

HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8443.99.2500, 8443.99.2550, 8471.50.0085, 8471.50.0150, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.61.0000, 8517.62.0010, 8517.62.0050, 8517.69.0000, 8517.70.0000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, 8542.21.8005, 8542.21.8020, 8542.21.8021, 8542.21.8022, 8542.21.8023, 8542.21.8024, 8542.21.8025, 8542.21.8026, 8542.21.8027, 8542.21.8028, 8542.21.8029, 8542.21.8030, 8542.31.0000, 8542.33.0000, 8542.39.0000, 8543.89.9300, and 8543.89.9600 of the HTSUS. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope.

### Scope Rulings

On December 29, 2004, the Department of Commerce ("Department") received a request from Cisco Systems, Inc., to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the *CVD Order*. See *Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 47546 (August 11, 2003) ("*CVD Order*"). The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the *CVD Order* provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. See Memorandum from Stephen J. Claeys to David M. Spooner, regarding Final Scope Ruling, Countervailing Duty Order on DRAMs from the Republic of Korea (January 12, 2006).

### Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review ("POR"), is January 1, 2008, through August 10, 2008.

### Analysis of Comments Received

We have addressed all issues raised in the case and rebuttal briefs in the January 5, 2011, Issues and Decision Memorandum for the Final Results in the Sixth Administrative Review of the Countervailing Duty Order on Dynamic

Random Access Memory Semiconductors from the Republic of Korea from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration ("Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room 7046 of the main Department building. In addition, a complete version of the public Decision Memorandum can be accessed directly on the Internet at <http://www.ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer, Hynix. For the period January 1, 2008, through August 10, 2008, we find that the *ad valorem* net subsidy rate for Hynix is 1.93 percent.

### Assessment Rates

The Department intends to issue assessment instructions to CBP fifteen days after the date of publication of these final results of this review. The Department will instruct CBP to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2008, through August 10, 2008, at 1.93 percent *ad valorem* of the F.O.B. invoice price, or 0.0033 U.S. dollars per megabit, as appropriate.<sup>1</sup>

### Cash Deposits

On October 3, 2008, the Department published a **Federal Register** notice that, *inter alia*, revoked this order, effective August 11, 2008. See *Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Sunset Review and Revocation of Order*, 73 FR 57594 (October 3, 2008). As a result, CBP is no longer suspending liquidation for entries of subject merchandise occurring after the revocation. Therefore, there is no need to issue new cash deposit

<sup>1</sup> For the calculation of the per-megabit rate, see Memorandum to the File from Shane Subler and Jennifer Meek, "Final Results Calculations for Hynix Semiconductor, Inc." (January 5, 2010).

instructions pursuant to the final results of this administrative review.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended.

Dated: January 5, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

### Appendix I—Comments in the Decision Memorandum

Comment 1: Income Tax Treatment of Hynix's Debt Restructuring

Comment 2: Allocation Method for Tax Benefit

Comment 3: Clerical Error Allegations

Comment 4: Circumvention of the Order

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-827]

#### Certain Cased Pencils From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**DATES:** *Effective Date:* January 13, 2011.

**SUMMARY:** The Department of Commerce ("the Department") has preliminarily determined that the respondents in this review, for the period December 1, 2008, through November 30, 2009, have made sales of subject merchandise at less than normal value. 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 antidumping duties on all appropriate entries.

The Department is also rescinding this review for those foreign producers/exporters for which requests for review were timely withdrawn. For the

companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption.

The Department invites interested parties to comment on these preliminary results. The Department intends to issue the final results no later than 120 days from the publication date of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

**FOR FURTHER INFORMATION CONTACT:**

Patricia Tran, Mahnaz Khan or David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1503, (202) 482-0914 or (202) 482-0371, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 28, 1994, the Department published in the **Federal Register** an antidumping duty order on certain cased pencils (“pencils”) from the People’s Republic of China (“PRC”). See *Antidumping Duty Order: Certain Cased Pencils from the People’s Republic of China*, 59 FR 66909 (December 28, 1994). On December 1, 2009, the Department published a notice of opportunity to request an administrative review of this order covering the period December 1, 2008, through November 30, 2009. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 4, 2009, in accordance with 19 CFR 351.213(b), Shandong Rongxin Import and Export Co., Ltd. (“Rongxin”), a foreign exporter/producer, requested that the Department review its sales of subject merchandise. On December 28, 2009, in accordance with 19 CFR 351.213(b), Beijing Fila Dixon Stationery Company Ltd. (“Beijing Dixon”), a foreign exporter, requested that the Department review its sales of subject merchandise. On December 31, 2009, the following exporters/producers requested reviews of themselves, in accordance with 19 CFR 351.213(b): Shanghai Three Star Stationery Industry Co., Ltd. (“Three Star”), Orient International Holding Shanghai Foreign Trade Corporation (“SFTC”), and China First Pencil Co., Ltd. (“China First”) and its affiliated companies including

Shanghai First Writing Instrument Co., Ltd. (“FST”), Fang Zheng Ltd. (“Fang Zheng”), Shanghai Great Wall Pencil Co. Ltd. (“Great Wall”) and China First Pencil Huadian Co., Ltd. (“Huadian”).<sup>1</sup>

On January 29, 2010, the Department published a notice of initiation for this administrative review covering the companies listed in the requests received from the interested parties named above. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review*, 75 FR 4770, 4772 (January 29, 2010). On March 29, 2010, China First and its affiliated companies, and Three Star withdrew their December 31, 2009 requests for a review.

The Department issued antidumping duty questionnaires to Rongxin and Beijing Dixon on April 6, 2010. Rongxin submitted its Section A Questionnaire Response on May 6, 2010, and its Section C and Section D Questionnaire Responses on May 28, 2010. Beijing Dixon submitted its Section A Questionnaire Response on April 23, 2010, its Section C Questionnaire Response on May 12, 2010, and its Section D Questionnaire Response on May 12, 2010. The Department issued supplemental questionnaires to Rongxin and Beijing Dixon between June 2010 and December 2010. Both companies timely filed their responses to those supplemental questionnaires.

On September 3, 2010, we extended the time limit for the preliminary results in this review until January 7, 2011. See *Certain Cased Pencils From the People’s Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 54089 (September 3, 2010).

**Scope of the Order**

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.

**Partial Rescission of Review**

The Department’s regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review, in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As explained above, SFTC withdrew its request for a review on March 1, 2010. On March 29, 2010, China First and its affiliated companies, and Three Star withdrew their requests for a review. These withdrawals occurred within the 90-day deadline, and no other party requested a review with respect to these companies. Therefore, the Department is rescinding this administrative review with regard to SFTC, China First and its affiliated companies, and Three Star.

**Non-Market Economy Country Status**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (“NME”) country. 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 the

<sup>1</sup> The Department sent a letter to China First on January 13, 2010, asking China First to provide a complete list of its affiliated companies. China First responded on January 15, 2010, stating that its affiliated companies subject to the review are FST, Fang Zheng, Great Wall and Huadian. On March 1, 2010, SFTC withdrew its December 31, 2009 request for a review.

administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Surrogate Country and Surrogate Values

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's factors of production ("FOPs"), to the extent possible, valued in one or more market-economy countries ("ME") that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined that India, Indonesia, the Philippines, Ukraine, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See Memorandum from Carole Showers, Director, Office of Policy, to Brandon Farlander, Program Manager, Office 1, entitled "Request for a List of Surrogate Countries for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China ("PRC")," dated April 14, 2010. On April 15, 2010, the Department invited the interested parties to comment on surrogate country selection and to submit surrogate value data. On September 1 and on September 27, 2010, the Department extended the deadline for submission of publicly available information to value factors. See the Department's Letters to All Interested Parties, "Certain Cased Pencils from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated April 15, 2010 and September 1, 2010, and Memorandum to the File from David Layton, "2008/2009 Administrative Review of Certain Cased Pencils from the People's Republic of China: Extension Request from Rongxin Import & Export Co., Ltd. Regarding the Submission of Surrogate Values," dated September 27, 2010. Beijing Dixon submitted publicly available information to value factors on October 15, 2010, and November 22, 2010. Rongxin submitted publicly available*

information on June 25, 2010, and October 18, 2010. Both respondents also provided certain surrogate value information in their supplemental responses.

As explained above, we determined that India is comparable to the PRC. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum from Mahnaz Khan to the File, "2008–2009 Antidumping Duty Administrative Review on Certain Cased Pencils from the People's Republic of China: Selection of a Surrogate Country," dated January 7, 2011. Finally, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. In this instance, India has publicly available, reliable data. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, March 1, 2004.*

Therefore, because India is at a comparable level of economic development to the PRC, is a significant producer of comparable merchandise, and has publicly available and reliable data, we have selected India as the primary surrogate country for this review. The Department notes that India has been the primary surrogate country in past segments of this proceeding.

#### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See section 771(18)(C) of the Act. Accordingly, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty deposit rate (i.e., a country-wide rate). See, e.g., Department Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005; 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 (September 8, 2006); 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) ("Diamond Sawblades").*

It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries 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. *See, e.g., Diamond Sawblades*, 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

The Department received a separate rate certification from Rongxin on February 26, 2010, and a separate rate certification from Beijing Dixon on March 5, 2010. China First, Three Star, and SFTC requested an extension until March 29, 2010, to file a separate rate certification before withdrawing their respective requests for a review. Consequently, SFTC, China First, and Three Star never filed separate rate certifications before the March 29, 2010 deadline.

In its separate rate application, Beijing Dixon reported that it is owned wholly by an entity located and registered in an ME country (*i.e.*, the United States). Thus, because we have no evidence indicating that Beijing Dixon is under the control of the PRC government, a separate-rate analysis is not necessary to determine whether it is independent from government control, and we determine Beijing Dixon has met the criteria for the application of a separate rate. *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 29080, 29081 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001); *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper*

*Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong), unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).

#### Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589. The evidence provided by Rongxin supports a preliminary finding of *de jure* absence of government control.

Rongxin has placed on the administrative record a copy of its business license and articles of association.<sup>2</sup> Neither of these documents contains restrictions with respect to export activities.

In its separate rates certification, Rongxin certified that during the POR: (1) As with the segment of the proceeding in which the firm was previously granted a separate rate ("previous Granting Period"), there were no government laws or regulations that controlled the firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by law or regulation at any level of government to possess additional certificates or other documents related to the legal status and/or operation of its

business beyond those discussed above; and (5) PRC government laws and legislative enactments applicable to Rongxin remained the same as in the previous Granting Period.

In prior cases, we have found an absence of *de jure* control absent proof on the record to the contrary. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*"). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we determine that the evidence on the record supports a preliminary finding of absence of *de jure* government control for Rongxin.

#### Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87, and *Furfuryl Alcohol*, 60 FR at 22545.

Rongxin has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, Rongxin's questionnaire responses indicate that its pricing during the POR was not coordinated with other exporters. As a result, there is a sufficient basis to preliminarily

determine that Rongxin has demonstrated a *de facto* absence of government control of its export functions and it is entitled to a separate rate.

#### Fair-Value Comparisons

To determine whether Rongxin's sales of subject merchandise were made at less than NV, we compared the NV to individual export price ("EP") transactions in accordance with section 777A(d)(2) of the Act. See "Export Price" and "Normal Value" sections of this notice, below. To determine whether Beijing Dixon's sales were made at less than NV, we compared constructed export price ("CEP") to NV as described in the "Constructed Export Price" section of the notice below.

#### Export Price

In accordance with section 772(a) of the Act, EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EPs for sales by Rongxin to the United States because the first sale to an unaffiliated party was made before the date of importation, and CEP methodology was not otherwise indicated. We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for Rongxin's foreign inland freight and foreign brokerage and handling where appropriate.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as reported in *Doing Business 2010: India*, published by the World Bank. See Memorandum from David Layton to File, "Factor Valuation for the Preliminary Results Memorandum," dated January 7, 2011 ("Factor Valuation Memorandum").

#### Constructed Export Price

In accordance with section 772(a) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or

<sup>2</sup> See Rongxin's Separate Rate Certification submission dated February 26, 2010, and Rongxin's Section A submission dated May 6, 2010.

exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). In its questionnaire responses, Beijing Dixon stated that it made CEP sales through its U.S. affiliate, Dixon Ticonderoga Company. In accordance with section 772(a) of the Act, we used CEP for Beijing Dixon's U.S. sales because all sales to unaffiliated customers were made after the date of importation and by its U.S. affiliate.

