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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Dana S. Mermelstein
Program Manager
AD/CVD Operations, Office I
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015

I. SUMMARY

We have analyzed the comments of the interested parties in the above-referenced antidumping duty administrative review of the order for certain cased pencils from the People's Republic of China (PRC), covering the period of review (POR) December 1, 2014, through November 30, 2015. The *Preliminary Results* were published on November 21, 2016.[1] The sole company subject to the administrative review is Shandong Rongxin Import & Export Co., Ltd. (Rongxin).[2] Based on our analysis of the comments we received, we made no changes to the preliminary results. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments and rebuttal comments by parties:

Comment 1: Whether Dixon Ticonderoga Company Has Standing as an Interested Party to Request an Administrative Review of Rongxin

Comment 2: Whether Rongxin is Eligible for a Separate Rate

[1] *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2014-2015,* 81 FR 83201 (November 21, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] In the *Preliminary Results* we rescinded the review of Wah Yuen Stationery Co. Ltd. and its affiliate Shandong Wah Yuen Stationary Co. Ltd. and its claimed affiliate Tianjin Tonghe Stationary Co. Ltd., as well as the review of Orient International Holding Shanghai Foreign Trade Co., Ltd., the only other respondents subject to this review, based on timely requests to withdraw review. *See Preliminary Results*, 81 FR at 83201.

Comment 3: Whether the Department is Required to Treat the PRC as a Market-Economy Country after December 11, 2016 because of the Accession protocol

II. BACKGROUND

On November 21, 2016, the Department published the *Preliminary Results* of this administrative review in the *Federal Register*, and invited interested parties to comment on those results. On December 21, 2016, we received a case brief from Rongxin.[3] On December 28, 2016, we received a rebuttal brief from the Dixon Ticonderoga Company (Dixon), a petitioner in the underlying investigation, as well as the party that requested a review of Rongxin for the 2014/2015 POR.[4] We found that Dixon's rebuttal brief contained untimely filed new factual information and requested that Dixon resubmit its rebuttal brief excluding this information.[5] Dixon submitted its revised rebuttal brief on January 17, 2017.[6] On March 10, 2017, we announced that we were extending the deadline for completion of the final results by 60 days to no later than May 22, 2017.[7]

III. SCOPE OF THE ORDER

Imports covered by this 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.

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[3] *See* Letter from Rongxin, "Cased Pencils from the People's Republic of China: CASE BRIEF," dated December 21, 2016 (Rongxin's case brief).

[4] *See* Letter from Dixon, "Certain Cased Pencils from the People's Republic of China, Administrative Review POR 12/01/14-11/3015: Rebuttal Brief of Dixon Ticonderoga Company," dated December 28, 2016; *and see* Letter from Dixon, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated December 30, 2015.

[5] *See* Letter from Rongxin, "Dixon's Rebuttal Brief: Certain Cased Pencils from the People's Republic of China, 2014-2015 Administrative Review," dated January 11, 2017.

[6] *See* Letter from Dixon, "Certain Cased Pencils from the People's Republic of China, Administrative Review POR 12/01/14-11/30/15: Revised Rebuttal Brief of Dixon Ticonderoga Company," dated January 17, 2017 (Dixon's revised rebuttal brief).

[7] *See* Memorandum, "Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review, " dated March 10, 2017.

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.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Dixon Has Standing as an Interested Party to Request an Administrative Review of Rongxin

Rongxin's Arguments:

- Only interested parties are entitled to request administrative reviews. Section 771(9)(C) of the Tariff Act of 1930, as amended (the Act) defines a domestic interested party as a "manufacturer, producer, or wholesaler in the United States of domestic like product" Rongxin claims that these rights are "not grandfathered in, but must be established on the administrative record of each proceeding, *i.e.,* each administrative review."[8]
- Rongxin argues that there is no evidence on the record that Dixon was a manufacturer, producer, and wholesaler of domestic like product during the POR.[9] Further, to have standing as a domestic interested party, a firm must establish, under section 771(9)(C), that it is a "manufacturer, producer or wholesaler" of the relevant proceeding's domestic like product. As such, Dixon is not entitled to request an administrative review of Rongxin.[10]
- The Department did not refer to Dixon as a "manufacturer of domestic like product," but rather as an "importer, manufacturer of subject merchandise, and one of the original petitioners."[11] The statute does not grant status as a "domestic interested party" to a producer of "subject merchandise."[12] Therefore, a producer of "subject merchandise" is not "qualified to request an administrative review of Rongxin."[13] Furthermore, Dixon appears to rely upon the fact that it was one of the original petitioners, rather than a producer of domestic like product in the POR.[14]
- Rongxin quotes the U.S. Court of International Trade (CIT) in *Brother Industries,* that the statute's "legislative history states that the 'standing requirements {should} be administered to provide an opportunity for relief for an adversely affected industry', and to 'prohibit petitions filed by persons with no stake in the result of the investigation'."[15]

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[8] *Id.*
[9] *Id.* at 3.
[10] *Id.*
[11] *Id.* at 4.
[12] *Id.* at 5.
[13] *Id.*
[14] *Id.* at 5-6.
[15] *Id.* at 8 (*quoting Brother Indus. (USA), Inc. v. United States*, 801 F. Supp. 751, 757 (CIT 1992)).

