

[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, Commerce.

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review.

SUMMARY: On February 1, 1996, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC) covering the period of December 21, 1994 through November 30, 1995. The Department is now rescinding this review in part with respect to respondents who had no shipments of the subject merchandise during the period of review, including Guangdong Provincial Stationery & Sporting Goods Import and Export Corporation (Guangdong), and China First Pencil Company, Ltd. (China First). We are basing the preliminary results on "facts available" for those companies that did not respond to our questionnaire.

EFFECTIVE DATE: January 13, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping Countervailing Duty Enforcement, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482-4474/3814.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

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 investigation 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

On November 8, 1994 the Department issued its final determination of sales at less-than-fair value (LTFV) on certain cased pencils from the PRC (59 FR 55625). In it, we calculated zero margins for certain producer/exporter combinations: China First/Company A and Guangdong/Company B. China First/Any other manufacturer received a rate of 44.66 percent (formerly called the all others rate, now the PRC rate) and Guangdong/Any other manufacturer also received a rate of 44.66 percent. We stated that, consistent with *Jia Farn Manufacturing Co., Ltd. v. United States*, 817 F.Supp. 969 (CIT 1993) ("*Jia Farn*"), we would exclude from the application of the order any imports of "subject merchandise sold by the exporter and manufactured by that specific producer. Merchandise that is sold by the exporter but manufactured by other producers will be subject to the order * * *" (59 FR at 55631). These exclusions based on exporter/producer combinations are consistent with 19 CFR 353.21(c).

On December 28, 1994, we published an antidumping duty order (59 FR 66909) that stated that imports of the two producer/exporter combinations identified in the LTFV investigation had margins of zero. We stated in the antidumping duty order that we would exclude from the order imports of subject merchandise that are sold by "either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin" (59 FR at 66910). In the final determination, we referred to the corresponding producers as Company A and Company B. Those producer/exporter combinations were subsequently identified in the order as China First/China First and Guangdong/Three Star Stationery.

In response to our notice of opportunity to request administrative review, for this first administrative review, the petitioner (the Writing

Instrument Manufacturers Association) requested by letter dated January 11, 1996 that the Department conduct an administrative review of China First and Guangdong "to determine whether merchandise purportedly produced and exported by the excluded combinations was, in fact, produced or exported by a combination of companies that are subject to the order." On February 1, 1996, the Department published a notice of initiation of an administrative review of China First, Guangdong and 94 other potential producers/exporters named by the petitioner in its review request covering the period of review (POR) December 21, 1994, through November 30, 1995.

On February 23, 1996, we sent a questionnaire to the companies for which the petitioner requested a review, including China First and Guangdong. In it, we specifically stated that pencils produced and exported by the excluded company combinations are not subject merchandise.

Rescission

Pursuant to 19 CFR 351.213(d)(3) of the Department's proposed regulations (61 FR 7308, 7365; February 27, 1996), we have determined that during the POR, China First did not export pencils to the United States that were manufactured by producers other than China First, and Guangdong did not export pencils to the United States that were manufactured by producers other than Three Star Stationery. We conducted on-site verification of this information in Shanghai and Guangzhou, China, from December 11, 1996, through December 13, 1996. We found no evidence of shipments of subject merchandise manufactured by producers other than China First or Three Star Stationery made by the exporters China First and Guangdong, respectively, to the United States during the POR. Therefore, we rescind this review with respect to China First and Guangdong. Furthermore, this review is also rescinded with respect to those respondents in this review, in addition to China First and Three Star Stationery, which reported that they made no shipments of subject merchandise during this POR, namely: (1) Tru Blue Products Ltd., (2) Onan Shipping Ltd., (3) Anhui Provincial Import & Export Corporation, (4) Aempac System Ltd., (5) The Merton Company Limited, (6) King Sun Company, (7) Shanghai Machinery & Equipment Import and Export Corporation, (8) China North Industries Tianjin Corporation, and (9) Panalpina, Inc.

Facts Available

Shanghai Lansheng (Shanghai), an exporter and a named respondent in this review, and a respondent in the LTFV investigation, did not respond to the questionnaire issued in this review. Because of Shanghai's failure to provide a questionnaire response, the administrative record in this proceeding lacks information necessary to make an informed determination regarding Shanghai's separate rate status, and we preliminarily determine that Shanghai is no longer entitled to a separate rate. Further, because Shanghai and other named respondents did not respond to our questionnaire in this review, as adverse facts available, imports of subject merchandise from Shanghai and all other producers/exporters who have not qualified for a separate rate will be subject to the PRC rate of 44.66 percent, the highest rate established in the LTFV investigation.

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use the facts available where an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In this case, Shanghai and other named respondents failed to respond to the Department's questionnaire. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd Sess. 870) provides 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," and that "corroborate" means to determine that the information has probative value. *Id.* During our analysis of the petition in the LTFV investigation, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. US purchase price (now export price) was based on multiple price quotes. The factors values for calculation of the foreign market value (now normal value) were based on public data, where available. However, as a result of our analysis, we recalculated the petition rates due to errors made by the petitioner in the calculation of paint costs, profit, and depreciation expenses. (See concurrence memorandum to file dated November 29, 1993.) We also rejected petitioner's methodology of using the cost of a finished core in our factors analysis, as this would have resulted in double counting of certain expenses included in the cost of a finished core. (See initiation notice, (58 FR 64548, December 8, 1993).) Thus, because we reviewed the petitioners assumptions and calculations from which the petition rates were derived, and made appropriate corrections, we determine that the petition rates, as corrected, have probative value.

The weighted-average dumping margins are as follows:

| Manufacturer/Producer/Exporter | Weighted Average Margin Percentage |
|--------------------------------|------------------------------------|
| PRC Rate | 44.66 |

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See § 353.38 of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments. The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters, will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate of its supplier, *i.e.*, the PRC rate. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under § 353.26 of the Department's regulations 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.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22 of the Department's regulations.

Dated: January 2, 1997.

Robert S. La Russa,
Acting Assistant Secretary for Import Administration.

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[A-580-807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amendment of Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On November 14, 1996, the Department of Commerce (the Department) published the final results of its administrative review of and notice of revocation in part of the antidumping duty order on