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July 14, 2003

MEMORANDUM TO: Jeffrey A. May
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of Certain Cased Pencils from the People's Republic of China;
Final Results

Summary

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of certain cased pencils from the People's Republic of China (PRC). As a result of our analysis, we have made changes, including corrections of certain inadvertent clerical errors in the preliminary margin calculations. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for these final results.

Below is the complete list of issues in this administrative review for which the Department of Commerce (the Department) received comments and rebuttal comments from interested parties:

- Comment 1: Whether the Department Should Value Black Graphite Cores Using Eximkey Data or Data From the Monthly Statistics of the Foreign Trade of India
- Comment 2: Whether the Department Used the Correct Grade of American Basswood Lumber to Value Rongxin's Pencil Slats
- Comment 3: Whether the Department Properly Accounted for Wood Loss
- Comment 4: Whether the Department Should Base Rongxin's Dumping Margin on Partial Adverse Facts Available
- Comment 5: Ministerial Errors
- Comment 6: Whether the Department Overstated CalCedar-Tianjin's Freight Costs

Background

On January 13, 2003, the Department published the preliminary results of the antidumping duty administrative review of certain cased pencils from the PRC. See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 1591 (January 13, 2003) (Preliminary Results). The period of review (POR) is December 1, 2000 through November 30, 2001. We gave interested parties an opportunity to comment on the Preliminary Results. On June 5, 2003, the respondents California Cedar Products Company, and its wholly-owned subsidiary Tianjin Custom Wood Processing Co., Ltd., (CalCedar-Tianjin), Shandong Rongxin Import & Export Co., Ltd. (Rongxin), and the petitioner¹ submitted case briefs. On June 12, 2003, the aforementioned interested parties submitted rebuttal briefs. No interested party requested a public hearing.

Discussion of the Issues

Comment 1: Whether the Department Should Value Black Graphite Cores Using Eximkey Data or Data From the Monthly Statistics of the Foreign Trade of India

The petitioner argues that the Department should use import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) to calculate the surrogate value of black graphite cores because the MSFTI data cover all imports of pencil cores into India during the entire period of review. In contrast, the petitioner notes that the Eximkey data, used to calculate the surrogate value of cores in the preliminary results of review, cover imports into only six Indian ports over merely half of the review period. Moreover, the petitioner notes that if the Department excludes from the Eximkey data imports of goods from the Republic of South Korea (which are normally excluded because the Department has determined that the Republic of South Korea maintains broadly available, non-industry specific export subsidies), the coverage of the Eximkey data would be further circumscribed.

CalCedar-Tianjin argues that the Eximkey data represent the best information available to calculate the surrogate value for black cores because the alternative data on the record, MSFTI data, are distortive. First, CalCedar-Tianjin contends that the MSFTI data for cores are distortive because they include imports of color cores. CalCedar-Tianjin states that it is commonly understood in the industry that, all else being equal, color cores tend to be significantly more expensive than black cores. Thus, according to CalCedar-Tianjin, the surrogate value for black cores will be overstated if it is based on Indian imports of both black and color cores. Second, CalCedar-Tianjin claims that the MSFTI data are distortive because they are reported in kilograms. CalCedar-Tianjin states that it is understood in the industry that different types of

¹The Pencil Section of the Writing Instrument Manufacturers Association, a trade association composed of domestic pencil producers, and Sanford Corporation, Musgrave Pencil Company, Moon Products, Inc., and General Pencil Company (collectively, the petitioner).

cores have different weights, and to the extent that less expensive cores (*e.g.* regular black cores used by Tianjin) are heavier than more expensive cores (*e.g.*, mechanical pencil cores), a very small proportion (by weight) of expensive cores will substantially increase the average per kilogram import value of cores. According to CalCedar-Tianjin, the Eximkey data precludes these distortions because imports of color cores may be excluded from the data and the Eximkey data are reported in pieces, rather than kilograms.