- Rongxin argues Dixon has no "identifiable 'stake' in the China Pencils Order."[16]
- Rongxin argues that to determine a party's status as a domestic producer, the Department has previously applied the six-part test used by the International Trade Commission (ITC) to assess whether "a firm's U.S. activities" qualify it as a domestic producer.[17]
- In *Brother Industries*, the CIT reversed the Department's determination that Brother Industries USA was not a domestic producer. According to Rongxin, "{t}he CIT noted that 'according to the ITC's six-factor test, whether a company is at risk' and thus, qualifies as a domestic producer, 'depends on *the nature and extent of its* <u>*operations*</u> in the United States'."[18] The CIT ruled that the Department had misapplied the ITC six-factor test, created for determining whether a firm's U.S. activities are sufficient to qualify it as a domestic producer, by giving too little weight to "the nature" of the company's "production in the United States".[19]
- Rongxin maintains that, "{t}he Department has continued to apply the ITC's six-part test to determine which domestic firms "have a 'stake' in the relevant proceeding that qualifies them as domestic producers."[20] In *Eurodif*,[21] the Court of Appeals for the Federal Circuit affirmed the Department's industry support determination in a case where utility companies performing certain processing operations in the United States claimed that they qualified as domestic like product producers, for purposes of standing.[22] In the investigation, the Department relied upon the six-factor test to deny U.S. utility companies' claim that their activities in further enriching subject imports in the United States made them "producers" of subject merchandise. According to Rongxin, the Federal Circuit found that Congress intended the industry support statute to prohibit petitions filed by persons with no stake in the result of the investigation.[23] The "Federal Circuit noted with approval"[24] that "Commerce interpreted having a 'stake' as requiring that a company '*perform some important or substantial manufacturing operation*' in the United States."[25]
- Based on the Courts' findings in *Brother Industries* and *Eurodif*, for Dixon to be considered a producer of domestic like product, it must establish that it could "suffer adverse effects" from "unfairly-traded U.S. imports of pencils" from the PRC, and, thus, has a "stake" in the result of the review.[26]
- Dixon can make this showing only by "demonstrating that it was a producer of 'domestic like product,' *i.e.,* it 'perform{s} some important or substantial manufacturing operation' in this country related to the production of pencils in the POR. It failed to do so."[27]

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[16] *Id.*at 8.
[17] *Id.*at 9 (*quoting Brother Indus.,* at 801 F. Supp. 751 at 755).
[18] *Id.* at 9 (*quoting Brother Indus.*, 801 F. Supp. at 757 (emphasis added in Rongxin's case brief)).
[19] *Id.* at 10 (*citing Brother Indus.*, 801 F. Supp. at 756, 757-59).
[20] *Id.* at 10-11.
[21] *Eurodif S.A. v. United States*, 411 F.3d 1355 (Fed. Cir. 2005) (*Eurodif*).
[22] *See* Rongxin's case brief at 11 (*citing Eurodif*, 411 F.3d at 1360).
[23] *Id.*
[24] *Id.*at 11.
[25] *Id.* at 11 (*quoting Eurodif*, 411 F.3d at 1360-61(emphasis added in Rongxin's case brief)).
[26] *Id.* at 12.
[27] *Id*.

- Rongxin continues to argue that the history of this antidumping duty order indicates that Dixon changed its interests from that of a U.S. manufacturer to a Chinese exporter.[28]
- Dixon's most recent requests for administrative review were made by Dixon as a U.S. importer of subject merchandise via its Chinese affiliate, Beijing Fila Dixon Stationery Company, Ltd. (Beijing Dixon). Rongxin contends that the "most recent official decision by Commerce"[29] involving Dixon was the revocation of the antidumping duty order with respect to Beijing Dixon. According to Rongxin, these recent requests made by Dixon as a U.S. importer supersede Dixon's role as a petitioner.

<u>Dixon's Arguments:</u>

- Dixon certified that it is a manufacturer, producer, and wholesaler of domestic like product, and, therefore, it has standing to request this administrative review.[30]
- Its request for review included a company certification by its chief executive officer attesting to the truth of its statements.[31]
- The lengthy history of petitions, reviews, and sunset reviews of this antidumping duty order and the record in this review demonstrate that Dixon is a U.S. manufacturer, producer, and wholesaler of domestic like product.
- Dixon was one of the original petitioners in the investigation and has appeared in sunset reviews in support of continuation of the order as a domestic producer.[32]
- To deny Dixon standing as a domestic interested party after two decades of participation in the Department's antidumping proceeding without proof that its standing has ceased, would undermine the purpose of the antidumping statute.
- Moreover, Dixon is not required to demonstrate that it performs a specific level of manufacturing, production, or wholesale operations in the United States to be considered an interested party. Rongxin did not cite any statute or case law requiring that Dixon meet a threshold amount of manufacturing in the United States to be considered a domestic manufacturer.
- Rongxin conflates Dixon with its affiliate, Beijing Dixon; the existence and activities of an affiliate does not negate Dixon's domestic manufacturing activity.

<u>Department's Position</u>: We disagree with Rongxin. We find that Dixon is an interested party with standing to request a review of Rongxin, because it is a manufacturer, producer, and wholesaler in the United States of a domestic like product within the meaning of section 771(9)(C) of the Act.

The Act defines "interested party" in section 771(9)(C), in relevant part, as a manufacturer, producer, or wholesaler in the United States of a domestic like product.[33] The terms "manufacturer, producer, or wholesaler" are not further defined by the statute. However, as the

[28] *Id.* at 12-13.
[29] *Id.* at 14.
[30] *See* Dixon's revised rebuttal brief at 2.
[31] *Id*.
[32] *Id.* at 3.
[33] Similarly, 19 CFR § 351.102(29)(v) defines a manufacturer, producer, or wholesaler in the United States of a domestic like product as an interested party.

CIT has recognized, Congress contemplated "a liberal construction" of the Tariff Act's standing requirements.[34] Specifically, the legislative history of the interested party provision states that "standing requirements should be administered to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation."[35] The Act further defines a "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses, with the article subject to …investigation."[36] Therefore, "'so long as {a party} manufactures or produces any one of the…like products… it is an interested party.'"[37]

Rongxin argues that there is no evidence on the record that Dixon satisfies the statute as an interested party entitled to request an administrative review, because Dixon did not meet any "test" to qualify as an interested party with status to request a review of it, because it did not provide record evidence that it is a qualified interested party, and furthermore, that the Department abused its discretion in initiating the administrative review.[38] We disagree for several reasons.

To support its argument, Rongxin contorts the Department's words in the Preliminary Decision Memorandum to support its claim that Dixon is not qualified to request a review of Rongxin. We mistakenly referred to Dixon in the Preliminary Decision Memorandum, as a "U.S. importer and manufacturer of subject merchandise, and a petitioner in the original investigation."[39] The statute distinguishes interested parties which are manufacturers, producers, or wholesalers in the United States of "domestic like product," and "subject merchandise," which means the class or kind of merchandise that is within the scope of an investigation or a review.[40] The term "subject merchandise" refers to imports whereas "domestic like product" refers to products made in the United States. No parties are refuting this. In the Preliminary Decision Memorandum, we cited Dixon's request for an administrative review, wherein Dixon identified itself as both an importer of cased pencils and a manufacturer, producer and wholesaler in the United States of a *domestic like product* that it was an interested party under section 771(9)(C) of the Act.[41] This indicates that we consider Dixon to be both a U.S. importer of subject merchandise and a U.S. manufacturer of domestic like product, *i.e.* cased pencils.

Moreover, accompanying Dixon's request for an administrative review and statement that it is a domestic interested party within the meaning of section 771(9)(C) of the Act was the company's certification of factual information, signed under penalty of law.[42] Dixon was also one of the original members of the Pencil Makers Association Inc., the trade association representing the

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[34] *See Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States,* 961 F. Supp. 2d 1291 (CIT 2014) (*Yuanda*) (*citing Brother Indus.*, 801 F. Supp. at 757; S. Rep. No. 96-249, at 47 96th Cong., 1st Sess. 63 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 449).
[35] *See* S. Rep. No. 96-249, at 47, reprinted in 1979 U.S.C.C.A.N. at 449
[36] *See* Section 771(10) of the Act.
[37] *See Yuanda,* 961 F. Supp. 2d at 1302 (*quoting Brother Indus., Ltd. v. United States,* 16 C.I.T. 1106, 1108 (CIT 1992)).
[38] *See* Rongxin's case brief at 4 -7.
[39] *See* Preliminary Decision Memorandum at page 2.
[40] *See* section 771(9) and section 771(25), respectively.
[41] *See* Dixon Request for Administrative Review (December 30, 2015) (emphasis added).
[42] *Id.*

domestic pencil-manufacturing industry in the underlying investigation which resulted in the implementation of the antidumping duty order on cased pencils from the PRC.[43] Since the investigation and subsequent issuance of the order, Dixon has participated in various administrative reviews, each time establishing itself as a producer of domestic like product.[44] Dixon has also regularly participated in the Department's five-year reviews, referred to as sunset reviews.[45] For example, Dixon participated in the fourth sunset review, recently completed by the Department in support of continuation of the antidumping duty order on pencils from the PRC.[46] This consistent participation belies Rongxin's claim that Dixon has not established its standing in proceedings before the Department.

Additionally, in June 2016, in a remand proceeding involving the 2012-2013 administrative review of this antidumping duty order, we examined the precise question of whether Dixon had standing to request an administrative review as a producer of domestic like product.[47] In that remand proceeding we found that the documentation provided by Dixon in response to the Department's questions regarding its domestic operation and production of domestic like product was sufficient to establish that Dixon is a producer of domestic like product.[48] The CIT sustained the Department's finding in this regard. Specifically, the CIT held that the Department's finding that work orders and screen shots of production stages were credible evidence that Dixon produced pencils in the United States during the POR.[49] In light of the above, we continue to find in these proceedings that significant weight is placed on Dixon's certifications and attestations of its status as a producer of domestic like product.

This is not the first time Rongxin has challenged Dixon's standing to request an administrative review. Yet, substantial record evidence demonstrates that Dixon satisfies the statutory definition of an interested party under section 771(9)(C) of the Act, with standing to request review of Rongxin, because it is a manufacturer, and producer of domestic like product. Rongxin asserts that the Department should apply the ITC's six-factor test for determining whether an entity qualifies as a domestic producer to determine whether Dixon qualifies as a producer of the domestic like product for purposes of this administrative review. Although we may have relied on such an analysis in prior proceedings, there is no requirement that we do so here. As the CIT recognized in *Brother Indus*., the terms "manufacturer, producer, or

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[43] *See Initiation of Antidumping Duty Investigations: Certain Cased Pencils from the People's Republic of China and Thailand,* 58 FR 64548 (Dec ember 8, 1993). This notice state that the petition was filed by the Pencil Makers Association Inc. Dixon was one of its members. *See also Cased Pencils from Thailand,* Inv. No. 731-TA-670 (Final), USITC Publication 2816 (Oct. 1994) at II-3 (identifying Dixon as one of the petitioners in the petitioning association)

[44] *See Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013* 80 FR 26897 (May 11, 2015);

[45] *See* section 751(c), which provides for five-year reviews; Sunset reviews are statutorily distinguishable from annual administrative reviews, in that the Department undertakes an analysis as to whether revocation of an antidumping duty order would likely lead to continuation or recurrence of dumping and of material injury.