The Department calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States, net of billing adjustments, rebates and early payment discounts. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling (U.S. brokerage and handling was reported as three "other transportation expense" categories), U.S. customs duties, U.S. inland freight from port to warehouse and U.S. inland shipment insurance in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from Beijing Dixon's starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including imputed credit expenses, applicable advertising expenses, commissions, royalties and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. For a detailed description of all adjustments, see Memorandum from Mahnaz Khan to the File, "Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Beijing Fila Dixon Stationery Company Ltd.," dated January 7, 2011 ("Beijing Dixon Preliminary Calculation Memo").

For our CEP adjustments for Beijing Dixon, we valued foreign brokerage and handling, and foreign inland truck rates using the same surrogate values described above in the "Export Price" section.

For its calculation of the CEP, the Department changed certain data in Beijing Dixon's U.S. sales database. Beijing Dixon reported no payment date for certain observations in the U.S. sales database. For these observations, the Department, as is its practice, applied as the payment date May 20, 2010, the deadline for submission of factual information in this administrative review as provided in 19 CFR 351.301(b)(2). We have also calculated the credit expense for each of the specific observations with missing

payment dates based on the May 20, 2010 payment date. See Beijing Dixon Preliminary Calculation Memo at 3–4. We have not yet requested clarification from Beijing Dixon regarding the missing payment dates, but intend to do so after these preliminary results.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs where the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal ME methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by the respondents for materials, energy, labor, and packing.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from an ME country and pays for it in ME currency, the Department will normally value the factor using the actual price paid to the ME supplier for the input. See 19 CFR 351.408(c)(1). Where a portion of the input is purchased from an ME supplier and the remainder from an NME supplier, the Department will normally use the price paid for the input sourced from ME suppliers to value all of the input, provided the volume of the ME input as a share of total purchases from all sources is "meaningful." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27366 (May 19, 1997); *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); 19 CFR 351.408(c)(1); see also *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61716–61719 (October 19, 2006) (regarding the Department's flexible 33 percent threshold for ME inputs). In this administrative review, Beijing Dixon reports purchasing four ME material inputs in volumes that exceed the threshold percentage that the Department normally considers

"meaningful." See Beijing Dixon Preliminary Calculation Memorandum. At the Department's request, Beijing Dixon provided documentation to support its claim that these four inputs were obtained from ME sources. See Sections C & D First and Second Supplemental Questionnaire Response of Beijing Fila Dixon Stationery Company, Ltd., dated September 10, 2010, at Exhibits Supplemental C–12 and D–5–D–9. Accordingly, we have calculated NV for these preliminary results using the ME prices paid by Beijing Dixon for these four inputs to value the relevant factors.

#### Factor Valuations

In accordance with section 773(c)(3) of the Act, we calculated NV based on FOPs reported by the respondents for the POR. Except as noted above for Beijing Dixon's ME inputs, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneousness of the data.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor and utilities, using the India Wholesale Price Index as published in the International Monetary Fund's International Financial Statistics.

When relying on prices of imports into India as surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies. Accordingly, it is reasonable to infer that exports to all markets from those countries may be subsidized. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007,

54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006); and *China Nat'l Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100-576 at 590-91 (1988), *reprinted* in 1988 U.S.C.C.A.N. 1547, 1623. Rather, the Department relies on information that is generally available at the time of its determination. Therefore, we have not used prices from those countries in calculating the Indian import-based surrogate values. See Factor Valuation Memorandum.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory, where appropriate. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit ("Federal Circuit") in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). See also Department Policy Bulletin No. 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value, November 1, 2010.

We valued the FOPs as follows:

(1) Except where noted below, we valued all reported material and packing inputs using Indian import data from the Global Trade Atlas for December 2008 through November 2009.

