

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board**

[Docket 53-2008]

**Foreign-Trade Zone 242 – Boundary County, Idaho, Application for Subzone, Hoku Materials, Inc., Cancellation of Public Hearing**

The public hearing scheduled for January 8, 2009, on the application for subzone status at the Hoku Materials, Inc. (Hoku), facility in Pocatello, Idaho (73 FR 59597, 10/9/08) has been cancelled. The party which had requested the hearing, Globe Metallurgical Inc. (Globe), submitted a letter to the Foreign-Trade Zones Board on January 2, 2009, withdrawing its request as a result of Hoku's December 31, 2008, amendment of its application in which Hoku indicated that it would not admit silicon metal subject to antidumping or countervailing duty orders into the proposed subzone facility and would accept an FTZ Board Order condition restricting such admission. Additional information is available on the FTZ Board web page via [www.trade.gov/ftz](http://www.trade.gov/ftz).

As indicated previously, the comment period for this case is open through January 23, 2009. Rebuttal comments may be submitted during the subsequent 15-day period, until February 9, 2009. For further information, contact Diane Finver at [Diane\\_Finver@ita.doc.gov](mailto:Diane_Finver@ita.doc.gov) or (202) 482-1367.

Dated: January 5, 2009.

**Andrew McGilvray,***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 Partial Rescission of Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce ("the Department") has preliminarily determined that the respondents in this review, covering the period December 1, 2006, through November 30, 2007, have made sales of subject merchandise at less than normal value. 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 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Alexander Montoro or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0238 and (202) 482-0371, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On December 28, 1994, the Department published an antidumping duty order on certain cased pencils from the People's Republic of China ("PRC"). See *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994).

On December 3, 2007, the Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain cased pencils from the PRC covering the period of review ("POR") December 1, 2006, through November 30, 2007. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 67889 (December 3, 2007). On December 26, 2007, in accordance with 19 CFR 351.213(b), Shandong Rongxin Import and Export Co., Ltd. ("Rongxin"), a PRC exporter/producer, requested a review of itself. On December 31, 2007, the following exporters/producers requested reviews of themselves in accordance with 19 CFR 351.213(b): China First Pencil Co., Ltd. ("China First"), Shanghai Three Star Stationery Industry Corp. ("Three Star"), and Oriental International Holding Shanghai Foreign Trade Co., Ltd. ("SFTC"). On December 31, 2007, the petitioners<sup>1</sup> requested a review of the following companies: China First (including subsidiaries Shanghai First Writing Instrument Co., Ltd. ("Shanghai First"), Shanghai Great Wall Pencil Co., Ltd. ("Great Wall"), and China First Pencil Fang Zheng Co., Ltd. ("Fang Zheng"), Three Star, Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation ("Guangdong"), Rongxin, Tianjin Custom Wood Processing Co.,

Ltd. ("Tianjin"), Beijing Dixon Stationery Company Ltd. ("Dixon"), and Anhui Import & Export Co., Ltd. ("Anhui").

On January 28, 2008, the Department published a notice of initiation for this administrative review covering the companies listed in the requests received from interested parties. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 4829 (January 28, 2008). On May 6, 2008, the petitioners requested that the Department conduct verification of the information the Department will rely upon in the final results of this review. On August 25, 2008, we extended the time limit for the preliminary results in this review until December 30, 2008. See *Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 49993 (August 25, 2008).

**Respondent Selection**

Section 777A(c)(1) of the Tariff Act of the 1930, as amended ("the Act"), directs the Department to calculate individual dumping margins for each known producer or exporter of the subject merchandise. Because it was not practicable for the Department to individually examine all of the companies covered by the review, the Department limited its examination to a reasonable number of producers/exporters, accounting for the greatest possible export volume, pursuant to section 777A(c)(2)(B) of the Act. Therefore, the Department selected China First, Three Star, and Rongxin as the mandatory respondents in this review. See Memorandum from Alexander Montoro, International Trade Compliance Analyst, to Susan H. Kubbach, Director of AD/CVD Operations Office 1, entitled "Selection of Respondents for the Antidumping Duty Review of Certain Cased Pencils from the People's Republic of China," June 17, 2008.