[46] *See Certain Cased Pencils from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order* 81 FR 69513 (October 6, 2016).

[47] *See Shandong Rongxin Import & Export Co., Ltd. v. United States,* 163 F. Supp. 3d 1249 (CIT 2016).

[48] *See* "Results of Redetermination Pursuant to Court Remand, A-570-827, Certain Cased Pencils from the People's Republic of China, *Shandong Rongxin Import & Export Co. Ltd. v. United States and Dixon Ticonderoga Company*, Court No. 15-00151, Slip Op. 16-32", dated June 17, 2016.

[49] *See Shandong Rongxin v. United States*, 203 F. Supp. 3d 1327, 1338 (CIT 2017) (*Shandong Rongxin*).

wholesaler" are not defined by the statute, and the legislative history calls for a liberal construction of the standing requirements.[50] Additionally, the Department enjoys maximum deference in interpreting a statute when the provision is silent with respect to the precise question,[51] which in this case is how an entity may establish that it has standing as a domestic interested party for purposes of requesting an administrative review. As discussed above, there is ample basis (record evidence and prior Department determinations on this precise question) to evaluate whether Dixon qualified as a domestic interested party without a need to rely upon the ITC's six-factor test.

Moreover, Rongxin's reliance on *Brother Indus.* and *Eurodif* are misplaced. In *Brother Indus.* the CIT addressed a challenge to the Department's determination that a subsidiary company was not an interested party with standing to file an antidumping duty petition against its parent company; a determination which ultimately rescinded the investigation.[52] In the proceeding at issue in that case, the Department relied on the six-factor test that the ITC used in its domestic industry determination.[53] The CIT held that the Department had improperly applied this test, and that if the Department chooses to exercise its discretion by borrowing another agency's test to apply to a determination before it, then the Department must apply that test in accordance with the statute and applicable case law governing that test.[54] The facts of *Brother Indu.* are distinguishable from the facts present here, in that this proceeding is not an investigation, nor is the Department evaluating whether an interested party has standing to file a petition. Thus, *Brother Indus.* is not relevant to this administrative review.

Similarly, *Eurodif* is also not relevant. In *Eurodif*, the petitioners challenged the Department's determination regarding industry support.[55] There, the Department determined that domestic utilities were not "producers" for purposes of the industry support provision of section 732(c)(4) of the Act, relying on guidance in the legislative history that this provision was intended to prohibit petitions filed by persons with no "stake" in the result of the investigation.[56] The Department interpreted having a "stake" in the outcome as requiring that a company "perform some important or substantial manufacturing operation."[57] However, the Federal Circuit's decision – which affirmed the CIT's decision sustaining the Department's determination – did not address the definition of "producer," but rather, whether the Department's decision was reasonable or not, and whether it was in accordance with the industry support provision of section 732(c)(4) of the Act. The facts of *Eurodif* are distinguishable from the facts present here in that this proceeding is not an investigation, nor is the Department evaluating industry support.

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[50] *Brother Indus.*, 801 F. Supp. at 757.

[51] *See*, *e.g.*, *Chevron, USA., Inc. v. Natural Res. Def Council, Inc.*, 467 U.S. 837, 843 (1984) (Chevron).

[52] *Brother Indus.,* 801 F. Supp. at 756-58.

[53] *Id.* at 758 ("{The Department} has discretion to utilize any methodology reasonably suited to fulfilling the statutory goals. Here, {the Department} has elected to use the ITC analysis to determine whether or not a party is a manufacturer.").

[54] *Id*. at 795.

[55] *See* section 732(c)(4).

[56] *Eurodif*, 411 F.3d at 1360-61.

[57] *Id.* at 1360.

The Courts have also spoken on the issue of standing. As the CIT explained in *Zenith*, "Commerce may presume standing, absence evidence to the contrary…. The question is what degree of evidence should prompt Commerce to commence an investigation into standing in an administrative review."[58] Although Rongxin continues to challenge Dixon's standing, it puts forth allegations without citation to record evidence that would contradict a finding that Dixon is a producer of the domestic like product. Absent evidence showing otherwise, it is reasonable for the Department to presume standing based on Dixon's certified attestations, involvement in prior proceedings as a domestic interested party, and the CIT's recent decision sustaining the Department's prior finding that Dixon has standing to request an administrative review.[59]

Rongxin next claims that Dixon must show that it "performs some important or substantial manufacturing operation" related to cased pencil manufacturing in the United States.[60] Rongxin does not cite any authority for this argument. Section 771(9) of the Act does not require that an entity add a specific value or amount to the product through its domestic manufacturing operations to qualify as a domestic interested party with standing to request an administrative review.

Finally, Rongxin infers without support in the statute, regulations, or case law, that Dixon has an "allegiance to imports" which detracts from its status as a producer of domestic like product. Rongxin also claims that the Department's last "official" decision regarding any Dixon entity was the 2010-2011 review in which Dixon requested a review as a U.S. importer of subject merchandise.[61] This argument is inapposite for a few reasons. The most recently-completed administrative review involving Dixon as an interested party was not the 2010-2011 administrative review, but rather, the 2012-2013 administrative review discussed above, in which Dixon requested a review as a domestic interested party. Further, as noted above, Dixon participated in the recently completed sunset review. Regardless, the fact that Dixon may also claim interested party status as an importer of subject merchandise does not detract from its status as a producer of the domestic like product.

Therefore, in light of the above, we continue to find that Dixon is a domestic interested party with standing to request a review of Rongxin's exports.

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[58] *See Zenith Electr. Corp. v. United States*, 872 F. Supp. 992, 996 (CIT 1994), (*Zenith*) (citing *Minebea Co. v. United States*, 984 F.2d 1178, 1181 (Fed. Cir. 1993); *Trent Tube Div. v. Avesta Sandvik Tube AB,* 975 F.2d 807 (Fed. Cir. 1992); *Suramerica de Aleciones Laminadas, C.A. v. United States,* 966 F.2d 660, 667 (Fed. Cir. 1992)).
[59] *See Shandong Rongxin,* 203 F. Supp. 3d at 1344 ("it cannot be said that the agency's findings that Dixon is a domestic producer of pencils possessing interested party status were unreasonable.")
[60] *See* Rongxin's case brief at 7.
[61] *See* Rongxin's case brief page 13-14.

Comment 2: Whether Rongxin is Eligible for a Separate Rate

Rongxin's Arguments:

- The facts on the record and the law support a finding that Rongxin is eligible for a separate rate.[62]
- The Department predicated its finding in the *Preliminary Results* based on a policy, not based on the evidence on the record.[63] The Department's policy equating majority ownership with potential government control over a company's operations is invalid.[64]
- The Department is required to base its decision on substantial evidence on the record.[65]
- Rongxin's Articles of Association "clearly and unequivocally" state that each shareholder and "each member of the board of directors has one vote and that a majority of votes is required to pass any resolution."[66]
- As such, the percentage of ownership in Rongxin is not relevant.
- The company's Articles of Association clearly state that Shandong International Trade Group (SITG), the government-owned company which owned a majority of Rongxin, until November 2015, when it was sold to a private company,[67] was entitled to only one vote as a shareholder, and that each of the remaining ten shareholders were also entitled to one vote, regardless of the percentage of ownership that each held in Rongxin.
- SITG was able to nominate only one candidate for election to the board of directors and because a majority of votes is necessary to pass a resolution by the board of directors, SITG, as a shareholder, had no actual or potential ability to control Rongxin either directly or indirectly.
- Rongxin claims that there is nothing on the record to suggest that SITG has any power to determine U.S. prices of subject merchandise.[68]
- The law supports a finding that Rongxin is eligible for a separate rate, because the Department must make its decisions based on a fair and balanced comparison of the data.[69]
- When substantial evidence is not utilized, such action is "tantamount to the use of speculation to make a determination." In *Asociacion Colombiana Exportadores de Flores v. United States,*[70] the CIT held that speculation cannot be a basis for finding substantial evidence on the record.[71]
- The Department made a "clear error of law and a clear error of judgment" in determining what constitutes substantial evidence on the record as indicated in *Yancheng Baolong*

[62] *See* Rongxin's case brief at 15-22.
[63] *Id.* at 15.
[64] *Id.* at 16.
[65] *Id.*
[66] *Id.*
[67] *Id.* at 16.
[68] *Id.* at 20.
[69] *Id.* at 18.
[70] *Id.*at 19 (*citing Asociacion Colombiana Exportadores de Flores v. United States,* 40 F Supp. 2d, 466, 472 (CIT 1999)).
[71] *Id.*

Biochemical Products Co., Ltd. v. United States,[72] in which the court held that "an abuse of discretion will be found when there is an error in law, a clear error of judgment, or findings that were clearly erroneous."

- There is no evidence on the record to suggest that "the number of shares owned is used as a basis to select the board of directors" nor is there evidence to support a conclusion that SITG controls the decisions made by the board of directors.[73]
- There is nothing on the record to suggest that SITG has any influence in determining the prices of subject merchandise; to the contrary, the record demonstrates that the company management, specifically, the manager of the stationery department, determines the U.S. prices. [74]
- The Court's findings in *Advanced Technology & Materials Co., Ltd. v. United States*[75] are not dispositive "because the set of facts therein is totally different from those in the instant review."[76] In *Advanced Technology,* the respondent admitted that the government-owned parent company "has the ability to nominate {Advanced Technology's candidates for board of directors}, hire or fire its directors, decide on profit allocations, *et cetera*." This is not the case with Rongxin because SITG only has one of the 11 shareholder votes, one of the six votes for board of directors, and can nominate only one director to be a candidate for the board. Furthermore, in *Advanced Technology*, voting by shareholders was based on the percentage of shares owned. However, this is not the case for Rongxin.

Dixon's Arguments:

- While SITG's control of Rongxin is not absolute, it is substantial enough for the Department to find *de facto* government control.[77]
- Government-owned SITG owns a majority of Rongxin, has at least one-eleventh of the shareholder vote, and nominates one member to Rongxin's six-member board of directors to represent its interests.

Department's Position: We continue to find Rongxin ineligible for a separate rate. As noted in *Sparklers*, and further developed in *Silicon Carbide,*[78] we have determined that exporters from non-market economy (NME) countries are entitled to a separate, company-specific rate if they can rebut the presumption that companies in the NME do not operate independently of the

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[72] *Id.* (*citing Yancheng Baolong Biochemical Products Co., Ltd. v. United States*, 406 F.3d, 1377, 1380 (Fed. Cir. 2005)).
[73] *Id.* at 19.
[74] *Id.* at 20.
[75] *Id.*at 21 (*citing Advanced Technology & Materials Co., Ltd. et al v. United States,* 885 F. Supp. 1343 (CIT 2012)).
[76] *Id.* at 21.
[77] *See* Dixon's revised rebuttal brief at 7.
[78] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).

government, by demonstrating an absence of central government control, that is, an absence of control both *de jure* and *de facto*.

