



A-570-827

AR: 12/1/2018 – 11/30/2019

**Public Document**

E&C/OVIII: SB

April 8, 2020

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of Antidumping  
Duty Administrative Review: Certain Cased Pencils from the  
People's Republic of China; 2018-2019

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping (AD) duty order on certain cased pencils (pencils) from the People's Republic of China (China) for the period of review (POR) December 1, 2018, through November 30, 2019. The mandatory respondent is Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. (collectively, Wah Yuen).<sup>1</sup>

We preliminarily determine that Wah Yuen did not have shipments of subject merchandise to the United States during the POR. In addition, we preliminarily determine that Tianjin Tonghe Stationery Co. Ltd. (Tianjin Tonghe) and Ningbo Homey Union Co., Ltd. (Ningbo Homey) are not eligible for a separate rate and, therefore, remain part of the China-wide entity. Finally, we are rescinding the administrative review with respect to Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC).

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess AD duties on all appropriate entries of pencils during the POR as discussed in the accompanying *Federal Register* notice.

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<sup>1</sup> Commerce has determined that these companies are affiliated and should be treated as a single entity in prior administrative reviews. See *Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015*, 81 FR 37573 (June 10, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 9–10, unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2014–2015*, 81 FR 74764 (October 27, 2016). Consistent with prior determinations, we are continuing to treat these companies as a single entity for purposes of this administrative review.



Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of the accompanying *Federal Register* notice of these preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h), unless this deadline is extended.

## II. BACKGROUND

Commerce published the initiation notice for this administrative review on February 6, 2020.<sup>2</sup> The review was requested for Wah Yuen, Tianjin Tonghe, Ningbo Homey,<sup>3</sup> and SFTC.<sup>4</sup> On March 9, 2020, SFTC timely withdrew its request for a review.<sup>5</sup> On April 24, 2020, we selected Wah Yuen as the mandatory respondent.<sup>6</sup> Wah Yuen reported that it did not ship subject merchandise to the United States during the POR.<sup>7</sup> Accordingly, we requested entry documentation from U.S. Customs and Border Protection (CBP).<sup>8</sup> For further information, *see* the “Preliminary Determination of No Shipments” section.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>9</sup> On July 21, 2020, Commerce tolled the deadlines for preliminary and final results in administrative reviews by an additional 60 days.<sup>10</sup> On December 7, 2020, Commerce extended the deadline for the preliminary results of this review by an additional 120 days in order to examine entry documentation from CBP.<sup>11</sup> The deadline for the preliminary results is now April 19, 2021.

## III. PERIOD OF REVIEW

The POR is December 1, 2018, through November 30, 2019.

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<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

<sup>3</sup> See Dixon Ticonderoga Company’s Letter, “Certain Cased Pencils from the People’s Republic of China: Request for Administrative Review,” dated December 27, 2019 (Ticonderoga Review Request).

<sup>4</sup> See SFTC’s Letter, “Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People’s Republic of China, A-570-827,” dated December 31, 2019.

<sup>5</sup> See SFTC’s Letter, “Orient International Holding Shanghai Foreign Trade Co., Ltd.’s Withdrawal of Request for Review: Administrative Review of the Antidumping Duty Order on Cased Pencils from the People’s Republic of China,” dated March 9, 2020.

<sup>6</sup> See Memorandum, “Antidumping Administrative Review of Certain Cased Pencils from the People’s Republic of China; 2018-2019: Respondent Selection,” dated April 24, 2020 (Respondent Selection Memorandum).

<sup>7</sup> See Wah Yuen’s Letter, “Certain Cased Pencils from the People’s Republic of China: Questionnaire Response,” dated August 21, 2020 (Q&V Response).

<sup>8</sup> See Memoranda, “Entry Summary Documentation for Specific Shipments of Cased Pencils,” dated September 28, 2020, and “Second Release of Entry Documentation for Specific Shipments of Cased Pencils,” dated January 25, 2021. The second release consists of the entry documentation included in the first release along with additional entry documentation.

<sup>9</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

<sup>10</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

<sup>11</sup> See Memorandum, “Certain Cased Pencils from the People’s Republic of China: Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review; 2018-2019,” dated December 7, 2020.

#### IV. SCOPE OF THE *ORDER*<sup>12</sup>

Imports covered by the *Order* are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the *Order* are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the *Order* are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the *Order* are pencils with all of the following physical characteristics: (1) length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the *Order*: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

#### V. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review.

In the *Initiation Notice*, we notified the public that, in the event we limited the number of respondents for individual examination, we intended to select respondents based on CBP data for U.S. imports of pencils during the POR.<sup>13</sup> On March 2, 2020, we placed CBP data for imports of subject merchandise made during the POR on the record of this administrative review, and requested comments on the data for use in respondent selection.<sup>14</sup> Wah Yuen submitted

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<sup>12</sup> See *Certain Cased Pencils from the People's Republic of China: Continuation of Antidumping Duty Order*, 82 FR 41608 (September 1, 2017); and *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994) (collectively, *Order*).