**Partial Rescission**

On July 3, 2008, Dixon requested that the Department rescind the administrative review with respect to Dixon and certified that it had no exports, sales or entries of subject merchandise to the United States during the POR. We reviewed CBP import data and found no evidence that Dixon had any shipments of subject merchandise during the POR. See Memorandum from Alexander Montoro to the File, entitled "Intent to Rescind in Part the Antidumping Duty Administrative

<sup>1</sup> The petitioners include Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company.

Review on Certain Cased Pencils from the People's Republic of China", August 7, 2008, ("Intent to Rescind Memo"). In addition, on July 17, 2008, we made a "No Shipments Inquiry" to CBP to confirm that there were no exports of subject merchandise by Dixon during the POR. We asked CBP to notify us within ten days if CBP "has contrary information and is suspending liquidation" of subject merchandise exported by Dixon. CBP did not reply with contrary information. The Department provided interested parties in this review until August 14, 2008, to submit comments on the Intent to Rescind Memo. No interested party submitted any comments. Accordingly, we are preliminarily rescinding this review with respect to Dixon.

#### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004-2005 Administrative Review and Notice of Rescission of 2004-2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country and Surrogate Values

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department if NV cannot be determined pursuant to section 773(a) of the Act. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries comparable to the PRC in terms of economic development. *See Memorandum from Carole Showers, Acting Director, Office*

of Policy, to Susan H. Kuhbach, Director, Office 1, July 9, 2008.

On November 14, 2008, the Department solicited comments on surrogate country selection from interested parties. The Department received comments from the petitioners on November 26, 2008. On November 26, 2008, the Department also received surrogate-value information from the petitioner, China First, and Three Star. On December 5, 2008, and December 8, 2008, the Department received rebuttal factual information and comments on factor valuation from the petitioners and China First and Three Star ("China First-Three Star"), respectively. For a detailed discussion of the Department's selection of surrogate values and financial ratios, *see* "Factor Valuations" section below. *See also* Memorandum from the Team to the File, entitled "2006-2007 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Preliminary Results", December 30, 2008, ("Factor Valuation Memorandum"), which is on file in the Central Records Unit ("CRU") in Room 1117 of the main Department of Commerce building.

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. *See Memorandum from Alexander Montoro to the File* entitled, "2006-2007 Antidumping Duty Administrative Review on Certain Cased Pencils from the People's Republic of China: Selection of a Surrogate Country," December 30, 2008.

Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments, and the only surrogate value data submitted on the record are from Indian sources. Given the above facts, the Department has selected India as the primary surrogate country for this review.

#### Scope of the Order

Imports covered by the 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 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.

#### Affiliation - China First and Three Star

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.<sup>2</sup> For the reasons discussed

<sup>2</sup> *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 64930, 64934 (November 6, 2006) (unchanged in the final results, 72 FR 44827 (August 9, 2007)), and *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty*

below, we find that this condition has not prevented us from examining in this administrative review whether China First and its subsidiary producers<sup>3</sup> are affiliated with Three Star.

In prior administrative reviews involving China First and Three Star, the Department found China First to be affiliated with Three Star as a result of Shanghai Light Industry, Ltd.'s ("SLI") direct oversight and control over both China First and Three Star.<sup>4</sup>

In this review, as in past administrative reviews, China First and Three Star claim that they are not affiliated and should not be collapsed. These respondents contend that SLI's transfer of its oversight responsibilities for China First and Three Star to the Huangpu District State Assets Administration Office ("HSAAO") on October 11, 2005, and September 8, 2005, respectively, is additional evidence of their non-affiliation.<sup>5</sup>

Based on our analysis, we preliminarily find that China First and its pencil-producing subsidiaries are affiliated with Three Star, pursuant to section 771(33)(F) of the Act, because of the common control exercised by HSAAO. See Memorandum From Team to Susan H. Kuhbach, Director, Office 1, entitled "Certain Cased Pencils from the People's Republic of China: Whether to Continue To Collapse China First and its Pencil-Producing Subsidiaries with Three Star," December 30, 2008 ("Affiliation/Collapsing Memo"). The basis of our finding is that the facts have not changed from previous reviews in which we found these parties to be affiliated.