Furthermore, CalCedar-Tianjin maintains that the Eximkey data are reliable because the data 1) are from the government of India and available to the public on-line through a commercial provider, and 2) represent a range of market prices paid by different Indian companies. Additionally, CalCedar-Tianjin notes that the data cover more than 50 percent of India's imports and, contrary to the petitioner's assertion, cover the period January 2001 through December 2001, 11 of the 12 months in the POR. Although these data do not include all Indian imports of cores during the POR, CalCedar-Tianjin contends that there is no requirement in the Department's regulations or practice that factor value data must be drawn from every month of the POR, nor is there a requirement that factor value data cover every import.

Rongxin states that the Department should continue to value black graphite cores using Eximkey data because these data are more "precise" than MSFTI data.² Rongxin contends that the petitioner's argument for valuing black cores using less "precise" data is unsupported, noting that the Court of Appeals for the Federal Circuit has stated that "the purpose of the statutory provisions is to determine antidumping margins as accurately as possible." *See Luoyang Bearing Factory v. United States*, 2002 C.I.T. 118, slip Op. 2002-118 (October 1, 2002).

Department's Position:

We disagree with the petitioner. In selecting publicly available surrogate values, the Department prefers to select values that are 1) for products as similar as possible to the input being valued, 2) representative of a range of prices in effect during the POR, and 3) based on transactions contemporaneous with, or closest in time to, the period under consideration. *See Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12442 (March 13, 1998). Based upon these criteria, we have determined in this case that the Eximkey data constitute the best available information on the record of this review with which to value black pencil cores because, unlike MSFTI data, these data contain descriptions of the imported merchandise which allow the Department to identify values for the types of pencil cores used by the respondents (*e.g.*, exclude

² Rongxin appears to view Eximkey data as more precise than MSFTI data because the data are more specific to the input being valued. However, Rongxin's only explanation for why Eximkey data are more precise than MSFTI data is not clear because Rongxin incorrectly refers to the input at issue in its explanation. Specifically, Rongxin argues that "{t}he reason {that Eximkey data are more precise than MSFTI data} is that the Eximkey data is limited to only pencil erasers. The *Monthly Statistics* data, on the other hand, includes all erasers of any kind."

values for color cores). The MSFTI data, on the other hand, cover imports of all cores into India and do not provide specific descriptions of the types of cores imported under the harmonized tariff schedule category for pencil cores. Moreover, like the MSFTI data, the Eximkey data are based on transactions that are contemporaneous with the POR (the Eximkey data query covers the period January 1, 2001 through December 31, 2001³) and represent a range of prices in effect during the POR. In particular, we note that the Eximkey data are for imports into six major Indian ports which, according to Asis Infotech Pvt. Ltd. (the company that provides the data), constitutes 75 percent of the imports into India. See the memorandum to the File from Paul Stolz titled, Pencil Production Information for India, the Philippines, and Indonesia and Information Regarding the Eximkey Data, dated December 16, 2002.

In addition, we note that in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department's policy is to weigh all the relevant characteristics of the surrogate value information on a case-by-case basis to determine the best available data for valuing factors of production. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61987 (November 20, 1997) (Comment 29), wherein the Department noted that "{i}t is important to emphasize, however, that our overarching mandate is to select the 'best' available data (see 19 U.S.C.1677b(c)(1)), which involves weighing all of the relevant characteristics of the data rather than relying on one or two absolute 'rules' . . . Thus the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input."

Therefore, consistent with section 773(c)(1) of the Act (stating that factor values shall be based on the best available information), and with the Department's practice of weighing all the relevant characteristics of the surrogate value information on a case-by-case basis to determine the best available data for valuing factors of production, we continue to value cores using the Eximkey data for purposes of these final results of review. However, for the final results of review, we have recalculated the surrogate value for cores using Eximkey data exclusive of any imports from countries which the Department has determined maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets (those countries are South Korea, Thailand, Indonesia, and India). See Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) and Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China, 68 FR 10685 (March 6, 2003) (and accompanying Issues and Decision Memoranda). Excluding imports from the applicable countries listed above (South Korea and Thailand), the Eximkey's total import volume of cores is decreased from 388,732 gross to 350,788 gross. Thus, this adjustment to the Eximkey data does not significantly limit its coverage as claimed by the petitioner.

³99.9 percent of the imports covered in this period, in terms of both quantity and value, is from the POR.

