affirming the recommendation of the ALJ that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

[Redacted Section]

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**,

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: October 17, 2006.

The Honorable Joseph N. Ingolia, Chief Administrative Law Judge.

[FR Doc. 06–9121 Filed 11–8–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration (A–570–827)

Notice of Amended Final Results in Accordance With Court Decision: Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China

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

SUMMARY: On July 12, 2006, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to sustain the Department of Commerce's (the Department's) remand redetermination in the 1999–2000 antidumping duty administrative review of certain cased pencils (pencils) from the People's Republic of China (PRC). In its redetermination, the Department assigned Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) a cash deposit rate of 13.91 percent, rather than the PRC-wide rate assigned to the company in the contested administrative review. As there is now a final and conclusive court decision in this case, the Department is amending the final results of the 1999–2000 antidumping duty administrative review of pencils from the PRC.

EFFECTIVE DATE: November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith at (202) 482–4162 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published in the **Federal Register** the antidumping duty order on pencils from the PRC. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66,909 (December 28, 1994). The Department excluded from this order Guangdong's U.S. sales of pencils produced by Shanghai Three Star Stationery Industry Corp. (Three Star). However, in the final determination that gave rise to the antidumping duty order, the Department stated that if Guangdong sold subject merchandise to the United States that was produced by manufacturers other than Three Star, such sales would be subject to a cash

deposit rate equal to the rate applied to the PRC entity. *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, 55627 (November 8, 1994), *see also Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision*, 64 FR 25275 (May 11, 1999).

In the 1999–2000 administrative review of the antidumping duty order on pencils from the PRC, the Department “collapsed” Three Star with another entity, China First Pencil Co. Ltd. (China First), based upon information that came to light late in the review. Further, the Department determined that the combined entity, China First/Three Star, was distinct from the Three Star whose factors of production formed the basis for excluding Guangdong from the antidumping duty order. Because there was no information on the record of the 1999–2000 review from which to calculate a dumping margin for Guangdong, consistent with the investigation in this proceeding, in the final results of review the Department assigned Guangdong’s sales of China First/Three Star produced subject merchandise a cash deposit rate equal to the PRC–wide rate. *See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48,612 (July 25, 2002), as amended in *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 59,049 (September 19, 2002) (*2000 Amended Final Results of Review*).

China First, Guangdong, Three Star, Orient International Holding Shanghai Foreign Trade Co. Ltd., and Kaiyuan Group Corporation, respondents in the 1999–2000 administrative review, filed a motion of judgement upon the agency record contesting the final results of that review. Specifically, these respondents challenged a number of the surrogate values selected by the Department, as well as the Department’s decision to collapse Three Star with China First, and initiate a review of Guangdong and assign it the PRC–wide rate. After considering the respondents’ arguments, the CIT upheld the Department’s selection of surrogate values but remanded the case to the Department instructing it to reevaluate the PRC–wide rate applied to Guangdong because

the Court found that by assigning this rate to Guangdong the Department had effectively applied adverse facts available to a participating and cooperative respondent. The CIT also instructed the Department to articulate specifically the portions of the existing collapsing statutes and regulations which are applicable or inapplicable in the non–market economy (NME) context, and provide the Court with a clearly articulated methodology for collapsing companies in NME countries. *See Kaiyuan Group Corp., et al v. United States and the Pencil Section Writing Instrument Manufacturers Ass’n, et al.*, 343 F. Supp. 2d 1289 (May 14, 2004). In its remand redetermination, the Department continued to collapse Three Star with China first (providing the additional explanation requested by the Court) but assigned Guangdong a cash deposit rate of 13.91 percent, which is equal to the weighted–average of the dumping margins calculated for the other respondents in the 1999–2000 administrative review. On August 23, 2005, the CIT sustained the Department’s remand redetermination. *See Kaiyuan Group Corp., et al v. United States and the Pencil Section Writing Instrument Manufacturers Association, et al.*, 391 F. Supp. 2d 1317 (August 23, 2005), and the Department’s Final Results of Redetermination Pursuant to Court Remand: *Kaiyuan Group Corp., et al v. United States and Pencil Section Writing Instrument Manufacturers Association, et al.* (dated September 30, 2004). On October 21, 2005, respondents filed a notice of appeal with the CAFC. On July 12, 2006, the CAFC issued a “Notice of Entry of Judgement Without Opinion,” in which it affirmed the decision of the CIT.

Amended Final Results of Review

As the litigation in this case has concluded, the Department is amending the *2000 Amended Final Results of Review* to reflect a dumping margin for Guangdong of 13.91 percent. The dumping margins for the other respondents in that review and the PRC–wide rate did not change as a result of the Department’s remand redetermination.

Cash Deposit Requirements

Subsequent to the 1999–2000 antidumping duty administrative review of pencils from the PRC, the Department determined, with respect to the pencils order, that Guangdong “did not merit a separate rate and will be subject to the PRC–wide rate.” *See Certain Cased Pencils from The People's Republic of China: Final Results and Partial Rescission of Antidumping Duty*

Administrative Review, 71 FR 38366 (July 6, 2006) (*2003–2004 Pencils AD Review*) and accompanying *Issues and Decision Memorandum* at Comment 10. Specifically, in the “Cash Deposit Requirements” section of the *2003–2004 Pencils AD Review*, and the Department’s corresponding cash deposit instructions to Customs and Border Protection (CBP), issued on July 28, 2006, we noted that for all PRC exporters of subject merchandise, to which we have not assigned a separate rate, the cash deposit rate will be the PRC wide rate of 114.9 percent. The cash deposit rate in the *2003–2004 Pencils AD Review* supersedes the cash deposit rate assigned to Guangdong in the instant amended final results. Therefore, Guangdong’s future entries will continue to be subject to the PRC–wide rate and there will be no need to issue cash deposit instructions to CBP in connection with the instant **Federal Register** notice.

Assessment

Consistent with the *2000 Amended Final Results of Review*, because there is no information on the record which identifies the importers of record, we calculated exporter–specific assessment rates for respondents’ shipments of subject merchandise. Specifically, we calculated 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 those sales. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 2, 2006.

David M. Spooner,
Assistant Secretary for Import
Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110606B]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.