In the four most recent administrative reviews of Pencils from China, the Department found China First and Three Star to be affiliated, in large part based on: (1) a 1997 public filing by China First that indicated that China First's shareholders voted to merge with Three Star; and (2) common oversight of the two firms by SLI, a government-owned assets management entity. Throughout the four reviews, both companies consistently asserted that the

1997 merger was not implemented and that the two companies, are in, fact unaffiliated competitors. However, neither China First nor Three Star was able to document that the 1997 shareholder decision to merge was reversed.

In this review, China First and Three Star continue to claim that the merger was never completed, but have yet to provide documents specifically supporting this claim. The only change is the transfer of SLI's administrative oversight of China First and Three Star to HSAAO. China First and Three Star describe the oversight duties and asset management of HSAAO to be essentially the same as those of SLI. Therefore, we preliminarily determine that common control of China First and Three Star continues and that they are affiliated under section 771(33)(F) of the Act.

The Department intends to obtain additional information on the relationship of these companies for consideration in the final results.

#### **Collapsing – China First and Three Star**

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. We also note that the rationale for collapsing, to prevent manipulation of price and/or production (see 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that producers of like merchandise are affiliated as a result of their mutual relationship with an exporter.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (Ct. Int'l. Trade 2003) (noting that the application of collapsing in the NME

context may differ from the standard factors listed in the regulation).

In summary, if there is evidence of significant potential for manipulation or control between or among producers which produce similar and/or identical merchandise, but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliated producers should be treated as one entity. See, e.g., *Mushrooms Fifth Review Prelim*, 70 FR at 10971 (unchanged in final results, 70 FR 54361 (September 14, 2005)); and *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635, 54637 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

As noted above in the "Affiliation – China First and Three Star" section of this notice, we find a sufficient basis to conclude that China First and its pencil-producing subsidiaries and Three Star are affiliated through the common control by HSAAO, pursuant to section 771(33)(F) of the Act. All of China First's three pencil-producing subsidiaries and Three Star produced cased pencils during the POR, which would be subject to the antidumping duty order if this merchandise entered the United States (see FOP data submitted by China First and Three Star in their section D responses, August 18, 2008). Therefore, we find that the first and second collapsing criteria are met because in addition to being affiliated, these producers have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities.

Finally, we find that the third collapsing criterion is met in this case because, a significant potential for manipulation of price or production exists among China First and Three Star. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. See *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative*

*Administrative Review*, 70 FR 10965, 10969 (March 7, 2005) ("Mushrooms Fifth Review Prelim") (unchanged in the final results, 70 FR 54361 (September 14, 2005)).

<sup>3</sup> China First's pencil-producing subsidiaries include the following companies: Shanghai First, Great Wall, and Fang Zheng.

<sup>4</sup> See, e.g., *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) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>5</sup> See page 2 of Three Star's section A response, and pages A-4 and A-5 of China First's section A response, August 1, 2008.

Review, 63 FR 12764, 12774 (March 16, 1998) and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997). See Affiliation/Collapsing Memo for further discussion. In this case, there is a significant potential for manipulation of price or production because China First and Three Star have common ownership as demonstrated by the fact that HSAAO has administrative oversight over both of them.

For the reasons explained more fully in the Affiliation/Collapsing Memo and pursuant to 19 CFR 351.401(f), we have preliminarily collapsed China First and its pencil-producing subsidiaries with Three Star.

### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(c) of the Act. Accordingly, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty deposit rate (*i.e.*, a country-wide rate). See *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 (September 8, 2006); *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 (May 22, 2006).

It is the Department's standard 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 *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 *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*").

Regarding the mandatory respondents, China First and Three Star are a joint stock limited company and a

company "owned by all of the people," respectively.<sup>6</sup> A portion of China First's shares are held in trust in part by HSAAO, which is also owned by "all of the people."<sup>7</sup> HSAAO, as trustee, has oversight over Three Star's assets. As discussed above in the "Collapsing—China First and Three Star" section of this notice, we are preliminarily treating China First and Three Star as a collapsed entity. Consequently, we are considering whether the collapsed entity as a whole is entitled to a separate rate. This decision is specific to the facts presented in this review and is based on several considerations, including the structure of the collapsed entity, the level of control between/among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if the facts, taken as a whole, support such a finding.

The other mandatory respondent, Rongxin, is a limited liability company.

Five respondents subject to this review were not selected as mandatory respondents.<sup>8</sup> We issued separate rate applications and certifications to all five of these companies. One of these respondents, Dixon, requested rescission on the basis that it had no shipments in the POR, as discussed above. SFTC filed its separate rate certification on July 24, 2008. The remaining three non-mandatory respondents did not submit either a separate rates certification or application. One of these three companies, Tianjin, qualified for a separate rate in an earlier administrative review. See *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 43082, 43084 (July 21, 2003). However, because Tianjin did not submit a separate rate certification in the instant review, it will now be treated as part of the PRC-wide entity. Consequently, Anhui, Guangdong, and Tianjin have not satisfied the criteria for separate rates for the POR and are considered as being part of the PRC-wide entity.

Our analysis of whether the export activities of Rongxin, the China First/Three Star collapsed entity, and SFTC are independent from government control follows.

<sup>6</sup> See page A-2 of China First's August 1, 2008, Section A Response and page 2 of Three Star's August 1, 2008 Section A Response.

<sup>7</sup> See page A-5 of China First's August 1, 2008, Section A Response.

<sup>8</sup> Dixon, SFTC, Anhui, Guangdong, and Tianjin.

### Absence of *De Jure* Control

The Department considers the following criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with the 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 20589.

The China First Three Star collapsed entity and Rongxin have placed on the administrative record the following documents to demonstrate absence of *de jure* control: the 1994 "Foreign Trade Law of the People's Republic of China;" the "Company Law of the PRC," effective as of July 1, 1994; and "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988. In other cases involving products from the PRC, these and other respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record of this segment, as well: the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988; and the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises." See December 30, 2008, memorandum to the file which places the above-referenced laws on the record of this segment.

In its separate rates certification, SFTC certified that during the POR: (1) as with the segment of the proceeding in which the firm was previously granted a separate rate ("previous Granting Period"), there were no government laws or regulations that controlled the firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by any level of government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; and (5) PRC government laws and legislative enactments applicable to SFTC remained the same as in the

previous Granting Period. SFTC attached copies of its business license and foreign trade operator registration form to its separate certification to document the absence of government *de jure* control.

As in prior cases, we have analyzed these laws and have found them to sufficiently establish an absence of *de jure* control of joint ventures and companies owned by “all of the people” absent proof on the record to the contrary. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People’s Republic of China*, 60 FR 22544 (May 8, 1995) (“*Furfuryl Alcohol*”). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we find that the evidence on the record supports a preliminary finding of absence of *de jure* government control for SFTC, China First–Three Star (“the China First–Three Star collapsed entity”), and Rongxin based on: (1) an absence of restrictive stipulations associated with the exporter’s business license; (2) the legal authority on the record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3) other formal measures by the government decentralizing control of companies.

#### Absence of *De Facto* Control

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*, 59 FR at 22587. 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 government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government 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, and *Furfuryl Alcohol*, 60 FR at 22545.

The affiliates in the China First–Three Star collapsed entity (where applicable) and Rongxin all have asserted the following: (1) each establishes its own export prices; (2) each negotiates contracts without guidance from any government entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent’s questionnaire responses indicate that its pricing during the POR was not coordinated among exporters. As a result, there is a sufficient basis to preliminarily determine that each respondent listed above (including the China First–Three Star collapsed entity as a whole) has demonstrated a *de facto* absence of government control of its export functions and is each entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of a separate rate. Moreover, with respect to the affiliates included in the China First–Three Star collapsed entity, we have assigned to all of them the same antidumping rate in these preliminary results for the above-mentioned reasons.

The Department also conducted a separate rates analysis for SFTC. SFTC certified the following: (1) there is no government participation in setting export prices; (2) the firm has independent authority to negotiate and sign export contracts; (3) the firm had autonomy from all levels of government in making decisions regarding the selection of management; (4) SFTC did not submit the names of its candidates for managerial positions to any governmental entity for approval; and (5) there are no restrictions on the use of export revenue. During our analysis of the information on the record, we found no information indicating the existence of government control of SFTC’s export activities. See SFTC’s submission of July 24, 2008. Consequently, we preliminarily determine that SFTC has met the criteria for the application of a separate rate.

#### Fair–Value Comparisons

To determine whether the respondents’ sales of subject merchandise were made at less than NV, we compared the NV to individual export price (“EP”) transactions in accordance with section 777A(d)(2) of the Act. See “Export Price” and “Normal Value” sections of this notice, below.

#### Export Price

In accordance with section 772(a) of the Act, EP is “the price at which merchandise is first sold (or agreed to be sold) before the date importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EPs for sales by the China First–Three Star collapsed entity and Rongxin 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 constructed export price methodology was not otherwise indicated. We based EP on free–on–board port or delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate. Movement expenses included expenses for foreign inland freight from plant to port of exportation, foreign brokerage and handling where applicable, international freight. Foreign inland freight and foreign brokerage and handling were provided by an NME vendor and, thus, as explained in the section below, we based the amounts of the deductions for these movement charges on values from a surrogate country.

For international freight, we used the reported expenses because the respondents used market–economy freight carriers and/or paid for those expenses in a market–economy currency. For certain sales, Rongxin used a market–economy carrier, which it paid in U.S. dollars. In China First–Three Star’s case, it used an NME carrier, but paid for the services in a market–economy currency. All of the respondents reported that they incurred no marine insurance expenses on their sales to the United States. For a detailed description of all adjustments, see Memorandum from Nancy Decker, Program Manager, Office 1, to the File entitled “Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: China First Pencil Company, Ltd., Shanghai Three Star Stationery Industry Corp.” (“China First–Three Star Preliminary Calculation Memorandum”), December 30, 2008, and “Analysis for the Preliminary

Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Shandong Rongxin Import and Export Co. Ltd." ("Rongxin Preliminary Calculation Memorandum"), December 30, 2008.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India; Kejirwal Paper Ltd. in the less than fair value investigation of certain lined paper products from India; and Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in final results, 71 FR 45012 (August 8, 2006)), and *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in final results, 71 FR 40694 (July 18, 2006)). 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 Financial Statistics* ("IFS") *Online Service* maintained by the Statistics Department of the International Monetary Fund at the website <http://www.imfstatistics.org>.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an factor of production ("FOP") methodology if the merchandise is exported from an NME country and the 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.

The Department will base NV on FOPs because the presence of government controls on various aspects of these NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, and packing.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy ("ME") country and pays for it in ME currency, the Department will normally value the factor using the actual price paid to the market-economy supplier for the input. See 19 CFR 351.408(c)(1). Where a portion of the input is purchased from a market-economy supplier and the remainder from an NME supplier, the Department will normally use the price paid for the input sourced from market-economy suppliers to value all of the input, provided the volume of the market-economy input as a share of total purchases from all sources is "meaningful." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997); *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); 19 CFR 351.408(c)(1); see also *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61716-61719 (October 19, 2006) regarding the Department's flexible 33 percent threshold for market economy inputs. In this administrative review, Three Star, one of the companies in the collapsed China First-Three Star entity, reports purchasing four market economy inputs. However, the volume of three of the four market economy purchases did not exceed the threshold percentage that the Department normally considers "meaningful" when these purchases were compared to the combined NME purchases of the same inputs by the collapsed Chin First-Three Star entity. See *China First-Three Star Preliminary Calculation Memorandum*.

With regard to both the Indian import-based surrogate values and the ME input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the*

*People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies, and it is reasonable to infer that exports to all markets from these countries may be subsidized. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (unchanged in final results, 71 FR 14170 (March 21, 2006)); and *China Nat'l Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. App 183 (Fed. Cir. 2004).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590-91 (1988), *reprinted* in 1988 U.S.C.C.A.N. 1547, 1623. Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating ME input values. See *Factor Valuation Memorandum*.

#### Factor Valuations

In accordance with section 773(c)(3) of the Act, we calculated NV based on FOPs reported by the respondents for the POR. We multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneousness of the data.

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. 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 the IFS.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we

added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory where appropriate (*i.e.*, where the sales terms for the ME inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued the FOPs as follows:

- (1) Except where noted below, we valued all reported material, energy, and packing inputs using Indian import data from the World Trade Atlas (“WTA”) for December 2006 through November 2007.
- (2) To value lindenwood pencil slats, we used 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.<sup>9</sup> The U.S. lumber prices for basswood for the period December 1, 2006, through November 30, 2007, are published in the Hardwood Market Report. We intend to obtain additional information on this issue after the preliminary results. For further discussion see Factor Valuation Memorandum.
- (3) The China First–Three Star collapsed entity reported that some of its purchases of specific inputs were sourced from ME countries and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by the China First–Three Star collapsed entity for one of these inputs. Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. See Factor Valuation Memorandum, *Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of*

*China: China First Pencil Company, Ltd. (“China First”) and Shanghai Three Star Stationery Industry Corp. (“Three Star”),* December 30, 2008, and *Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Cased Pencils from the People’s Republic of China: Shandong Rongxin Import & Export Co. (“Rongxin”),* December 30, 2008. As noted above, we found that the ME purchases of the other three inputs reported by the China First–Three Star collapsed entity did not account for a high enough percentage of the collapsed entity’s total purchases of those inputs to be meaningful.

- (4) We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled “Electricity Tariff & Duty and Average Rates of Electricity Supply in India,” dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. See Factor Valuation Memorandum.
- (5) We valued steam using the data as calculated by the Department in the *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 11. We adjusted this value, as appropriate, to account for inflation between the effective period and the POR.
- (6) Section 351.408(c)(3) of the Department’s regulations requires the use of a regression-based wage rate. Therefore, we valued labor using the regression-based wage rate for China published on IA’s website. The source of the wage rate data on the Import Administration’s website is the International Labour Organization (“ILO”), Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. See *Expected Wages of Selected NME Countries* (revised November 2008) (available at <http://ia.ita.doc.gov/wages/index.html>). Since this regression-based wage rate does not separate the labor rates into

different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor.

- (7) We derived ratios for factory overhead, depreciation, and selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2006–2007 (“FY 06–07 FS”) financial statement of Triveni Pencils Ltd. (“Triveni”), an Indian producer of pencils, in accordance with the Department’s practice with respect to selecting financial statements for use in NME cases (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2). The Department prefers to derive financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable.

In prior reviews of this product, the Department derived the surrogate financial ratios from the financial statement of Camlin Ltd. (“Camlin”), an Indian producer of pencils and other products. See, e.g., *Certain Cased Pencils From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 70949 (December 7, 2006) (“*Prelim PRC Pencils 2004–2005 AR*”) (unchanged in the final results, 72 FR 27074 (May 14, 2007)). However, we have used Triveni’s FY 06–07 FS for purposes of the preliminary results of this review because Triveni pencils, whereas Camlin produces pencils and an array of other art supplies. Because of this, Triveni is a better match with our Chinese respondents who also primarily produce pencil producers. Consequently, we find Triveni’s FY 06–07 report to be more reliable and less distortive than Camlin’s financial data. In addition, India is our primary surrogate country and Triveni is an Indian producer of the subject merchandise. Therefore, for both the China First–Three Star collapsed entity and Rongxin, we have applied the ratios taken from Triveni’s FY 06–07 FS statement to the respondents’ calculated costs for materials, labor, and energy.

- (8) We valued inland truck freight expenses using a per-unit average

<sup>9</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 Mfrs. Ass’n Pencil Section, et. al. v. United States*, 984 F. Supp. 629, 639 (Ct. Int’l. Trade 1997), aff’d 178 F.3d 1311 (Fed. Cir. 1998).

rate calculated from data on the following website: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this website contains inland freight truck rates between many large Indian cities. For certain Rongxin sales where inland freight was provided by “ferry,” we were unable to find sufficiently recent barge rates and, therefore, we substituted inland truck rates. See Factor Valuation Memorandum. Since the truck rate value is not contemporaneous with the POI, we deflated the rate using WPI. For Rongxin we used 2006–2007 data from the website [www.Indianrailways.gov](http://www.Indianrailways.gov) to derive, where appropriate, input-specific train rates on a rupees per kilogram per kilometer basis (≥Rs/kg/km). Rongxin also reported transportation by cart for one input which we disregarded because the distance involved was insignificant. See China First–Three Star Preliminary Calculation Memorandum. For further discussion of the surrogate values we used for these preliminary results of review, see the Factor Valuation Memorandum, which is on file in the Central Records Unit (“CRU”) in Room 1117 of the main Department of Commerce building.