Comment 2: Whether the Department Used the Correct Grade of American Basswood Lumber to Value Pencil Slats

The petitioner claims that the Department incorrectly valued Rongxin's pencil slats using a grade of American basswood lumber that is equivalent to the grade of wood used to produce the slats, rather than the grade of the slats.⁴ According to the petitioner, the practice of valuing slats using a grade of lumber equivalent to the grade of the slat was set forth in the Remand Determination: Writing Instrument Manufacturers Association, Pencil Section v. United States, (No. 95-01-00081) dated March 22, 1996 (Remand Determination) at page 10,⁵ which states that the Department "{h}aving determined what grades of slats China First used" next determined "the U.S. sawn basswood equivalents to these three grades." The petitioner also notes that this approach was followed in the 1999-2000 segment of this proceeding. Moreover, the petitioner asserts that the valuation methodology used in the preliminary results erroneously assumes that the "middle" Chinese grade of lumber reportedly used to produce the slats is equivalent to American basswood grade #1Com. (the surrogate used in the preliminary results). Because Rongxin failed to provide documentation concerning the Chinese standards used to grade lumber, the petitioner maintains that there is no basis on which to assume that the "middle grade" of lumber reportedly used to produce pencil slats is equivalent to American basswood grade #1 Com. Nevertheless, because Rongxin reported that its supplier used "first grade" slats to produce pencils, the petitioner contends that the Department should follow past practice and use first grade American basswood lumber (grade FAS) as the surrogate.⁶

Rongxin claims that the verified record evidence indicates that it purchased slats made from grade-two wood (Rongxin notes that its November 25, 2002 supplemental response corrected its

⁴ Consistent with the methodology used throughout this proceeding, in the preliminary results of review the Department valued lindenwood pencil slats using U.S. prices of American basswood lumber. American basswood lumber grades include the following (listed in descending order of quality): FAS, #1Com, #2A.

⁵The remand determination was filed by the Department with the United States Court of International Trade on March 22, 1996 and was affirmed on November 13, 1997. See Writing Instrument Manufacturers Association, Pencil Section v. United States, 984 F.Supp 629 (CIT)1997 and Notice of Court Decision: Certain Cased Pencils from the People's Republic of China, 62 FR 65243 (December 11, 1997). See memorandum to the file from the team concerning the Remand Determination and Court Decision dated July 2, 2003.

⁶ To the extent that there is evidence that Rongxin's supplier used second grade slats to produce pencils, the petitioner argues that such slats should be valued using prices for American basswood grade #1Com, the grade of American basswood lumber equivalent to second or medium grade Chinese lindenwood slats.

prior statement that first-grade wood was used). Thus, Rongxin contends that there is no basis for valuing the lower grade wood used to produce pencil slats at the high value of grade-one wood. Additionally, Rongxin contends that the Department has latitude to determine the American lumber grade that is equivalent to the Chinese lumber grade. Therefore, Rongxin concludes that the petitioner has not provided any rationale for valuing grade-two wood with any grade other than grade #1 Com American basswood.

CalCedar-Tianjin argues that the Department should not equate slat grades with lumber grades in calculating the value of its lindenwood slats because evidence on the record shows that low quality basswood lumber will yield slats that can be categorized into each of CalCedar-Tianjin's slat grades (Grade A, Grade B and Utility-grade). Moreover, CalCedar-Tianjin contends that the National Hardwood Lumber Association grading guidelines used by the Department in this review indicate that low-quality lumber contains limited portions of high quality wood, thus enabling slat producers to produce high-grade slats from low-grade lumber. Therefore, CalCedar-Tianjin concludes that there is no correlation between lumber grades and slat grades. Based on record evidence indicating that low-grade lumber is used to produce CalCedar-Tianjin's slats, CalCedar-Tianjin contends that the Department should value its slats using only the lowest grade of basswood lumber from the Hardwood Market Reports that are on the record (grade #2A).

Department's Position:

Contrary to the petitioner's claim, in the Preliminary Results, the Department valued Rongxin's slats using a grade of American basswood lumber that is equivalent to the grade of the slats. This methodology was described in the Remand Determination, which noted that the Department, "having determined what grades of slats {were} used," examined "the U.S. sawn basswood equivalents to these three grades" to determine the most appropriate surrogate price for slats. See Remand Determination at pages 7 through 10. Since the preliminary results of this review, the Department verified that Rongxin purchased and produced pencils made from "second grade slats." See Rongxin's supplemental response dated September 17, 2002 at Exhibit 10. See also Exhibit D8 of Laizhou's verification report. Therefore, because Rongxin produced pencils made from "second grade slats" and provided evidence in support of the grade of slats used in the production of the subject merchandise, we continued to value Rongxin's slats based on the equivalent grade of American basswood lumber, #1 Com.