In conducting this analysis, the Department considers the following *de jure* criteria in determining whether a respondent may be granted a separate rate: (1) an absence of restrictive stipulations associated with an exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.[79]

The Department then evaluates whether the respondent has demonstrated an absence of *de facto* government control. As absence of *de facto* control can be proven by supporting documentation that demonstrates the following four factors: (1) that the company sets its own export prices independently of the government and without the approval of a government authority; (2) it retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) it has the authority to negotiate and sign contracts and other agreements; and (4) it has autonomy from government regarding the selection of management.[80] If a respondent is able to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports, the respondent will be assigned a separate rate.[81] The consequences of failing to fully demonstrate an absence of *de facto* control means the exporter will be assigned the single rate given to the NME-entity. This approach has been upheld by the Courts.[82]

In *Advanced Technology v. United States*, the CIT found that "a parent company's *control* or influence {on an individual firm} would seem entirely relevant,"[83] to a company's decision-making. The CIT subsequently remanded to the Department its determination for clarification of its separate rate test.[84] The CIT later remanded the determination for a second time for the Department to explain the extent of "government control" that would preclude the granting of a separate rate.[85] As a result of the remands, we determined that "ownership is relevant to the

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[79] *See also* Policy Bulletin 05.1.
[80] *See 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) (*Sparklers*).
[81] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2014-2015*, 82 FR 4844 (January 17, 2017) and accompanying IDM at 12.
[82] The Federal Circuit has upheld the application of the "NME presumption," in *Sigma Corp. v. United States,* 117 F.3d 1401 (Fed. Cir. 1997). In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the Court of International Trade acknowledged and sustained Commerce's NME policy." *Transcom Inc. v. United States,* 294 F.3d 1371, 1381-82 (Fed. Cir. 2002).
[83] *See Advanced Technology & Materials Co, Ltd, v. United States*, Consol. Ct. No. 09-00511, Slip Op. 11-122 (CIT 2011), at 35 (emphasis in original).
[84] *Id.* at 35-36.
[85] *See Advanced Tech. & Materials Co. v. United States,* 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.")

separate rates analysis to the extent that ownership, as well as the degree of ownership, affects *de facto* control."[86]

In more recent cases, the Department, partly reflecting the decision of the CIT in the *Advanced Tech.* line of cases, has determined that respondents that are wholly or majority owned by, and thus under the control of the State-Owned Assets Supervision and Administration Commission (SASAC), a Chinese government entity, are presumptively not entitled to separate rates.[87] Specifically, we have consistently found that where a government entity holds a majority ownership share, either directly or indirectly in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[88]

In the instant review, no party has contested our preliminary finding that Rongxin demonstrated an absence of *de jure* government control,[89] and as such, for these final results, we continue to find that the evidence provided by Rongxin supports a finding of an absence of *de jure* government control.

(footnotes omitted); *id*. at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id*. at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (emphasis in original) (footnotes omitted); *id* at 1361 ("For the above reasons, the court remains unclear as to the extent of "governmental control" that would preclude, or lack thereof permit, the grant of a separate rate, particularly with regard to the third and fourth *de facto* factors, as previously pondered.").

86 *See "Final Results of Redetermination Pursuant to Remand Order, Diamond Sawblades and Parts Thereof from the People's Republic of China, Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Product Company, and Gang Yan Diamond Products, Inc. with Bosun Tools Group Co. Ltd. v. United States and Diamond Sawblades Manufacturers Coalition, Wehai Xiangguang Mechanical Industrial CO., Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd.*, Consol. Court No. 09-00511, Slip Op. 12-147, (November 30, 2012)," at 3.

87 *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Par*t, 79 FR 53169 (September 8, 2014) and accompanying PDM at 6-7, unchanged in final *Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 79 FR 68860 (November 19, 2014); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017) and accompanying IDM at 12.

88 *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 75 (January 4, 2016) and accompanying Decision Memorandum at 15*;* unchanged in final *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part,* 81 FR 35316 (June 2, 2016); *see also 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less - Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 69786 (October 7, 2016) and accompanying Decision Memorandum at 17, unchanged in final *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part,* 82 FR 12192 (March 1, 2017) and accompanying Issues and Decision Memorandum at 12-16.

89 *See* PDM at 6.

With respect to an absence of *de facto* government control, Rongxin reported that it was majority owned by SITG for eleven out of twelve of the months of the POR.[90] SITG was wholly-owned by the Commerce Department of Shandong Province, a Chinese government entity, during this time.[91] Because Rongxin was majority owned by SITG, which was wholly owned by the Commerce Department of Shandong Province, we find that the government exercises, or has the potential to exercise, control over Rongxin's day-to-day operations generally.

