DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review; Certain cased pencils from the People's Republic of China.

SUMMARY: On January 13, 1997, the Department of Commerce (the Department) published the preliminary results and partial rescission of an administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC) covering the period of December 21, 1994, through November 30, 1995 (62 FR 1734). We gave interested parties an opportunity to comment on our preliminary results. On May 6, 1997, we published final results in this review and erroneously stated therein that we had received no comments (62 FR 24636). Subsequent to issuance of the final results, it was discovered that, in fact, a timely case brief had been submitted by the petitioner, the Pencil Section of the Writing Instrument Manufacturers Association and the domestic producers of pencils. No comments were filed by respondents or other interested parties. Therefore, we are amending the final results of this review to address these comments. This amendment to the final results changes the PRC-wide dumping margin from 44.66 percent to 53.65 percent for this period.

EFFECTIVE DATE: July 8, 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, DC 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 regulations set forth at 19 CFR 353.1, *et seq.*, 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

The antidumping duty order on pencils from the PRC was published in the **Federal Register** on December 28, 1994 (59 FR 66909). On January 13, 1997, the Department published in the **Federal Register** the preliminary results and partial rescission of its review of this order for the December 21, 1994 through November 30, 1995 period of review (POR) (62 FR 1734). On April 30, 1997 the Department issued final results for this review (62 FR 24636). On May 1, 1997, it was discovered that the petitioner had submitted comments on the preliminary results which were not considered by the Department in arriving at its final results. Therefore, pursuant to section 735(e) of the Act and 19 CFR 353.28(c) the Department is amending the final results of this review to correct for this ministerial error by addressing the petitioner's comments.

Analysis of Comments Received

Comment 1: Petitioner argues that the recalculated petition rate of 44.66 percent (the PRC-wide rate from the less-than-fair value (LTFV) investigation) used in the preliminary results lacks probative value and should not be used as facts available to set the PRC-wide rate in the instant review. Petitioner argues that, although the Department properly resorted to facts available to set the PRC country-wide rate in this review, the Department has repudiated the recalculated petition rate of 44.66 percent pursuant to a voluntary remand determination in a pending action in the United States Court of International Trade (CIT), *Writing Instrument Manufacturers Association et al.* v. *United States*, Court No. 95–01–00081 (Writing Instruments). Petitioner argues that because the Department itself repudiated the 44.66 percent rate, this rate lacks probative value. Petitioner argues that the Department should rely instead on the rate of 53.65 percent, submitted as the recalculated petition rate to the court under the voluntary remand, as facts available. Petitioner argues that the Department itself views this rate, although as yet unaffirmed by the court, to be more accurate, *i.e.*, affording proof or evidence of the issue, and thus having probative value.

Department Position: We agree with the petitioner that the 53.65 percent rate submitted to the CIT pursuant to the voluntary remand has more probative value for use as facts available than the recalculated petition rate of 44.66 percent.

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, certain named respondents failed to respond to the Department's questionnaire. Where the Department must rely on the facts otherwise available because a respondent failed to cooperate to the best of its ability in responding to a request for information, section 776(b) authorizes the Department to make 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 in the investigation, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. *See also*, Statement of Administrative Action (SAA) (H. Doc. 316, 103d Cong., 2nd

Sess. 870), providing that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA, at page 870, clarifies that the petition is ''secondary information.''

In August 1995, we requested that the CIT remand to us the two issues of : (1) Basswood prices; and (2) valuation of slats and logs. In performing the remand, the recalculated petition rate of 44.66 percent was changed to 53.65 percent. Consistent with a recent ruling by the U.S. Court of Appeals for the Federal Circuit (CAFC) in an unrelated action, we consider it inappropriate to use as facts available a rate that we have determined is indefensible. In reviewing the Department's selection of the best information available, *i.e.*, the predecessor provision in the Act to the facts available provision, the CAFC held in *D&L Supply* v. *the United States,* 1997 WL230117, at 2 (May 8, 1997 Fed. Cir.) (D&L Supply) that ''(i)nformation that has conclusively been determined to be inaccurate does not qualify as the 'best information' under any test and certainly cannot be said to serve the 'basic purpose' of promoting accuracy.''

While there is no conclusive court action on the amended petition rate, we have found it to be indefensible and, therefore, not probative. Petitioner is correct that the Department itself requested a remand in the Writing Instruments action in order to correct for a procedural error at the LTFV investigation. Further, to conduct the remand proceeding, the Department re-opened the administrative record to accept the submission of new factual information from the parties. After analyzing this new factual information, and on the basis of this fuller administrative record, the Department determined on remand that the appropriate PRC-wide rate is 53.65 percent.

Under these circumstances, and pursuant to the Department's charge under section 776(c) of the Act to corroborate secondary information from independent sources reasonably at the Department's disposal, we determine that the unaffirmed remand determination rate of 53.65 percent is the rate with more probative value. In performing the remand, the Department relied on new factual information from the very types of independent sources, including published price lists and official import statistics and customs data, that are discussed in the SAA at 870. All of the new factual information on the re-opened administrative record was publicly-available information on which the Department principally relies in non-market economy cases. Because the analysis performed on remand was based on a much fuller factual record, the Department believes that the remand results provide the more appropriate facts available rate.

Therefore, the Department is relying on the 53.65 percent rate as facts available to establish the PRC country-wide rate in this review.

Comment 2: Petitioner asserts that the recalculated petition rate reflects underlying legal errors pertaining to the LTFV investigation. Petitioner argues that these alleged errors are found both in the LTFV investigation as well as in the results of the remand determination, and requests that the Department correct these alleged errors in the final results of this review.

Department Position: The bases of the petitioner's various assertions of underlying legal errors relating to the LTFV investigation are contained in the administrative record of the LTFV investigation, and not in the administrative record of this administrative review. These claims are properly before the CIT in the pending Writing Instruments action, which action pertains to the LTFV investigation and for which a decision is now pending.

Amended Final Results of the Review

Based on our analysis of the issues outlined above, we have determined that a margin of 53.65 percent is appropriate for the PRC entity for the POR December 21, 1994 through November 30, 1995. (Separate rates and exclusions determinations previously noted in the final results of this review are unaffected by these amended final results.)

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted average margin percentage
PRC-wide Rate	53.65

The U.S. Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: Merchandise exported by all PRC exporters other than those previously assigned separate rates and/or excluded from this antidumping duty order will be the PRC-wide rate of 53.65 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 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 notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 353.28(c).

Dated: July 1, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Preliminary Results of Antidumping Duty Administrative Review of Solid Urea From the Former German Democratic Republic

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on solid urea