With respect to CalCedar-Tianjin's argument, we note that the Department's practice in this proceeding has been to use a surrogate product for slats as similar as possible to the input being valued. See Remand Determination at 11 noting that "we are using that surrogate product which most closely resembles the product actually used by China First." Thus, we continue to value CalCedar-Tianjin's lindenwood slats using the prices for U.S. basswood lumber of a size and grade closest to that of the slats purchased by CalCedar-Tianjin. While the Department has at times deviated from this practice when there was insufficient information on the record regarding the grades of slats used in producing subject merchandise, such is not the case here. Therefore, we have selected the surrogate product for CalCedar-Tianjin's lindenwood slats based on the

grade of the slats rather than the grade of lumber used to produce the slats that the company purchased.

Comment 3: Whether the Department Properly Accounted for Wood Loss

As noted in Comment 2 above, in the Preliminary Results, as well as in prior segments of this proceeding, the Department based the surrogate value of lindenwood slats on U.S. prices of American basswood lumber. Because both respondents purchased, rather than produced lindenwood slats, the Department calculated the cost of the total amount of basswood lumber required to produce a slat gross to include yield loss that occurs during the production of slats. The petitioner argues that the Department failed to properly account for wood loss in calculating the surrogate value for lindenwood slats. With respect to Rongxin, the petitioner claims that the Department failed to account for reported wood losses related to preparing purchased slats for use in production. With respect to CalCedar-Tianjin, the petitioner claims that the Department failed to account for wood losses resulting from imperfections which prevent portions of the lumber from being used in manufacturing processes. The petitioner claims that yield percentages that account for such losses are established and quantified in the publication National Hardwood Lumber Association Standard Grades (NHLA Grades). According to the petitioner, these percentages apply regardless of the product into which the lumber is being manufactured. Therefore, the petitioner requests that, for the final results, the Department calculate a surrogate value for CalCedar-Tianjin's slats which takes into account the yield rates reported by CalCedar-Tianjin as well as the yield rates reported in NHLA Grades.

Rongxin maintains that the Department should rely upon its verified yield rate which accounts for all losses in pencil production.

CalCedar-Tianjin refutes the petitioner's assertions concerning the "yield loss" allegedly computed by the NHLA for each grade of wood, arguing that there is no factual evidence on the record justifying the petitioner's attempt to equate NHLA grading rules with "yield loss," or that the alleged calculation of "yield loss" actually applies to CalCedar-Tianjin. CalCedar-Tianjin maintains that the worksheet the Department used in calculating "yield loss," based on NHLA grading information, was employed in the Department's preliminary results of this administrative review to assess "yield loss" in the valuation of another respondent. According to CalCedar-Tianjin, while the worksheet shows that the source of the information is the "National Hardwood Lumber Association Standard Grades," there is no documentation provided in support of the "yield loss" calculations reflected in that worksheet. CalCedar-Tianjin further argues that, since no record evidence supporting this worksheet is provided and no indication was given that the calculation had any relevance to CalCedar-Tianjin, it is hampered in its ability to comment effectively on the accuracy of the Department's calculation. For this reason, CalCedar-Tianjin requests that the Department not use the yield loss in question in its calculation of the company's basswood costs.

CalCedar-Tianjin also argues that the Department should not calculate its yields based on the percentages reported in the publication NHLA Grades because these percentages do not represent

yields but represent the percentage of a given piece of lumber that is “clear” (e.g., does not contain imperfections such as knots).⁷ According to CalCedar-Tianjin, lumber that is not considered “clear” is not necessarily lost but may remain usable depending on the product being produced. Specifically, CalCedar-Tianjin notes that its slats may have knots which demonstrates that the slat producer readily employs lumber that is not considered “clear.” Thus, CalCedar-Tianjin maintains that the Department will overstate its slat costs if it uses the NHLA grading standards (i.e., the “clear” wood percentages at issue) as yield rates in calculating the surrogate value for slats.

Nevertheless, if the Department continues to consider the percentages in the NHLA grading standards to be yield rates, CalCedar-Tianjin urges the Department adjust its yield calculations to reflect the following. CalCedar-Tianjin argues that if the Department incorrectly equates NHLA grading standards with “yield loss,” the Department should not compound the “yield loss” stemming from the NHLA grades with CalCedar-Tianjin’s reported yield loss resulting from its actual production of finished slats. CalCedar-Tianjin maintains that applying both the NHLA “yield loss” and the reported manufacturing yield loss to the American basswood lumber prices, in order to construct a slat value, would double-count yield losses in the slat manufacturing process. According to CalCedar-Tianjin, if the Department uses the NHLA yield loss standards, the Department would be assuming that CalCedar-Tianjin uses clear wood for all of its pencil slats, and such an assumption would negate the need to account for yield losses incurred by CalCedar-Tianjin while processing raw slats into the finished slats used in the production of the subject merchandise.

CalCedar-Tianjin also argues that, should the Department equate NHLA grading standards with “yield loss,” the Department must construct a yield loss figure that not only minimizes the double-counting, but is also as consistent as possible with the record evidence pertaining to the company’s basswood slat grades. According to CalCedar-Tianjin, the Department should use NHLA standard yields to calculate the loss for only the grade of CalCedar-Tianjin’s slats that requires “clear” lumber, i.e., Grade A. According to CalCedar-Tianjin, the information on the record allows the Department to determine the percentage of each slat grade used in production during the POR. CalCedar-Tianjin further argues that if the Department relies on NHLA yield loss standards for all of CalCedar-Tianjin’s slats, the Department would erroneously be ascribing a “clear” wood standard to CalCedar-Tianjin’s lower quality slat grades (i.e., Grade B and Utility grade slats), which do not require “clear” faced wood.

Finally, CalCedar-Tianjin argues that if the Department applies additional yield loss to the company’s basswood slat computations, the Department should include in its calculation a value for the sale of by-products made from the yield loss. According to CalCedar-Tianjin, the wood

⁷ CalCedar-Tianjin maintains that these percentages are part of the lumber grading standards used by NHLA. CalCedar-Tianjin notes that “these standards differentiate grades of lumber based on the proportion of a given piece of lumber the will yield what is known as a “clear-face cutting.” Here we are referring to clear lumber as the portion of lumber that will yield clear-face cuttings.

lost to the slat manufacturing process becomes sawdust and wood chips, which have an economic value offsetting a slat producer's wood cost. CalCedar-Tianjin contends that the Department has already established that sawdust and wood chips have an economic value. See Factors of Production Valuation/Analysis Memorandum for the preliminary results of this review dated December 31, 2002. CalCedar-Tianjin argues that, should the Department apply a yield loss based on the NHLA yield loss standards to calculate a value for slats, it should recognize that wood falling into the "yield loss" category retains an economic value that partially defrays wood costs.

Department's Position:

In the Preliminary Results, for Rongxin, the Department applied the surrogate value for Chinese lindenwood slats which included yield loss based on NHLA standard yields to the reported slat factor of production. For these final results, we are applying the surrogate value for Chinese lindenwood slats which include yield loss based on Rongxin's reported wood loss to the verified reported slat factor of production. With respect to the petitioner's claim that the Department failed to account for Rongxin's reported wood losses related to preparing purchased slats for use in production, we note that the Department verified that Rongxin's reported factor for slat did indeed include the loss that occurs in the processes of trimming slats, cutting grooves, shaping and trimming pencils, and other wood loss that occurs during the manufacturing process of pencils. Therefore, no additional yield loss calculation for processing purchased slats is necessary. See Exhibit D8 of Laizhou's verification report.

With respect to CalCedar-Tianjin, in the Preliminary Results, we applied CalCedar-Tianjin's reported slat finishing yield loss to American basswood prices to account for yield loss that occurs during the production of pencil slats. For these final results, we are continuing to apply CalCedar-Tianjin's reported slat finishing yield loss to account for wood loss that occurs after a slat is purchased in addition to applying CalCedar-Tianjin's reported wood loss in the production of cedar slats to account for loss that occurs during the production of slats.