This determination is consistent with our finding in more recent cases.[92] For example, in *Hydrofluorocarbon from the PRC,*[93] we concluded that, "where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally. This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate." Similarly, in *Truck and Bus Tire*s, we explained that "{f}ollowing the {CIT}'s reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate." [94]

Rongxin argues that the record rebuts the presumption that it does not operate free of government control because it operated autonomously from the government in making decisions regarding the selection of management. Specifically, it asserts that SITG was entitled to only one vote as a shareholder of Rongxin, has the ability to nominate only one candidate for election

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[90] *See* Letter from Rongxin, "Cased Pencils from the People's Republic of China: Rongxin Section A Response," dated August 5, 2016 (Rongxin's Section A Response) at A-3, in which Rongxin reported that SITG was sold via auction to a private company in November 2015, the end of the POR. The Department could not calculate a separate rate after the sale because no sales data was submitted after this time.

[91] *See* Rongxin's Section A Response at A-2 and A-3.

[92] *See Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, (Stainless Steel Sheet and Strip from the PRC*, 81 FR 64135 (September 19, 2016) and accompanying Preliminary Decision Memorandum at 12-13, unchanged in final *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 9714 (February 8, 2017) and accompanying Issued and Decision Memorandum at 28-29; *see also Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Par*t, 79 FR 53169 (September 8, 2014) and accompanying PDM at 6-7, unchanged in final *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 79 FR 68860 (November 19, 2014); *see also Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 8510 (January 26, 2017) and accompanying IDM at 12.

[93] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination in the Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 42314 (June 29, 2016) and accompanying IDM at Comment 8.

[94] *See Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less than Fair Value and Critical Circumstances, and Postponement of Final Determination",* 81 FR 61186 (September 6,2016) and accompanying Decision Memorandum at 13.

to the board of directors, and further, that a majority of votes is required to pass a resolution.[95] We find, however, that the provisions of the Articles of Association cited by Rongxin, alone, are insufficient to demonstrate that it operated autonomously from the government in making decisions regarding the selection of management during the POR.[96] Crucially, the effective date of the Articles of Association falls just over two months after the beginning of the POR, and the record is devoid of any information showing how the new Articles of Association operate in light of the conflicting scenarios of majority ownership and one vote per shareholder.[97] As such, the record does not provide the necessary information that is required for the Department to determine whether Rongxin actually operated independently of the government.

As facts available, the Department is relying on our findings in the most recently completed administrative review of Rongxin, the *2012-2013 Final Results*.[98] In the absence of information to the contrary, we find that the Articles of Association in effect were the same as those in effect during the 2012-2013 POR. In the *2012-2013 Final Results*, we found, based on the Articles of Association in effect during that period that Rongxin did not operate free of government control, including in the selection of management.[99] Specifically, we found that SITG, as the majority shareholder, explicitly names one member of the board of directors but effectively has control over the appointment of the remaining five directors, who, in turn, appoint company management.[100] The CIT recently upheld the Department's determination in *2012-2013 Final Results* that Rongxin did not demonstrate autonomy from the government in making decisions regarding the selection of management, stating "Commerce reasonably concluded that the board is elected by a majority of the shareholders."[101] Additionally, for the first two months of the POR we find, as facts available, that the prior Articles of Association were in operation and that the government, through SITG's majority ownership share, exercises, or has the potential to exercise, control over Rongxin's day-to-day operations, including the selection of management.

Although Rongxin asserts that the new Articles of Association in effect during the remainder of the POR establish that it operated free of government control in the selection of management, we find that this evidence, alone, is not dispositive. The record does not include any evidence to establish that Rongxin's operation in the latter part of the POR, *i.e.*, after the effective date of the Articles of Associations provided by Rongxin, differed from the earlier part. Consequently, Ronxin has not rebutted the presumption of government control, and thus, we continue to find that for the remainder of the POR (other than the last month) the government, exercises, or has the potential to exercise, control over Rongxin's day-to-day operations, including the selection of management.

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[95] *See* Rongxin's case brief at 16.

[96] *See* Rongxin's Section A Response at Exhibit 23.

[97] *Id.* at page 8 (showing date two months into the POR).

[98] *See Certain Cased Pencils from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013,* 80 FR 26897 (May 15, 2015) (*2012-2013 Final Results*), and accompanying Issues and Decision Memorandum at 7.

[99] *See* (*2012-2013 Final Results*, and accompanying Issues and Decision Memorandum at 7.

[100] *Id.* at 7.

[101] *See Shandong Rongxin Import & Export Co., Ltd. v. United States*, 203 F. Supp. 3d 1327 (CIT 2017) *Rongxin II*, 204 F. Supp. 3d at 1349.

Because we have found that Rongxin did not operate autonomously from the government in making decisions regarding the selection of management, we have not examined whether the Rongxin has established that it operates free of government control with respect to the other three *de facto* factors. We have repeatedly found that failure to provide evidence of an absence of *de facto* control from the government with respect to one of the four factors is sufficient to conclude that a company has failed to prove an absence of *de facto* government control, and that it is unnecessary to analyze the other *de facto* criteria.[102] This is because all four factors in the *de facto* analysis must be satisfied for a respondent to establish its eligibility for a separate rate.[103] Rongxin further argues that the Department should exercise its discretion in finding an absence of *de facto* government control here, as it did in *Jiangsu Jiangsheng*.[104] That case, however, is distinguishable. In that case, a twenty percent ownership interest in the respondent company was held by a wholly state-owned enterprise. Although there was evidence on the record that the wholly state-owned company exerted some influence over the Board of Directors, we found that there was other record evidence that indicated that the selection of personnel and control of business operations was not influenced by the government.[105] The Court upheld our determination as reasonable.[106] Here, in contrast, the provisions in the Articles of Association cited by Rongxin are not dispositive as to whether it operated free of *de facto* government control during the majority of the POR. In the absence of evidence demonstrating that Rongxin operated autonomously from the government in the selection of management following the effective date of the Articles of Association on the record of this review, evidence that Rongxin is indirectly majority owned by a Chinese government entity, and that the company did not operate autonomously from the government in the selection of management during the first two months of the POR, weighs in favor of finding that Rongxin has not rebutted the presumption of government control.