<sup>13</sup> See *Initiation Notice*.

<sup>14</sup> See Memorandum, "Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China: Release of Customs and Border Protection Data," dated March 2, 2020 (CBP Entry Data).

comments after the due date, which we rejected as untimely.<sup>15</sup> No other party provided comments on respondent selection.

As noted in the Respondent Selection Memorandum, the CBP Entry Data indicated that Wah Yuen accounted for all entries of subject merchandise during the POR.<sup>16</sup> Therefore, we selected Wah Yuen as the sole mandatory respondent in this review.<sup>17</sup>

## VI. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As noted in the discussion of respondent selection above, on March 2, 2020, we placed CBP data for imports of subject merchandise during the POR on the record of this administrative review.<sup>18</sup> Commerce selected Wah Yuen as a mandatory respondent on April 24, 2020.<sup>19</sup> The results of our initial CBP inquiry (*i.e.*, the CBP Entry Data) indicated that Wah Yuen had entries of subject merchandise during the POR.<sup>20</sup> In the *Initiation Notice*, we instructed producers or exporters under review that had no exports, sales, or entries of subject merchandise during the POR to notify Commerce within 30 days of publication of the notice (*i.e.*, by March 7, 2020).<sup>21</sup> Wah Yuen submitted an untimely no shipment certification in May 13, 2020, which we rejected.<sup>22</sup> On August 10, 2020, Commerce issued a questionnaire to Wah Yuen, requesting that Wah Yuen report the quantity and value of any subject merchandise it exported to the United States during the POR.<sup>23</sup>

In its response, Wah Yuen certified that it had not exported subject merchandise to the United States during the POR and the CBP data misidentified Wah Yuen as an exporter of subject merchandise.<sup>24</sup> It added that it does not act as the importer of record for any of its shipments and, therefore, would not have direct knowledge of suspended entries of any subject merchandise.<sup>25</sup> Wah Yuen also alleged certain “anomalies” with the CBP Entry Data (the content of which is subject to the administrative protective order (APO) of this review) that resulted in Wah Yuen having been improperly selected as a mandatory respondent.<sup>26</sup> Finally, Wah Yuen reported that only two sales of pencils to the United States may have overlapped the POR but explained that these pencils were of Taiwanese origin, as demonstrated by the certificates of origin that Wah Yuen submitted in its response.<sup>27</sup>

In accordance with our standard practice when there are discrepancies between CBP entry data and a respondent’s claims with regard to shipments of subject merchandise, we requested entry

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<sup>15</sup> See Commerce Letter, “Rejection of May 13, 2020, Submission,” dated August 10, 2020 (Rejection Letter).

<sup>16</sup> See Respondent Selection Memorandum at 2.

<sup>17</sup> *Id.*

<sup>18</sup> See CBP Entry Data.

<sup>19</sup> See Respondent Selection Memorandum.

<sup>20</sup> *Id.*; see also CBP Entry Data.

<sup>21</sup> See *Initiation Notice*.

<sup>22</sup> See Rejection Letter.

<sup>23</sup> See Commerce Letter, “Questionnaire,” dated August 10, 2020.

<sup>24</sup> See Q&V Response at 2-3 and Exhibit 1.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.* at 3-5.

<sup>27</sup> *Id.* at 5-6 and Exhibit 2.

documentation from CBP that would provide further information about the disputed entries.<sup>28</sup> We placed this information on the record of this review on September 28, 2020, and January 25, 2021.<sup>29</sup> Parties were provided the opportunity to comment on and file factual information to rebut, clarify, or correct this information, in accordance with 19 CFR 351.301(c)(4). Wah Yuen submitted comments on October 12, 2020, and February 1, 2021.<sup>30</sup> In both submissions, Wah Yuen reiterated its claim that the CBP data misidentified Wah Yuen as an exporter of subject merchandise during the POR.<sup>31</sup> To support its contention that it did not export subject merchandise to the United States during the POR, Wah Yuen provided a listing of all of the sales it made to the United States during the POR (the U.S. Sales List) which, according to Wah Yuen, demonstrated that its only sales to the United States were pencils of Taiwanese origin.<sup>32</sup> In support, Wah Yuen provided sales and payment documents and certificates of origin corresponding to three relevant sales.<sup>33</sup>

Subsequently, we requested information from Wah Yuen to confirm that the submitted U.S. Sales List comprised the totality of Wah Yuen's sales to the United States during the POR.<sup>34</sup> Specifically, we instructed it to explain and demonstrate how it generated the U.S. Sales List. In addition, we instructed Wah Yuen to add to the U.S. Sales List corresponding invoice numbers, quantities, and values, and to provide the invoices and country of origin certificates for certain pre-selected sales. Next, we instructed Wah Yuen to reconcile the total quantity and value of the reported U.S. sales to its financial records.