The Department disagrees with CalCedar-Tianjin's claim that it could not effectively comment on the NHLA standard yields that the petitioner asserts should be applied to American basswood lumber prices to account for lumber yield losses or the source document containing the percentages used to calculate the yield loss based on NHLA standards. The Department placed on the record of this review the NHLA yield loss calculation worksheet showing actual grades and corresponding standard yield loss as published in the NHLA Grades, a publicly available document, and clearly cited to the source used. See Factors of Production Valuation/Analysis Memorandum for the preliminary results of this review dated December 31, 2002. Further, this calculation was used in the preliminary and final results of certain cased pencils from the PRC for the review period December 1, 1999 through November 30, 2000, and both the calculation worksheet and source document are available on the public record of that review, which is on file in the Central Record Unit, room B-099 of the main Department of Commerce building. See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 2402 (January 17, 2002) and Certain

Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002). Therefore, the Department had provided the resources CalCedar-Tianjin needed to be able to effectively comment on the NHLA yield loss applied to American basswood lumber prices and the source document used to calculate the NHLA yield loss. For further discussion, see Memorandum to the File from the Team: National Hardwood Lumber Association Standard Grades (NHLA Memorandum), dated July 14, 2003.

The Department agrees with CalCedar-Tianjin that the standards published in the NHLA Grades publication are not suitable for the application of yield loss, which occurs in the process of manufacturing slats from lumber, to the American basswood lumber prices. Although we used the NHLA standards as a basis for yield loss in the prior administrative review, we agree that the NHLA standards do not represent actual yield losses. Instead, these standards are essentially yield percentages of clear and non-clear lumber. We contacted Mr. Mark Horne, the Chief Specialist at the National Hardwood Lumber Association, who confirmed that the percent yields are not necessarily losses, but yields of clear-faced cuttings and non-clear-faced cuttings. Mr. Horne also emphasized that the percentage of non-clear face percentage of lumber for each grade may still be considered usable. For further detail on NHLA's standards, see the NHLA Memorandum. For this reason, we are not applying, as a basis for yield loss that occurs from lumber to slats, the NHLA standards to the American basswood lumber prices.

The Department recognizes that wood loss will occur in the process of producing a slat from a piece of sawn lumber. However, as indicated above, we cannot apply the NHLA standard yields because that assumes that the non-clear lumber yields account for loss when, in actuality, the non-clear lumber yields may still be usable. Section 776(a)(1) of the Act instructs that we use the facts available if "necessary information is not available on the record." Since there is no information available on the record regarding wood loss that occurs in the process of producing a pencil slat from a piece of sawn lindenwood or basswood lumber, we find that the use of partial facts available is appropriate. We also find an adverse inference is not warranted because CalCedar-Tianjin and Rongxin complied with our requests for information and acted to the best of their ability. Therefore, for CalCedar-Tianjin, we used, as partial facts available, the yield loss CalCedar-Tianjin incurred from producing slats from cedar lumber, as reported to and verified by the Department. See Exhibit 14 of CalCedar's verification report. With respect to Rongxin, similar to the methodology applied in the Remand Determination, we used, as partial facts available, the verified percent loss experienced by its supplier in producing a pencil sheath from a pencil slat.

Given the fact that the Department did not base the yield loss on the NHLA standards in the valuation of the American basswood lumber prices for purposes of these final results, we have not addressed points raised by CalCedar-Tianjin on this issue.

Comment 4: Whether the Department Should Base Rongxin's Dumping Margin on Partial Adverse Facts Available

The petitioner argues that Rongxin's one sale of pencils manufactured by Jinan Hengtong Writing Instrument Co. (Jinan) should be assigned a dumping margin based on adverse facts available because Jinan refused to provide factors of production information for the sale and 1) offered no reason for its refusal, 2) gave no indication that it cooperated to the best of its ability, and 3) never suggested an alternative means of obtaining the data.

Rongxin agrees with the petitioner and notes that, in the preliminary results of review, the Department based the margin for this sale on adverse facts available.