Finally, we find that the purchase of SITG by a private company during the POR does not weigh against, or require an outcome different from, a finding that Rongxin is ineligible for a separate rate. We analyzed and considered the invoice date as the date of sales, as Rongxin claimed is

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[102] *See 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part and Postponement of Final Determination,* 81 FR 69786 (October 7, 2016) (*Tetrafluoroethane from the PRC*) and accompanying PDM at 17; unchanged in final, *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part,* 82 FR 12192 (March 1, 2017) and accompanying IDM at 12-16; *see also Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, (Stainless Steel Sheet and Strip from the PRC*, 81 FR 64135 (September 19, 2016) and accompanying PDM at 12-13, unchanged in final *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part,* 82 FR 9714 (February 8, 2017) and accompanying IDM at 28-29.

[103] *See Yantai CMC Bearing Co. Ltd. v. United States,* 203 F. Supp. 3d 1317, 1326 (CIT 2017) (*Yangtai*) ("Commerce requires that exporters satisfy all four factors of the *de facto* control test in order to qualify for separate rate status."); *see id.* at 1325-26 (upholding the Department's practice that all four factors of the de facto test must be met to demonstrate an absence of de facto control) ("Given that all four factors must be satisfied, {the Department} had no further obligation to continue with the analysis").

[104] *See* Rongxin's case brief at 22.

[105] *Jiangsu Jiansheng Photovoltaic Tech. Co. v. United States,* 121 F. Supp. 3d 1263 (CIT 2015).

[106] *Id.* at 1272.

appropriate.[107] The U.S. sales database provided by Rongxin demonstrates that the company made no sales to the United States in November 2015.[108] Because there were no U.S. sales made after the change in ownership, there is no basis for us to evaluate whether Rongxin operated free of *de facto* government control during this period, nor are there any U.S. sales that we could use for purposes of calculating a margin were we to find Rongxin eligible for a separate rate.

Comment 3: Whether the Department is Required to Treat China as a Market-Economy Country

Rongxin's Arguments:

- The PRC's World Trade Organization (WTO) accession protocol unambiguously limits the application of nonmarket-economy status by other member countries in antidumping proceedings to no more than 15 years and, because the PRC joined the WTO on December 11, 2001, no WTO-member country can treat the PRC as a nonmarket-economy after December 11, 2016.[109]
- Treaties are treated with equal effect as if it were based on statute. The PRC acceded to the WTO after the United States joined the WTO and after the Tariff Act of 1930 was amended, and therefore, the accession protocol is "last in date" and the Department is required to implement all provisions of the WTO, including the language in the Accession protocol signed by the PRC.
- The language of the accession protocol is mandatory and immediate and "self-executing," rather than forward-looking. The courts have determined that the treaty is "in-force" domestically and therefore automatically vests rights in the interested parties. Therefore, the Department cannot apply non-market methodology to Rongxin in the final results and the question as to whether was controlled by SITG during the POR is now moot.

Dixon's Arguments:

- The Department is not required to treat the PRC as a market-economy country.[110] Even if Rongxin is correct that the PRC is no longer to be considered a NME after December 11, 2016, nothing in the accession protocol indicates treatment would be applied retroactively to the POR (which is more than a year prior to December 11, 2016).
- Even if Rongxin is correct that section 15(a)(ii) of the accession protocol expires on December 11, 2016, section 15(a)(i) remains in effect. Section 15(a)(i) states that if the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, product and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability.

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[107] *See* Letter from Rongxin, "Cased Pencils from the People's Republic of China: Rongxin Sections C and D Responses," dated August 22, 2016 at C-2.
[108] *See* Letter from Rongxin, "Cased Pencils from the People's Republic of China: Rongxin Sections C and D Responses," dated August 22, 2016 at Exhibit C-2.
[109] *See* Rongxin's case brief at 22.
[110] *See* Dixon's revised rebuttal brief at 8.

- In this review, the company under investigation, Rongxin, cannot demonstrate that market-economy conditions apply, and therefore, the Department cannot apply a methodology using Chinese prices or costs.

Department's Position: We disagree with Rongxin that the PRC's Protocol of Accession is "in force" domestically and "automatically vest{s} rights in the interested parties."[111] The Uruguay Round Agreements (including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) "are not self-executing" and "their legal effect in the United States is governed by implementing legislation."[112] Likewise, the PRC's Protocol of Accession is not self-executing, and does not grant direct rights under U.S. law. Instead, antidumping duty proceedings conducted by the Department are governed by U.S. law, which provides that the Department determines, on the basis of a complete, fact-intensive analysis of a country's economy, whether NME status is warranted for antidumping purposes. That determination remains in effect until it is reviewed again. In this review, no party requested that we review the PRC's NME status. As such, we continue to treat the PRC as an NME in this review, and we have made determinations that are consistent with the statute, the legislative history, and the regulations governing antidumping duty proceedings with respect to NME countries.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register.*

☒	☐
Agree	Disagree

5/22/2017

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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[111] *Cf.* Rongxin's case brief at 23-24.
[112] S.Rep. No. 103–412, at 13 (1994); *accord* H.R.Rep. No. 103–826, pt. I, at 25 (1994).