**Currency Conversion**

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

We preliminarily determine that the following margins exist for the period December 1, 2006, through November 30, 2007:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd. (which includes its affiliates China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., and Shanghai Great Wall Pencil Co., Ltd.), and Shanghai Three Star Stationery Industry Corp. <sup>10</sup> .....	33.26
Shandong Rongxin Import & Export Co., Ltd. ....	8.53
Orient International Holding Shanghai Foreign Trade Co., Ltd. ....	20.90

Manufacturer/exporter	Margin (percent)
PRC-wide Entity <sup>11</sup> .....	114.90

<sup>10</sup>For this review, we consider China First Pencil Company, Ltd., China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and Shanghai Three Star Stationery Industry Corp. to constitute a single entity as stated on page A-1 of China First’s August 1, 2008, Section A Response.

<sup>11</sup>The PRC-wide entity includes Anhui Import Export Co., Ltd., Guangdong Provincial Stationery and Sporting Goods Import Export Corporation, and Tianjin Custom Wood Processing Co., Ltd.

As stated above in the “Separate-Rates Determination” section of this notice, SFTC qualifies for a separate rate in this review. Moreover as stated above in the “Respondent Selection” section of this notice, we limited this review by selecting the largest exporters and did not select SFTC as a mandatory respondent. Therefore, SFTC is being assigned a dumping margin based on the calculated margins of mandatory respondents which are not *de minimis* or based on adverse facts available, in accordance with Department practice. Accordingly, we have assigned SFTC the simple-average of the dumping margins assigned to the China First–Three Star collapsed entity and Rongxin.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to

19 CFR 351.301(c)(1). See *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within seven days of issuance of the verification report 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 CFR 351.309(c)(1)(ii) and 19 CFR 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.

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, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon completion of this administration review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- or customer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. To determine whether the duty assessment rates are *de minimis* (i.e., less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate customer-specific *ad valorem* ratios based on export prices.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer-specific assessment rate calculated in the final



results of this review is above *de minimis*.

For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct CBP to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

For the China First–Three Star collapsed entity and Rongxin, we have calculated customer-specific antidumping duty assessment amounts 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 these assessment amounts because there is no information on the record which identifies entered values or the importers of record for the U.S. sales of the China First–Three Star collapsed entity and Rongxin.

As noted above, SFTC, the company that met the separate rate application status, will be assigned the simple-average dumping margin based on the calculated margins of mandatory respondents which are not *de minimis* or based on adverse facts available, in accordance with Department practice. We will instruct CBP to assess antidumping duties on this company's entries equal to the margin this company receives in the final results, regardless of the importer or customer.

The other three companies, Anhui, Guangdong and Tianjin, did not provide separate rate information. Therefore, the Department finds that they are not entitled to a separate rate. As a result, these three companies will be considered part of the PRC-wide entity, subject to the PRC-wide rate.

For Dixon, for which this review is preliminarily rescinded, antidumping duties shall be assessed at rates equal to the cash-deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

#### Cash Deposit Requirements

The following cash-deposit requirements will apply to all shipments of certain cased 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 further notice.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 the preliminary results determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 30, 2008.

**David M. Spooner**,  
Assistant Secretary for Import  
Administration.

[FR Doc. E9-00062 Filed 1-6-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-805]

#### Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta From Turkey

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

**SUMMARY:** In response to a request from Marsan Gida Sanayi ve Ticaret A.S. (Marsan), a producer of pasta, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department is initiating a changed circumstances review of the antidumping duty order on certain pasta (pasta) from Turkey. This review is being conducted to determine whether Marsan is the successor-in-interest to

Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (Gidasa) for purposes of determining antidumping duty liability.

**DATES:** *Effective Date:* January 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett, Office of AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161.

#### Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Turkey. See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey*, 61 FR 38545 (July 24, 1996) (*Pasta from Turkey Order*). On December 3, 2008, Marsan filed a request for an expedited changed circumstances review to determine whether it is the successor-in-interest to Gidasa, in accordance with section 751(b) of the Act and 19 CFR 351.216. Marsan submitted certain information in support of its claim that it is the successor-in-interest to Gidasa and, therefore, is entitled to Gidasa's current antidumping duty cash deposit rate of 0.29 percent.<sup>1</sup>

#### Scope of the Order

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is

<sup>1</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 64 FR 69493 (December 13, 1999); see also *Notice of Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta From Turkey*, 68 FR 41554 (July 14, 2003).