Department's Position:

We agree with both parties. In the Preliminary Results, as adverse facts available, we assigned a margin to the sale in question equal to the highest margin calculated for Rongxin. Use of adverse facts available is appropriate in this situation because Rongxin's supplier (an interested party pursuant to section 771(9) of the Act) failed to cooperate by not acting to the best of its ability to supply the information requested by the Department. See sections 776(a)(1) and 776(b) of the Act. Therefore, for purposes of these final results of review, the Department has continued to base the margin for the sale in question on adverse facts available.

Comment 5: Ministerial Errors

Both of the respondents allege that the Department made ministerial errors in this segment of the proceeding. Rongxin claims that the Department, in its verification report, incorrectly recalculated the quantity of slats required to produce a gross of pencils (this recalculation is based on verification findings, which Rongxin does not contest). According to Rongxin, increasing the reported slat consumption quantity (in kilograms) by the 0.34 percent understatement found at verification does not result in the corrected slat weight per pencil gross identified in the verification report.⁸

CalCedar-Tianjin claims that the Department incorrectly calculated normal value because it inadvertently treated the surrogate value of a gross of lindenwood slats as the value of a kilogram of lindenwood slats.

The petitioner states that the Department correctly calculated slat consumption for Rongxin based on the verified consumption of slats and the weight of each slat. While this methodology differs from that used by Rongxin to adjust the reported consumption quantity, the petitioner claims that Rongxin failed to show any error in the Department's methodology.

The petitioner did not comment on CalCedar-Tianjin's ministerial error allegation.

Department's Position:

⁸ In its brief, Rongxin erroneously identified the percentage as 3.4 percent.

We disagree with Rongxin. At verification, the Department found that Rongxin understated the *theoretical* number of slats required to produce a gross of pencils by 0.34 percent. However, simply increasing the reported quantity of slats per pencil gross by the 0.34 percent understatement fails to take production yields into account. In its verification report, the Department recalculated the slat weight per pencil gross based on actual consumption quantities which take yield into account. Thus, no ministerial error was made. For further discussion of the recalculation, see Rongxin's Calculation Memorandum, dated concurrently with this memorandum.

On the other hand, we agree with CalCedar-Tianjin. In its normal value calculation, the Department inadvertently treated the surrogate value of a gross of lindenwood slats as the value of a kilogram of slats. We have corrected this error for purposes of the final results of review. See Analysis Memorandum for further details.

Comment 6: Whether the Department Overstated CalCedar-Tianjin's Freight Costs

CalCedar-Tianjin argues that the Department overstated the freight costs for its inputs by failing to calculate freight costs based on the shorter of the distance between its production facility and the closest PRC seaport or its production facility and the PRC input supplier. CalCedar-Tianjin notes that this approach is in accordance with Department's practice resulting from Sigma Corp. V. United States, 117 F.3d 1401 (Fed. Cir 1997) (Sigma).

The petitioner maintains that the practice established pursuant to Sigma was developed to avoid double counting foreign inland freight when import statistics are used to calculate surrogate values. Because the Department is valuing lindenwood slats using lumber prices which do not include inland freight charges, the petitioner argues that Sigma should not apply to the freight cost calculation for lindenwood slats.

Department's Position:

We agree with CalCedar-Tianjin, in part, and with the petitioner, in part. In accordance with Sigma Corp v. United States, 86 F. Supp. 1344, 1347 (CIT 2000), when inputs are valued using import prices, it is the Department's practice to value freight services based on the shorter of the reported distance from the manufacturer of subject merchandise to the closest seaport or the manufacturer of subject merchandise to its input supplier. See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) and accompanying Issues and Decision Memorandum at Comment 4 (where the Department stated that it would "apply the Sigma cap only to those surrogate values based on import data.").

Therefore, for all inputs valued using import prices, we have recalculated the cost of freight following the practice developed pursuant to Sigma. However, with respect to lindenwood slats, we calculated the surrogate value based on U.S. basswood lumber ex-works prices. Therefore, for these final results of review, we continue to value freight services for lindenwood slats based

on the actual distance from the supplier of the input to the manufacturer of pencils.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree_____ Disagree_____ Let's Discuss_____

Jeffrey A. May
Acting Assistant Secretary
for Grant Aldonas, Under Secretary

(Date)