



A-570-827

AR: 12/1/2019 – 11/30/2020

Public Document

E&C/OVIII: SB

August 27, 2021

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; 2019-2020

I. SUMMARY

In response to a request from the Dixon Ticonderoga Company (the petitioner), 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, 2019, through November 30, 2020.¹ The mandatory respondent is Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. (collectively, Wah Yuen).²

We preliminarily determine that Wah Yuen did not make 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. If these preliminary results are adopted in the final results of this review, we intend to 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.

¹ See Petitioner's Letter, "Request for Administrative Review," dated December 30, 2020 (Request for Review).

² Commerce previously determined that these companies are affiliated, pursuant to section 771(33) of the Tariff Act of 1930, as amended (the Act), and should be treated as a single entity, pursuant to 19 CFR 351.401(f). 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) and *Certain Cased Pencils from the People's Republic of China: Amended Final Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 92784 (December 20, 2016)). Because there is no record evidence indicating that Commerce should revisit this determination, we are continuing to treat these two 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 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 4, 2021.³ The review was requested for Wah Yuen, Tianjin Tonghe, and Ningbo Homey.⁴ On March 5, 2021, we selected Wah Yuen as the mandatory respondent.⁵ On April 27, 2021, we issued the AD questionnaire to Wah Yuen.⁶ On May 18, 2021, in its timely response to section A of the AD questionnaire, Wah Yuen reported that it did not ship subject merchandise to the United States during the POR.⁷ For further information, *see* the “Preliminary Determination of No Shipments” section.

III. PERIOD OF REVIEW

The POR is December 1, 2019, through November 30, 2020.

IV. SCOPE OF THE ORDER⁸

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-

³ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 8166 (February 4, 2021) (*Initiation Notice*).

⁴ *See* Request for Review.

⁵ *See* Memorandum, “Respondent Selection,” dated March 5, 2021 (Respondent Selection Memorandum).

⁶ *See* Commerce’s Letter, “Request for Information,” dated April 27, 2021. Commerce initially issued the questionnaire on March 9, 2021, by posting it to its Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), but reissued the questionnaire to Wah Yuen via Federal Express, upon realizing that Wah Yuen had not entered an appearance on the record. *See* Memorandum, “Issuance of Questionnaire,” dated April 30, 2021. With its reissuance of the AD questionnaire, Commerce extended the deadline for Wah Yuen’s response.

⁷ *See* Wah Yuen’s May 18, 2021 Section A Questionnaire Response (Wah Yuen May 18, 2021 AQR).

⁸ *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*).

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 and producer of the subject merchandise. 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 or 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.⁹ On February 12, 2021, 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.¹⁰ We did not receive comments. 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.¹¹ Therefore, we selected Wah Yuen as the sole mandatory respondent in this review.¹²

VI. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As noted, in its May 18, 2021 AQR, Wah Yuen reported that it did not ship subject merchandise to the United States during the POR. Specifically, Wah Yuen explained that it “is a small company” and “fully aware that exports of pencils to the United States is {sic} subject to {AD} duties and therefore as soon as an order is placed by a customer, Wah Yuen confirms the discharge port.”¹³ Wah Yuen further explained that “{i}f the discharge port is based in the United States then Wah Yuen ensures that it only sources the pencils from Taiwan to fill the order.”¹⁴ In support, Wah Yuen provided a list of sales to the United States and the corresponding country of origin certificates which indicate that its sales of pencils to the United

⁹ See *Initiation Notice*.

¹⁰ See Memorandum, “Release of Customs and Border Protection Data,” dated February 12, 2021 (CBP Entry Data).

¹¹ See Respondent Selection Memorandum at 2.

¹² *Id.*

¹³ See Wah Yuen May 18, 2021 AQR at 1.

¹⁴ *Id.*

States during the POR were comprised of pencils of Taiwan origin.¹⁵ In addition, Wah Yuen commented on the CBP Entry Data, the content of which is subject to the administrative protective order (APO) of this administrative review.¹⁶

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,¹⁷ we requested entry documentation from CBP that would provide further information about the disputed entries, and placed this information on the record of this review.¹⁸ Parties were provided the opportunity to comment and file factual information to rebut, clarify, or correct this information, in accordance with 19 CFR 351.301(c)(4). Wah Yuen submitted comments reiterating its no-shipment claim and, to demonstrate that the CBP entry documents did not support the conclusion that Wah Yuen had shipments of pencils during the POR, Wah Yuen provided sample shipment documents which indicate that its sales of pencils during the POR were to countries other than the United States.¹⁹ Wah Yuen also claimed that it "does not have knowledge of what happens to the pencils it sells to" a certain relevant customer, identified in its comments, *i.e.*, whether those pencils were destined for the United States.²⁰

Having analyzed the CBP entry documentation, Wah Yuen's comments, and information provided by Wah Yuen, Commerce preliminarily determines that there is no record evidence contradicting Wah Yuen's claim that it had no knowledge that the United States was the ultimate destination of any pencils it sold during the POR. Therefore, we preliminarily determine that Wah Yuen did not ship subject merchandise to the United States during the POR. Consistent with our practice in non-market economy (NME) proceedings, 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.²¹

¹⁵ *Id.* at Exhibits 1 and 2.

¹⁶ *Id.* at 3-4 and Exhibit 4.

¹⁷ See, e.g., *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; see also *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tube from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34863 (July 19, 2019), and accompanying PDM at 4-5, unchanged in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64455 (November 22, 2019), and accompanying IDM.

¹⁸ See Memoranda, "Entry Summary Documentation for Specific Shipments of Cased Pencils," dated June 30, 2010; and "Second Release of Entry Documentation," dated August 4, 2021.

¹⁹ See Wah Yuen's Letters, "Certain Cased Pencils from the People's Republic of China: Comments on CBP Data," dated July 8, 2021 (Wah Yuen's July 2021 Comments), at Exhibits 1-4; and "Certain Cased Pencils from the People's Republic of China: Comments on Corrected CBP Data Dated August 4, 2021," dated August 11, 2021. The content of these submissions is subject to the APO of this administrative review.

²⁰ See Wah Yuen's July 2021 Comments at 3.

²¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be an NME country.²² 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.²³ 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.²⁴ 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 established in *Sparklers*,²⁵ as further developed in *Silicon Carbide*,²⁶ and further refined by *Diamond Sawblades*.²⁷

²² 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)).

²³ See *Initiation Notice*.

²⁴ 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).

²⁵ 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*).

²⁶ 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*).

²⁷ See *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* (May 6, 2013) in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), sustained, *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd, Case No. 2014-1154 (Fed. Cir. 2014). This remand redetermination is on the Enforcement and Compliance website 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) (*Diamond Sawblades*), and accompanying IDM at Comment 1.

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 a proceeding, to submit a separate rate certification (SRC) stating that they continue to meet the criteria for obtaining a separate rate.²⁸ 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).²⁹ A review was requested, and not withdrawn, for Tianjin Tonghe and Ningbo Homey.³⁰ These entities did not submit a SRC or SRA and, therefore, have not demonstrated eligibility for a separate rate. Accordingly, 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.³¹ Thus, the rate for the China-wide entity (*i.e.*, 114.90 percent) is not subject to change pursuant to this review.³²

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

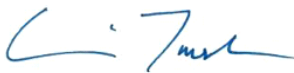
Agree

☐

Disagree

8/27/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance

²⁸ See *Initiation Notice*.

²⁹ *Id.*

³⁰ See *Request for Review*.

³¹ 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).

³² 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).