(2) We calculated the slats surrogate value using data from "Paper and Stationery."<sup>3</sup> The slats, for which values were reported in "Paper and Stationery," are used for pencil production and are made from Ajanta, valued at Rs. 210 per 1000 cubic feet, and Vatta II, valued at Rs. 200 per 1000 cubic feet. We averaged the values for Ajanta and Vatta II to arrive at a surrogate value of Rs. 205 per 1000 cubic feet. We converted Rupees-per-1000 cubic-feet to Rupees-per-kilogram. We adjusted this value to account for inflation between the effective period and the POR. See

Attachment 4 of the Factor Valuation Memorandum for the calculation of the surrogate values for slats.

(3) We calculated separate surrogate values for black and color cores, and, for valuation purposes, distinguished between regular and thick core dimensions. We obtained surrogate values for black and color cores from "Paper and Stationery."<sup>4</sup> We adjusted these values to account for inflation between the effective period and the POR. See Attachment 4 of the Factor Valuation Memorandum for the calculation of the surrogate values for black and color cores.

(4) We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. Those electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. See Factor Valuation Memorandum.

(5) For Rongxin, we valued steam coal using data obtained for grade E non-long flame non-coking coal reported on the 2007 Coal India Data website. For Beijing Dixon, we valued steam coal using data obtained for grade C long flame non-coking coal reported on the 2007 Coal India Data Web site. See Factor Valuation Memorandum.

(6) On May 14, 2010, the Federal Circuit in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent Federal Circuit decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing the respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. Our methodology is described below.

The Department is valuing labor using a simple average, industry-specific wage rate derived from earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). Specifically, the Department has calculated the wage rate as a simple

average of the data provided to the ILO under Sub-Classification 36 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of Furniture; Manufacturing n.e.c.") to be the best available information for valuing the respondents' labor input because it is specific and derived from industries that produce merchandise comparable to the subject merchandise.

Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and to be significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, and Thailand. On this basis, the Department calculated a simple average, industry-specific wage rate of \$1.23 for these preliminary results. For further information on the calculation of the wage rate, see Factor Valuation Memorandum.

(7) We derived ratios for factory overhead, depreciation, selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2006-2007 financial statement of Triveni Pencils Ltd. ("Triveni"), an Indian producer of pencils, in accordance with the Department's practice with respect to selecting financial statements for use in NME cases. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2. Reliance upon Triveni's financial statements is consistent with the 2007-2008 administrative review.

(8) We valued inland truck freight expenses using a per-unit average rate calculated from data on the following publicly accessible Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since the truck rate value is based on an annual per-unit rate and falls within the POR (August 2008 through July 2009), we are treating the derived average rate as contemporaneous with the POR. For rail freight, we used 2006-2007 data from the publicly accessible website <http://www.Indianrailways.gov.in/> to derive, where appropriate, input-specific train rates on a rupees-per-kilogram per-

<sup>3</sup> See "Pencil Industry in India—A Robust Future," Divya Jha, in "Paper & Stationery Samachar" (Delhi, November 2008), an Indian trade journal ("Paper and Stationery") at 54, attached as Exhibit 3 to Rongxin's June 25, 2010 Surrogate Value Submission.

<sup>4</sup> See *id.*

kilometer basis (“Rs/kg/km”). The Department is not inflating the 2006–2007 rail freight data from the <http://www.Indianrailways.gov.in> website since these rates are currently published on their website, and the website does not have any updated rail freights for the POR. Therefore, the Department continues to treat these rail freights on the <http://www.Indianrailways.gov.in> Web site as contemporaneous with the POR in this administrative review.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### Preliminary Results of Review

We preliminarily determine that the following margins exist for the period December 1, 2008, through November 30, 2009:

Exporter	Margin (percent)
Beijing Dixon Stationery Company Ltd. ....	0.00
Shandong Rongxin Import and Export Co., Ltd. ....	0.17

As stated above in the “Separate Rates Determination” section of this notice, Dixon and Rongxin each qualify for a separate rate in this review.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the

submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) no later than 30 days after publication of these preliminary results of review, and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue(s); (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a compact disk containing the public version of those comments. We will issue a memorandum identifying the date and time of a hearing, if one is requested.

The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of this administration review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review.

Rongxin did not report entered values for its U.S. sales. Therefore, we calculated a per-unit assessment rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. To determine

whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer) specific *ad valorem* ratios based on the estimated entered value. Where an importer-specific (or customer-specific) rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to liquidate that importer’s (or customer’s) entries of subject merchandise without regard to antidumping duties.

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212.(c)(1)(i). The Department intends to issue appropriate assessment instructions regarding entries of the rescinded companies directly to CBP 15 days after publication of this notice.

#### Cash Deposit Requirements

The following cash-deposit requirements will apply to all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing the preliminary results determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-627 Filed 1-12-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-820]

#### **Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** In response to requests from petitioners,<sup>1</sup> the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India (“Indian Hot-Rolled”) manufactured by Essar Steel Limited (“Essar”), Ispat Industries Limited (“Ispat”), JSW Steel Limited (“JSW”), and Tata Steel Limited (“Tata”). The period of review (“POR”) covers December 1, 2008, through November 30, 2009. We preliminarily determine that Essar, Ispat, JSW, and Tata had no reviewable entries of subject merchandise during the POR.

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 this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

**DATES:** *Effective Date:* January 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161 and (202) 482-3965, respectively.

#### **SUPPLEMENTARY INFORMATION:**

<sup>1</sup> The petitioners are the United States Steel Corporation, Nucor Corporation, and ArcelorMittal USA Inc. (collectively “petitioners”).

#### **Background**

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on Indian Hot-Rolled. See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 60194 (December 3, 2001) (“*Amended Final Determination*”). On December 1, 2009, the Department published in the **Federal Register** a notice titled “Opportunity to Request Administrative Review” of the antidumping duty order on Indian Hot-Rolled. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 62743 (December 1, 2009). On December 31, 2009, petitioners requested an administrative review of the antidumping duty order on Indian Hot-Rolled, for subject merchandise produced or exported by Ispat, JSW, Tata, and Essar. On January 29, 2010, the Department published a notice of initiation of antidumping duty administrative review of Indian Hot-Rolled for the period December 1, 2008, through November 30, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferal of Initiation of Administrative Review*, 75 FR 4770 (January 29, 2010) (“*Initiation Notice*”). On February 2, 2010, Ispat and Essar, and on February 17, 2010, JSW, each informed the Department that they did not have shipments of subject merchandise to the United States during the POR.

In February 2010, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus all deadlines in this segment of the proceeding have been extended for seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010.

On February 16, 2010, the Department issued its antidumping questionnaire to Tata. On February 18, 2010, Tata informed the Department that it had one shipment of subject merchandise that was entered into the United States during the POR, but that shipment was not of normal commercial quantities and was a one-off transaction for testing purposes only. Tata informed the

Department that it would, therefore, not respond to the antidumping questionnaire.

On August 23, 2010, the Department placed on the record and invited interested parties to comment on U.S. Customs and Border Protection (“CBP”) data obtained to corroborate the claims of the respondents. See Memorandum to the File from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, concerning “Customs and Border Protection (“CBP”) Data for Corroboration of Claims of No Shipments,” dated August 23, 2010 (“August 23 Comment Memorandum”); clarified by Memorandum to the File from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, and Melissa Skinner, Office Director, concerning “Clarification of Customs and Border Protection (“CBP”) Data for Corroboration of Claims of No Shipments,” dated August 25, 2010 (“August 25 Clarification Memorandum”). On August 31, 2010, we received timely comments from Nucor Corporation.

On September 14, 2010, the Department extended the deadline for the preliminary results to January 7, 2011. See *Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 55742 (September 14, 2010).

On November 23, 2010, we requested CBP to provide documents associated with certain entries. See Memorandum to Michael Walsh, Director, AD/CVD/Revenue Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, from Melissa Skinner, Office Director, entitled “Request for U.S. Entry Documents—Certain Hot-Rolled Steel Flat Products from India (A-533-820),” dated November 23, 2010 (“November 23 CBP Request Memorandum”). We received such documents on December 23, 2010. See Memorandum from Christopher Hargett, International Trade Compliance Analyst, Office 3, through Melissa Skinner, Office Director, Office 3, AD/CVD Operations, to the File, entitled “Entry Documentation for Corroboration of Claims of No Shipments,” dated January 7, 2011 (“January 7 Entry Documentation Memorandum”).

#### **Period of Review**

The POR covered by this review is December 1, 2008, through November 30, 2009.