Wah Yuen responded on February 12, 2021.<sup>35</sup> First, Wah Yuen explained that the company is small and thus "fully aware" that subject merchandise is subject to United States AD duties.<sup>36</sup> Therefore, as soon as an order's "discharge port" is identified as the United States, company personnel know to source only pencils of Taiwan origin to fill that order.<sup>37</sup> Wah Yuen provided the sales invoices we requested and submitted the country of origin certificate corresponding to

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<sup>28</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, in Part, of the Third Administrative Review*, 74 FR 10009 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum (IDM) at Comment 19.

<sup>29</sup> See Memoranda, "Entry summary documentation for specific shipments of cased pencils," dated September 28, 2020, and "Second Release of Entry Documentation for Specific Shipments of Cased Pencils," dated January 25, 2021. The second release consists of the entry documentation included in the first release along with additional entry documentation.

<sup>30</sup> See Wah Yuen's Letters, "Certain Cased Pencils from the People's Republic of China: Comments on CBP Entry Summary Documentation," dated October 12, 2020 (First CBP Entry Comments), and "Certain Cased Pencils from the People's Republic of China: Comments on CBP Entry Summary Documentation," dated February 1, 2021 (Second CBP Entry Comments).

<sup>31</sup> In the Second CBP Entry Comments, Wah Yuen reiterates the arguments it made in the First CBP Entry Comments.

<sup>32</sup> See First CBP Entry Comments at 3 and Exhibit 1.

<sup>33</sup> *Id.* at Exhibit 3.

<sup>34</sup> See Commerce Letter, "Questionnaire," dated January 26, 2021.

<sup>35</sup> See Wah Yuen's Letter, "Certain Cased Pencils from the People's Republic of China: Response to Supplemental Questionnaire," dated February 12, 2021.

<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.*

each sale in the U.S. Sales List, which indicate that none of its sales were of Chinese origin.<sup>38</sup> It also explained and illustrated how it generated the U.S. Sales List by providing screen shots from its accounting system demonstrating each step it took to compile the list.<sup>39</sup>

Based on the information Wah Yuen has provided, including a U.S. Sales List, supported by financial records and country of origin certificates, we preliminarily determine that Wah Yuen did not have shipments of subject merchandise during the POR. Consistent with our practice in non-market economy (NME) cases, we are not rescinding the review of Wah Yuen, but intend to complete the review and issue appropriate instructions to CBP based on the final results.<sup>40</sup>

## VII. DISCUSSION OF THE METHODOLOGY

### A. Non-Market Economy Country Status

Commerce considers China to be an NME country.<sup>41</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

### B. Separate Rate Determinations

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may apply for separate rate status in NME reviews.<sup>42</sup> In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single AD duty rate.<sup>43</sup> It is Commerce's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent and entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME proceeding under the test

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<sup>38</sup> *Id.* at Exhibit 1.

<sup>39</sup> *Id.* at Exhibit 5.

<sup>40</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

<sup>41</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>42</sup> See *Initiation Notice*.

<sup>43</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 available at <https://enforcement.trade.gov/policy/bull05-1.pdf>; see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); and *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, 29307 (May 22, 2006).

established in *Sparklers*,<sup>44</sup> as further developed in *Silicon Carbide*,<sup>45</sup> and further refined by *Diamond Sawblades*.<sup>46</sup>

In order to demonstrate separate rate status eligibility, Commerce normally requires entities, for which a review was requested, and which were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.<sup>47</sup> For entities that were not assigned a separate rate in a previous segment of a proceeding, to demonstrate eligibility, Commerce requires a separate rate application (SRA).<sup>48</sup> A review was requested, and not withdrawn, for Tianjin Tonghe and Ningbo Homey.<sup>49</sup> These entities did not submit an SRA and, therefore, have not demonstrated eligibility for a separate rate. Therefore, we preliminarily consider Tianjin Tonghe and Ningbo Homey to be part of the China-wide entity.

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, Commerce is not conducting a review of the China-wide entity.<sup>50</sup> Thus, the rate for the China-wide entity (*i.e.*, 114.90 percent) is not subject to change pursuant to this review.<sup>51</sup>

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<sup>44</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>45</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>46</sup> See *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012); *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd*, 581 Fed. Appx. 900 (Fed. Cir. 2014) (*Diamond Sawblades*). Final Results of Redetermination Pursuant to Remand Order *Diamond Sawblades and Parts Thereof from the People's Republic of China*, dated May 6, 2013, this remand redetermination is available at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

<sup>47</sup> See *Initiation Notice*.

<sup>48</sup> *Id.*

<sup>49</sup> See Ticonderoga Review Request.

<sup>50</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>51</sup> See *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 24675 (May 30, 2017).

## VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree

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Disagree

4/8/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance