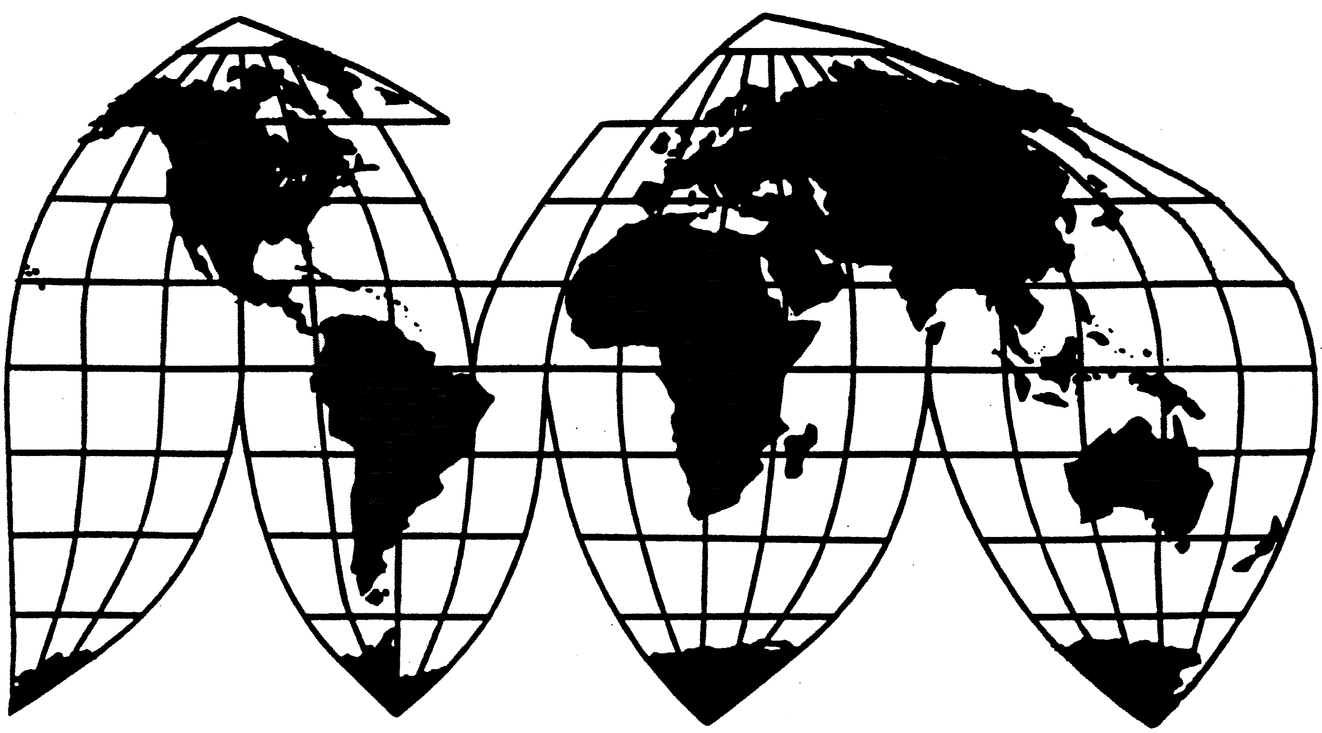
Certain Cased Pencils from the People's Republic of China

Investigation No. 731-TA-669 (Final)

Publication 2837 December 1994

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

PART I

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-669 (Final)

CERTAIN CASED PENCILS FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China (China) of certain cased pencils,[3] provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4]

Background

The Commission instituted this investigation effective June 16, 1994, following a preliminary determination by the Department of Commerce that imports of certain cased pencils from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 7, 1994 (59 F.R. 34865). The hearing was held in Washington, DC, on August 25, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford dissenting.

[3] For purposes of its investigation, the Department of Commerce defined "certain cased pencils" as pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or manmade materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. Specifically excluded from the scope of the investigation are mechanical pencils, cosmetic pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks.

[4] Commissioner Rohr and Commissioner Newquist also voted in the affirmative with respect to critical circumstances.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is threatened with material injury by reason of imports of cased pencils from the People's Republic of China ("China") that the U.S. Department of Commerce ("Commerce") has determined are sold in the United States at less than fair value ("LTFV").[1] [2] [3] [4]

I. LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."[5] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[6]

Commerce has defined the scope of this investigation as:

> certain cased pencils of any shape or dimension 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 these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

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[1] 19 U.S.C. § 1673d(b). Material retardation is not an issue in this investigation.

[2] Commissioner Rohr and Commissioner Newquist find the domestic industry materially injured by reason of LTFV imports.

[3] Commissioner Crawford finds that the domestic industry is neither materially injured nor threatened with material injury by reason of less than fair value imports. She concurs with the conclusions of her colleagues with respect to like product, domestic industry, and the discussion of the condition of the domestic industry, except as noted. See her dissenting views infra.

[4] Chairman Watson, Vice Chairman Nuzum, and Commissioner Bragg further find, in accordance with 19 U.S.C. § 1673d(b)(4)(B), that the domestic industry would not have experienced present material injury by reason of imports of cased pencils from China had there not been a suspension of liquidation.

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(10). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. E.g., S. Rep. No. 249, 96th Cong. 1st Sess. 90-91 (1979); Torrington v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.[7]

The scope of imported articles includes a variety of cased pencils including commodity or standard yellow pencils, colored pencils ("cased crayons"), decorated, imprinted or specialty pencils,[8] drafting pencils, pencil blanks,[9] and raw pencils. Commerce determined that these imported items constitute a single class or kind of merchandise.[10]

B. Like Product Analysis for this Final Investigation

In the preliminary determination and in our recent determination with respect to the companion investigation of cased pencils from Thailand, we found a single like product, consisting of all cased pencils.[11] We discussed in detail the issue of like product with respect to the scope of imports Commerce defined in the Thailand investigation. The scope of imports defined by Commerce in this investigation is identical; thus, our analysis in the earlier determination is equally germane to imports from China and we adopt that analysis and finding.[12] Accordingly, based on the similarity of physical characteristics and uses, interchangeability, similarity of channels of distribution, and use of common manufacturing facilities and production employees, we find that all domestically produced cased pencils are like the imports under investigation from China.[13]

In the preliminary determination, the Commission applied its "semifinished/finished products" analysis and determined that a "raw pencil" is an unfinished cased pencil; it is "a cased pencil that is unsharpened, unpainted, and untipped." We included raw pencils within the like product definition of all cased pencils.[14] We see no reason to deviate from this

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[7] 59 Fed. Reg. 55625 (Nov. 8, 1994) (Notice of Final Determination of Sales at Less Than Fair Value -- China); see also 59 Fed. Reg. 30911 (June 16, 1994) (Notice of Preliminary Determination of Sales at Less Than Fair Value -- People's Republic of China) (same language).

Two producers in China were found not to be dumping, and pencils from those two firms are not included as subject product.

[8] These pencils are specially imprinted, decorated with characters, designs, and shapes, such as having a "Beavis and Butthead" caricature embossed on the pencil, or are tipped with a novelty item, such as a "troll head." Confidential Report ("CR") at I-78 n.89, I-80, Public Report ("PR") at II-47 n.89, II-48 n.89; Preliminary Investigation Conference Transcript at 84-85.

[9] Pencil blanks are the next stage of production beyond raw pencils. Blanks are lacquered and sometimes have a ferrule and eraser. CR at I-6, PR at II-4. Producers sell blanks to advertising firms that embellish the pencils with special logos or advertisements.

[10] 59 Fed. Reg. 55625 (Nov. 8, 1994) (Notice of Final Determination of Sales at Less Than Fair Value -- China).

[11] Certain Cased Pencils from the People's Republic of China and Thailand, Inv. Nos. 731-TA-669 & 670 (Preliminary), USITC Pub. 2713 at I-5 - I-7 (Dec. 1993); Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at I-5 - I-7 (Oct. 1994).

[12] E.g., Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at I-5 - I-7 (Oct. 1994). The record evidence on this issue in the Thailand investigation is the same as in the current investigation.

[13] E.g., Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at I-5 - I-7 (Oct. 1994).

[14] The Commission applies the "semifinished/finished products" analysis to determine whether domestically-produced semifinished and finished products are a single like product. The Commission has modified the analysis slightly since its application in the preliminary investigation. Under the modified "semifinished/finished products" analysis, the Commission examines the following five factors:

(continued...)

finding in this final investigation as no new evidence on the record of this final investigation provides a basis to reach a different conclusion.[15]

Domestically produced raw pencils exist only in a production stream for finished cased pencils and are dedicated to the production of downstream, further finished cased pencils.[16] There is no market for domestically produced raw pencils.[17] Although the physical characteristics of raw and finished cased pencils differ slightly in that the latter are lacquered and may contain a ferrule and an eraser,[18] both items can act as hand held writing instruments and can perform the same function -- writing. Because wood comprises the largest input cost for both raw pencils and finished cased pencils, the cost or value differences between the articles is not large for most domestic producers, with the exception of non-commodity or decorated pencil producers, which can have somewhat higher finishing costs.[19] Although the processes used to transform raw pencils into finished non-commodity or decorated pencils can involve a degree of technical expertise and a variety of processing steps,[20] these processes are not significant or extensive and do not lead us to define raw pencils as a separate like product from cased pencils.[21]

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[14] (...continued)

(1) whether the upstream article is dedicated to the production of the downstream article or whether it has independent uses;
(2) whether there are perceived to be separate markets for the upstream and downstream articles;
(3) differences in the physical characteristics and functions of the upstream and downstream articles;
(4) differences in the costs or value of the vertically differentiated articles; and
(5) significance and extent of the processes used to transform the upstream into the downstream articles.

See Stainless Steel Bar from Brazil, India, Italy, Japan, and Spain, Inv. Nos. 731-TA-678 through 682 (Preliminary), USITC Pub. 2734 at I-11 - I-12 (Feb. 1994). The modifications in the analysis since the preliminary determination have not altered our conclusion and even under the earlier analysis our conclusion would be the same as no new evidence has arisen since the preliminary determination to change the finding made there.

[15] We note that no party to this final investigation argues that the Commission should change this finding. See Petitioner's Prehearing Brief at 2-10; Petitioner's Responses to Commission Questions at 1-2; Hearing Transcript ("Tr.") at 121, 124-125.

[16] CR at I-6 - I-10, PR at II-4 - II-7; Pentech's Posthearing Statement at 8; Tr. at 152.

[17] Subject imports are not sold on the open market other than to manufacturers (such as Pentech) that further process them. Pentech's Posthearing Statement at 8; Tr. at 152. Domestically produced raw pencils are not sold on the open market, and U.S. manufacturers of raw pencils consume them captively to manufacture finished pencils. Pentech's Posthearing Statement at 8; Tr. at 152 (Mr. Kalin); Preliminary Investigation Conference Transcript at 91 (Jorgenson).

[18] CR at I-6, PR at II-4; Preliminary Investigation Conference Transcript at 17-18 (Dahlberg). Without lacquer, raw pencils can warp when exposed to moisture; however, warping is not likely to eliminate the ability to use a raw pencil as a writing instrument. See Tr. at 58-61.

[19] See CR at I-44 - I-49, I-51, PR at II-26, II-27, Table 10. Decorated pencil operations undergo a process that uses multi-colored printing presses and, sometimes, foil application machinery. Pentech Preliminary Investigation Postconference Brief at 4; see Preliminary Investigation Report at I-9 - I-10. The processing Pentech performs on raw pencil imports accounts for a large percent of the total value of the decorated pencils it sells. Id. at I-23 n.40; see also Pentech Preliminary Investigation Postconference Brief at 5-6, 16. Processing "commodity" yellow pencils, by contrast, merely involves lacquering, a process that does not add substantial value to the pencil. CR at I-6 - I-10, I-80 - I-81 & n.96, PR at II-4 - II-7, II-47 - II-48 & n.96. Most U.S. production is of commodity pencils.

[20] See Certain Cased Pencils from Thailand, USITC Pub. 2816 at I-7 - I-9 (discussing the extent of Pentech's finishing operations performed on raw pencils).

[21] CR at I-6 - I-10, PR at II-4 - II-7; Tr. at 16, 21-23, 122, 152-53.

II. DOMESTIC INDUSTRY

A. In General

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."[22]

In light of our like product determination, we find that there is a single domestic industry comprising the domestic producers of all cased pencils.

As in the preliminary investigations and in the final investigation with respect to imports from Thailand, petitioners argue in this final investigation that Pentech's processing operations for decorated pencils do not constitute pencil production.[23] In our determination with respect to imports from Thailand, we discussed and analyzed in detail the significance of Pentech's domestic operations. We adopt that analysis in this investigation.[24] In summary we find Pentech's operations to be domestic production because Pentech employs a substantial amount of capital, labor, and technical sophistication to add significant value to the raw pencils that it imports.

B. Related Parties

The related parties provision, 19 U.S.C. § 1677(4)(B), permits exclusion of certain domestic producers from the industry. The provision involves a two-step inquiry. The Commission first determines whether a producer satisfies the statutory definition of a related party as a domestic producer who is either related to exporters or importers of the product under investigation, or is itself an importer of that product.[25] Second, the Commission may exclude such a related party from the domestic industry if it finds that "appropriate circumstances" exist.[26] Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.[27] Pentech imported raw pencils and finished cased pencils from China over the period of investigation.[28] Therefore Pentech is a related party, and we consider whether appropriate circumstances exist to exclude it from the domestic industry.

1. Whether Appropriate Circumstances Exist to Exclude Pentech[29]

Petitioners contend that Pentech is a related party and should be excluded from the domestic industry. Their principal argument is that Pentech imports LTFV raw pencils from

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[22] 19 U.S.C. § 1677(4)(A).

[23] Petitioners arguments appear in their Posthearing Response to Commission Questions at 10-14, 16-18, their Postconference Brief from the preliminary investigation at 14-16, and in their hearing testimony, Tr. at 16, 123-24, 173-74, 175-76.

[24] E.g., Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at I-7 - I-9 (Oct. 1994).

[25] The Commission may also consider whether a party is "related" by virtue of a special relationship with an importer or control of the purchase of large volumes of imports. See Fresh Garlic from China, Inv. No. 731-TA-683 (Preliminary), USITC Pub. 2755 (Mar. 1994), at I-14.

[26] 19 U.S.C. § 1677(4)(B).

[27] See Torrington Co. v. United States, 790 F. Supp. at 1168.

[28] CR at I-20 - I-21, PR at II-12 - II-13.

[29] Commissioner Crawford does not join this discussion. See her discussion of this issue in her dissenting views infra.

China solely to gain a cost advantage over other domestic producers. Petitioners further contend that, because Pentech imports subject merchandise, its financial performance is better than the remainder of the domestic industry and that its inclusion in the industry would skew the financial indicators.[30] Pentech argues against exclusion. It contends that it was compelled to import raw pencils because it could not secure a satisfactory domestic source of low-cost wood or raw pencils from which to produce its decorated pencils.[31]

In the preliminary determination, the Commission excluded Pentech from the domestic industry because its imports shielded it from the negative effects of the subject imports in a manner that was unique among U.S. producers.[32] The Commission corroborated this conclusion with the firm-specific financial data on record in the preliminary investigations.[33]

We note that Pentech imported a substantial volume of pencils from China and that it was responsible for an increasing percentage of total Chinese imports over the period of investigation.[34] Pentech accounted for less than 10 percent of domestic cased pencil production in 1992 and 1993.[35]

Pentech's comments[36] show that it made a conscious decision to use a growing percentage of total LTFV imports from China as production inputs in order to minimize its production costs, and thereby maximize its profits. Therefore Pentech has benefited from LTFV imports and has shielded itself from the negative effects of those LTFV imports. A comparison of Pentech's financial performance with that of other domestic pencil producers supports this conclusion.[37] Moreover, Pentech's inclusion in the industry would inflate financial performance indicators.[38] For these reasons, we find that appropriate circumstances exist to exclude Pentech from the domestic industry as a related party.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the domestic industry.[39] These factors include output, sales, inventories, capacity

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[30] Petitioners' Prehearing Brief at 20-23.

[31] Pentech's Posthearing Statement at 3-7.

[32] USITC Pub. 2713 at I-10 (relying on testimony of Pentech's chief executive officer in Preliminary Investigation Conference Transcript at 123, 125, 127-28, 165).

[33] Id. (citing Preliminary Investigation Report Table 9, at I-34-37).

[34] Pentech imported *** percent of all LTFV imports from China in 1991, *** percent in 1992 and *** percent in 1994, *** percent in interim 1993, and *** percent in interim 1994. See Office of Investigations Memorandum INV-R-197 (Dec. 5, 1994).

[35] CR at I-27, I-21 n.33, PR at II-13 n.33, Table 2.

[36] See Tr. at 121, 126-27, 155-162; Pentech's Posthearing Statement at 3-7, 11; Preliminary Investigation Conference Transcript at 123, 125, 127-28, 165; see also Chinese Respondents' Posthearing Brief at 1-3.

[37] See CR at I-45 - I-48, PR at II-27 - II-30, Table 10.

[38] See CR at I-16 - I-21, I-38 - I-55, C-2 - C-10, PR at II-8 - II-13, II-22 - II-34, C-3 - C-6, and accompanying tables; INV-R-188 (Nov. 30, 1994).

[39] 19 U.S.C. § 1677(7)(C)(iii). We have received additional data in this investigation since our decision with respect to Thailand. Moreover, we have excluded Pentech from the domestic industry as a related party. Therefore, the data discussed in this determination differ from those discussed in the determination with respect to imports from Thailand. Much of the discussion is confidential, and we have deleted the confidential data in the footnotes from the public version of this determination.

All data referred to in the condition section of the determination are summarized in confidential memorandum, INV-R-188 (November 30, 1994) at B-6, Table B-2 (summarizing data for the domestic industry excluding Pentech), unless otherwise specifically noted.

utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[40]

In examining the condition of the domestic pencil industry, we are mindful that this industry is mature and recently has gone through restructuring involving certain producers acquiring others.[41] We also note that the industry historically has produced commodity pencils but recently has produced larger percentages of non-commodity pencils. Moreover, demand is responsive to changes in population, primarily in the school-age population category.[42] Purchasers and producers are not likely to discover any new uses in the future for pencils that will greatly increase demand.[43]

Cased pencils are sold in the United States to a variety of customers, including distributors/wholesalers, retailers, office suppliers, office supply superstores, school suppliers, government, mail order catalogues, and advertisement specialty dealers.[44] The office supply market segment has been the most profitable for U.S. producers.[45] Recently, this segment has changed, experiencing a shift from small, regional distributors to nationwide catalogue wholesalers or superstores.[46]

Apparent U.S. consumption of cased pencils by quantity[47] increased 10.1 percent from 1991 to 1993 and was 3.7 percent higher in interim period (January-June) 1994 than in interim period (January-June) 1993.[48] Consumption by value increased 23.8 percent from 1991 to 1993, and was 3.8 percent higher in interim 1994 than in interim 1993.[49]

Domestic production of cased pencils increased 4.7 percent from 1991 to 1993, but declined 15.7 percent when comparing interim 1994 with interim 1993.[50] Domestic capacity to produce cased pencils increased 7.4 percent from 1991 to 1993, but was 1.8 percent lower in interim 1994 compared to interim 1993.[51] The industry's capacity utilization rate for cased

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[40] 19 U.S.C. § 1677(7)(C)(iii).

[41] CR at I-13, I-16 - I-21, PR at II-8 - II-13; Tr. at 45, 54.

[42] CR at I-13 & n.20, I-78; PR at II-8 & n.20, II-47; Final Economic Memorandum EC-R-100 at 12-13 (Sept. 30, 1994); Tr. at 30, 36, 81.

[43] Tr. at 30 (statement of Mr. Spies, Senior Vice President of Berol Corporation).

[44] Economics Memorandum EC-R-100 at 5-6 (Sept. 30, 1994).

[45] Id. at 6.

[46] Id. at 7; Tr. at 35, 102, 104-105.

[47] Pencil quantities are measured in gross. A gross contains 12 dozen (144) pencils.

[48] Consumption was *** gross in 1991, slightly less than *** gross in 1992, and slightly more than *** gross in 1993. Consumption in interim 1994 was *** gross, compared with *** gross in interim 1993. As noted above, data referred to in the condition section of this determination are summarized in INV-R-188 (November 30, 1994) at B-6, Table B-2 (summarizing data for the domestic industry excluding Pentech).

[49] Consumption by value was *** in 1991, *** in 1992, and *** in 1994. In interim 1994, consumption by value was *** compared with *** in interim 1993.

[50] Domestic production was *** gross in 1991, *** gross in 1992, and *** gross in 1993. In interim 1994, production was *** gross compared with *** gross in interim 1993.

[51] Production capacity was almost *** gross in 1991, *** gross in 1992, and *** gross in 1993. In interim 1994, capacity was *** compared with *** in interim 1993.

pencils decreased 2.0 percentage points from 1991 to 1993, and was 11.2 percentage points lower in interim 1994 compared with interim 1993.[52]

The domestic industry's U.S. shipments of cased pencils by quantity decreased 7.6 percent from 1991 to 1993, and was 6.4 percent lower when comparing interim 1994 with interim 1993.[53] U.S. shipments of cased pencils by value followed a different pattern, increasing 9.2 percent from 1991 to 1993, but were 1.5 percent lower in interim 1994 compared with interim 1993.[54] Exports of cased pencils by the domestic industry as a share of total shipments increased 3.8 percentage points from 1991 to 1993, but were 25.0 percent lower in interim period 1994 than in interim 1993.[55] The domestic industry reported an increase in end-of-period inventories of cased pencils of 32.9 percent from 1991 to 1993, and an increase of 2.4 percent when comparing interim 1994 to interim 1993. Inventories as a share of U.S. shipments increased 5.8 percentage points from 1991 to 1993 and were 2.3 percentage points higher in interim 1994 compared with interim 1993.[56]

Employment of production and related workers (PRWs) in the domestic cased pencils industry declined overall by 3.4 percent from 1991 to 1993, and was 12.3 percent lower in interim period 1994 than in interim period 1993. Hours worked increased by 13.7 percent from 1991 to 1993, but were 13.6 percent lower in interim 1994 than in interim 1993. From 1991 to 1993, total compensation increased 22.1 percent, but was 12.4 percent lower in interim 1994 compared to interim 1993. Hourly total compensation increased 7.4 percent from 1991 to 1993 and was 1.4 percent higher in interim 1994 compared to interim 1993.

Net sales values increased in each calendar year, rising 13.0 percent from 1991 to 1993, but was 2.9 percent lower in interim 1994 compared with interim 1993.[57] Gross profits increased 13.1 percent from 1991 to 1993 but declined 5.9 percent when comparing interim 1994 with interim 1993.[58] The industry experienced operating losses each calendar year and during both interim periods over the period of investigation.[59] The operating income margin (ratio of operating income to net sales) decreased 1.8 percentage points from 1991 to 1993 but increased 1.9 percentage points when comparing interim 1994 with interim 1993.[60]

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[52] Capacity utilization was *** percent in 1991, *** percent in 1992, and *** percent in 1993. In interim 1994, capacity utilization was *** percent compared with *** percent in interim 1993.

[53] Domestic shipments were *** gross in 1991, almost *** gross in 1992, and *** gross in 1993. Domestic shipments were *** gross in interim 1994 as compared with *** gross in interim 1993.

[54] Domestic shipments by value were *** in 1991, *** in 1992, and almost *** in 1993. Domestic shipments were *** in interim 1994 compared with *** in interim 1993.

[55] Export shipments were *** gross in 1991, *** gross in 1992 and *** gross in 1993. In interim period 1994, export shipments were *** gross in interim 1994 compared with *** gross in interim 1993.

[56] Inventories as a share of U.S. shipments were *** percent in 1991, *** percent in 1992, and *** percent in 1993. Inventories were *** percent in interim period 1993 compared with *** percent in interim period 1994.

[57] Net sales values were *** in 1991, *** in 1992, and almost *** in 1993. Net sales value was *** in interim 1994 compared with *** in interim 1993.

[58] Gross profits were *** in 1991, *** in 1992, and *** in 1993. Gross profits were *** in interim 1994 compared with *** in interim 1993.

[59] Data show *** in 1991, *** in 1992, and *** in 1993. In interim 1994, the industry experienced *** compared with *** in interim 1993.

[60] The operating income margin was *** percent in 1991, *** percent in 1992, but *** percent in 1993. The margin was *** in interim 1994 as compared with *** percent in interim 1993.

Cost of goods sold increased 13.0 percent from 1991 to 1993 but was 2.1 percent lower in interim 1994 when compared with interim 1993.[61] The cost of goods sold as a ratio to net sales was unchanged in 1991, 1992, and 1993, but was slightly higher in interim 1994 than in interim 1993.[62] The unit cost of goods sold increased 18.2 percent from 1991 to 1993, and was 7.2 percent higher in interim 1994 than in interim 1993.[63] Selling, general and administrative expenses increased 23.7 percent from 1991 to 1993 but were 14.0 percent lower in interim 1994 than interim 1993.[64] Capital expenditures increased 51.2 percent from 1991 to 1993 but were 5.7 percent lower in interim 1994 compared with interim 1993.[65] [66] [67]

IV. CUMULATION

In this investigation, we have not cumulated cased pencil imports from China with imports from Thailand.[68] Although petitioners filed the petition underlying this investigation simultaneously with the petition in Certain Cased Pencils from Thailand,[69] we determined in the final investigation with respect to imports from Thailand that cumulation of imports from Thailand and China was inappropriate because subject imports from Thailand were negligible, and we reached a negative determination with respect to imports from Thailand.[70] Imports from Thailand are no longer "subject to investigation" as of vote day for this investigation because of the Commission's negative determination in Certain Cased Pencils from Thailand.[71]

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[61] Cost of goods sold was *** in 1991, *** in 1992, and *** in 1993. Cost of goods sold was *** in interim 1994 compared with *** in interim 1993.

[62] The cost of goods sold as a ratio to net sales was *** percent in 1991, 1992, and 1993, and was *** percent in interim 1994 compared with *** percent in interim 1993.

[63] Unit costs of goods sold per gross was *** in 1991, *** in 1992, and *** in 1993. Unit costs of goods sold was *** in interim 1994 compared with *** in interim 1993.

[64] Selling, general and administrative expenses were *** in 1991, *** in 1992, and *** in 1993. These expenses were *** in interim 1994 compared with *** in interim 1993.

[65] Capital expenditures were *** in 1991, *** in 1992, and *** in 1993. Capital expenditures were *** in interim 1994 compared with *** in interim 1993.

[66] Only one firm reported research and development expenses, and its expenses ***. CR at I-55, PR at II-33, Table 13.

[67] Based on the foregoing, Commissioner Rohr and Commissioner Newquist determine that the domestic industry is experiencing material injury.

[68] Generally, in determining whether there is material injury by reason of the LTFV imports, the Commission is required to assess cumulatively the volume and effect of imports from two or more countries subject to investigation if such imports "compete with each other and with like products of the domestic industry in the United States market." 19 U.S.C. § 1677(7)(C)(iv)(I). Cumulation is not required, however, when imports from a subject country are negligible and have no discernible adverse impact on the domestic industry. 19 U.S.C. § 1677(7)(C)(v).

[69] The Commission conducted the preliminary investigations simultaneously. Inv. Nos. 731-TA-669 & 670 (Preliminary), USITC Pub. 2713.

[70] See Certain Cased Pencils from Thailand, USITC Pub. 2816 at I-11 - I-16.

[71] See 19 U.S.C. § 1677(7)(C)(iv)(I); Chaparral, 901 F.2d at 1104 (Commission cannot cumulate imports unless imports are subject to investigation as of vote day).

As we found in the investigation with respect to Thailand, we again conclude in this final investigation that the census data we have examined constitute the best information available on import volumes and market share and we adopt the reasoning of the determination of imports from Thailand on this issue. See USITC Pub. 2816 at I-15 n.82.

ADDITIONAL VIEWS OF CHAIRMAN WATSON AND COMMISSIONER BRAGG[1]

I. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.[2] The Commission must consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.[3]

Although the Commission may consider alternative causes of injury to the industry other than the LTFV imports, it is not to weigh causes.[4] [5] For the reasons discussed below, Chairman Watson and Commissioner Bragg find that the domestic cased pencils industry is not presently materially injured by reason of LTFV imports from China.

In first addressing volume, LTFV imports of cased pencils from China increased by quantity from *** in 1991 to almost *** in 1993.[6] Imports rose from *** in interim 1993 to almost *** in interim 1994.[7] The market share of subject imports from China increased as well, rising from *** percent in 1991 to *** percent in 1993. Subject imports also rose from *** percent of the market in interim 1993 to *** percent of the market in interim 1994. Chinese imports have historically been low value, commodity pencils directed to the mass market.[8] However, recently, those imports have been sold increasingly in the office supply segment of the market, a segment in which the domestic industry had been able to obtain higher prices for its pencils.[9] LTFV imports from China have also increasingly included non-commodity, decorated pencils,[10] products that the domestic industry had traditionally been able to sell at a higher price.[11] We find the volume of LTFV of cased pencils from China, and particularly the increase in that volume over the period, to be significant. However, the lack of significant price effects or of an adverse

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[1] We join the preceding views of the Commission and present these additional views for our analysis of material injury, threat, and the effect of suspension of liquidation of imports by Commerce.

[2] 19 U.S.C. § 1673d(b).

[3] 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." Id.

[4] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[5] For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

[6] See Office of Investigations Memorandum INV-R-189, Table B-2 at B-6 (Nov. 30, 1994) (correcting Table B-1, at B-3 in INV-R-184 (Nov. 23, 1994)).

[7] See id.

[8] Economics Memorandum EC-R-100 at 5-7 (Sept. 30, 1994).

[9] INV-R-197 (Dec. 5, 1994); CR at I-64, PR at II-38, Figure 8; Tr. at 33-36.

[10] See INV-R-197 (Dec. 5, 1994); CR at I-64, PR at II-38, Figure 8; Tr. at 33-36.

[11] Economics Memorandum EC-R-100 at 5-7 (Sept. 30, 1994); CR at I-78 - I-86, PR at II-47 - II-50.

impact by the subject imports leads us to ultimately conclude that there is no material injury by reason of those imports.

As stated, we find no significant adverse price effects in this industry.[12] Chinese pencils nominally undersold the domestic product in 41 out of 42 price comparisons for which the Commission collected pricing data. However, we do not find the underselling to be significant. The underselling is a reflection in part of the lower quality of Chinese pencils, which is recognized in the market.[13] Moreover, because Chinese imports have been concentrated in the mass market segment where their lower quality has been recognized, the observed underselling has not prevented the domestic industry from receiving high prices for its higher quality commodity pencils and non-commodity pencils or prevented domestic producers from receiving higher prices in the office supply segment of the market.[14] Further, despite underselling by LTFV imports, the domestic industry during the period of investigation was able to compete with LTFV imports, even on high end commodity pencils, as purchasers have based their decisions to purchase domestic pencils on non-price factors, such as quality, reliability or availability of supply, brand reputation, delivery times, or other factors.[15]

Price trends varied depending on the supplier, type of purchaser, and the pencil type, i.e., either commodity pencils sold to retail outlets or wholesalers and office supply superstores, or raw or colored pencils.[16] The domestic industry generally has been able to maintain higher prices and has not foregone price increases to a significant degree, particularly with respect to the high end, higher quality, or non-commodity pencils and in the office supply market, in which the domestic industry is dominant.[17] Accordingly, we find that Chinese pencils did not suppress or depress U.S. prices to a significant degree.

Finally, we consider the impact of subject imports from China on the domestic industry producing cased pencils. In this investigation, we find that subject imports from China did not have an adverse present impact on the domestic industry over the period. We

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[12] CR at I-81 - I-94, PR at II-48 - II-52 and accompanying Tables and Figures. We note that because our pricing data were gathered and compiled before the final LTFV determination concerning imports from China by Commerce, in which imports from two Chinese companies were found not to be dumped, they include a small quantity of non-LTFV product data. This is the smallest group or category of products that includes the subject merchandise for which pricing data are available.

[13] See CR at I-22 - I-23, I-94 - I-98, I-100 - I-104, PR at II-13 - II-14, II-53 - II-54; Economics Memorandum EC-R-089 (Aug. 23, 1994); Economics Memorandum EC-R-100 23-27 (Sept. 30, 1994).

[14] Economics Memorandum EC-R-100 at 5-7; CR at I-65, I-78 - I-82, I-87 - I-94, PR at II-38, II-47 - II-49, II-51 - II-53, Figure 8

[15] CR at I-94 - I-98, PR at II-53 - II-54; Economics Memorandum EC-R-100 at 25-27 (Sept. 30, 1994); Tr. at 33, 35, 50-52, 64-66, 69-71, 73-74, 146, 148, 171-73, 182; see also Pentech's Prehearing Statement at 11. As noted in our section on threat of material injury by reason of LTFV imports, non-price factors are no longer as important in purchasing decisions as they have been in the past and support our affirmative threat finding.

[16] See CR at I-81 - I-94, PR at II-48 - II-52 and accompanying Tables and Figures.

[17] Economics Memorandum EC-R-100 at 6-7 (Sept. 30, 1994); Tr. at 33-36. Prices for commodity pencils range significantly depending on the quality of the pencil, prices for specialty/decorated pencils will also range depending on the complexity of the specific design or type of topper attached. CR at I-81 - I-82, PR at II-48 - II-49. Moreover, U.S. producers did not make allegations of lost revenues but rather reported that they did not reduce prices or roll back announced price increases because of the imported products from China. CR at I-100 & n.119, PR at II-56 & n.119.

note at the outset that production, capacity, value of shipments/net sales, exports, gross profits, and capital expenditures increased from 1991 to 1993.[18]

The domestic industry has relied heavily on sales to the office supply segment of the market, in which it has been able to receive higher prices for its pencils.[19] The domestic industry also has substantially produced and sold higher cost, high end pencils, such as non-commodity pencils or higher quality commodity pencils, rather than relying on sales of the low end products like suppliers of Chinese pencils.[20] Increasing raw material costs, higher labor costs, and higher selling expenses all contributed to declining operating income over the period of investigation.[21] We cannot, however, attribute the declining operating income to LTFV imports from China when the facts show that the combination of the higher costs for high end commodity pencils and the move to higher cost non-commodity pencils are the reason for the declining operating income. Although the production costs of non-commodity pencils are higher, these costs are more than offset by the increased unit values of these pencils, thereby making them a more profitable product for the domestic industry.[22] The domestic industry's profitability has been sustained by its concentration in sales of these products and sales at higher prices in the office supply segment of the market.[23]

II. THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

Section 771(7)(F) of the Act directs us to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[24] We do not make such a determination "on the basis of mere conjecture or supposition."[25] In making our determination, we have considered all of the statutory factors that are relevant to this investigation.[26]

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[18] Although these indicators generally declined slightly when comparing interim 1993 to interim 1994, we place less weight on the indicators during these periods than the full year data.

[19] Economics Memorandum EC-R-100 at 6-7 (Sept. 30, 1994); CR at I-78 - I-82, PR at II-47 - II-49; Tr. 33-35.

[20] CR at I-44 - I-51, C-4 - C-10, PR at II-26 - II-30, C-5 - C-6, Tables C-2 - C-7. High end pencils have a better quality wood casing, ferrule, and eraser, and have a smoother lead. The lower quality and lower value pencil is a low-end, standard, yellow No. 2 pencil. CR at I-82, PR at II-49.

[21] See CR at I-6 - I-10, I-44 - I-51, I-80 - I-81, C-6 - C-9, PR at II-4 - II-7, II-26 - II-27, II-47 - II-48, Tables C-3 - C-6.

[22] CR at C-6 - C-9, PR at C-5 - C-6, Tables C-3 - C-6. SG&A expenses for non-commodity pencils are also higher due to, inter alia, increased packaging and rapping costs. See id; see also, e.g., Pentech Preliminary Investigation Postconference Brief at 4-10; Preliminary Investigation Conference Transcript at 126-27, 139-140; PMA Preliminary Investigation Postconference Brief at 14-16.

[23] See INV-R-188 Table B-2 at B-8 (Nov. 30, 1994); Economics Memorandum EC-R-100 at 5-7 (Sept. 30, 1994); Tr. at 33-36.

[24] 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

[25] 19 U.S.C. § 1677(7)(F)(ii).

[26] 19 U.S.C. § 1677(7)(F)(i). In addition, we must consider whether antidumping findings or remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. § 1677(7)(F)(iii). Three statutory threat factors have no relevance to this investigation. Threat statutory factory (I) is not applicable in this investigation because no subsidies are alleged. Factor VIII on product shifting is not an issue because there is no evidence that foreign manufacturers of cased pencils produce any other products currently under investigation or subject to an order. Factor IX is inapplicable because this case does not involve a raw or processed agricultural product.

We note that the changing cost structure of the domestic industry discussed above currently places the industry in a vulnerable position. Recent increases in imports of Chinese pencils, particularly non-commodity pencils, and increased purchases of Chinese pencils in the office supply segment of the market pose a threat of material injury by reason of Chinese LTFV imports.

Although there is no known substantial underutilized capacity in China, it is likely that current or future increases in production will lead to significant increases in LTFV imports from China. Production is much less costly in China than in the United States and Chinese producers have the ability to obtain inexpensive basswood or lindenwood for pencil production in virtually unlimited quantities.[27] Chinese production is also highly labor intensive.[28] Therefore, producers could easily expand pencil production merely by adding labor to their operations and obtaining additional supplies of the wood.[29]

Although capacity utilization rates are high for the two reporting Chinese producers found to be dumping, they could shift existing capacity to the production of decorated pencils from production of low end, commodity pencils.[30] As this is the market in which the most profitable domestic sales are concentrated, this shift would adversely impact the domestic industry.

As noted above, LTFV imports of cased pencils from China were significant and increased rapidly from 1991 to 1993 and from interim 1993 to interim 1994.[31] The market share of subject imports from China was similarly significant and by quantity increased rapidly from 6.4 percent in 1991 to 18.9 percent in 1993 and from 14.9 percent in interim 1993 to 28.7 percent in interim 1994.[32] Recently, purchasers in the office supply segment of the market have been purchasing increasing volumes of lower priced Chinese imports. These sales have come at the expense of the domestic industry, which had relied on the office supply market because of the higher price it could receive in this segment. Moreover, recently LTFV imports from China increasingly have been non-commodity, decorated pencils,[33] which is a product that the domestic industry had traditionally been able to sell at a higher price. These two changes in the pattern of import volumes and market share are all the more significant in light of the shift to a higher cost structure which has placed the domestic industry in a vulnerable position.[34]

LTFV exports from China to the United States were at high levels and increased rapidly from 1991 to 1993. As a share of total Chinese shipments, Chinese exports to the United States increased considerably from 1991 to 1993 and from interim 1993 to interim 1994.[35] Moreover, orders for Chinese produced LTFV cased pencils scheduled for arrival in

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[27] CR at I-61 - I-64, PR at II-37 - II-38.

[28] Id.

[29] CR at I-61, PR at II-37; Tr. at 91-92.

[30] See INV-R-184 Table C-1 (Nov. 23, 1994). We note that capacity utilization data are of limited value in this investigation because only two Chinese producers that Commerce found to be dumping reported production and capacity data, and the Chinese firms that were found to be dumping and that reported data on their exports to the United States only comprise 31 percent of total LTFV imports from China in 1993. Compare INV-R-184 Table C-1 (Nov. 23, 1994) with id. Table B-1.

[31] See Office of Investigations Memorandum INV-R-189, Table B-2 at B-6 (Nov. 30, 1994) (correcting Table B-1, at B-3 in INV-R-184 (Nov. 23, 1994)).

[32] Id.

[33] INV-R-197 (Dec. 5, 1994); CR at I-64, PR at II-37, Figure 8; Tr. at 33-35, 51-52, 104-105.

[34] Economics Memorandum EC-R-100 at 5-7 (Sept. 30, 1994); CR at I-78 - I-86, PR at II-47 - II-50; Tr. at 33, 35, 51-52, 104-105.

[35] Compare INV-R-184 Table C-1 (Exports to U.S.: Group A divided by Total shipments: Group A) (Nov. 23, 1994) with id. Table C-1 (Shipments: Home Market, Group A divided by Total Shipments: Group A). Chinese imports increased from *** percent of total shipments in 1991 to almost *** percent in 1993, and increased from *** percent in interim 1993 to *** percent in interim 1994.

the United States from July through September 1994 were significant.[36] In addition, the Chinese home market shipments as a percentage of total shipments have decreased over the period of investigation, while the percentage of shipments to the U.S. market has increased over the same period.[37] These trends indicate that LTFV imports from China increasingly will be directed to the U.S. market and that the rapid increase of imports from China poses a threat of material injury to the domestic industry.

As noted above, the domestic industry has been able to maintain its sales performance, mitigate the effects of increased costs, and maintain its profitability by concentrating on sales of non-commodity pencils, and relying on sales in the office supply segment of the market. Due to increased production and selling costs, however, the domestic industry's profit margin has begun to decline.[38] Thus, the industry is now more vulnerable to increasing volumes of lower-priced LTFV Chinese imports.

Recent changes in the office supply market indicate a shift from small, regional distributors to nationwide catalogue wholesalers or superstores. This shift has put downward pressure on prices of pencils as larger purchasers are demanding lower prices for the increased quantities of pencils that they are buying.[39] Therefore, recently office supply purchasers are increasingly making their purchasing decisions on price rather than on other non-price factors such as quality, reliability or availability of supply, brand reputation, delivery times, or other factors,[40] thereby making it likely that imports, which undersell domestic products,[41] will have a depressing or suppressing effect on prices of domestically produced pencils.

Although the domestic industry until recently generally has been able to increase prices and maintain net sales value, further increases in the volume of lower-priced Chinese imports, particularly of non-commodity pencils and pencils sold in the office supply segment of the market,[42] will lead to price declines and continued market share losses.[43] As a result of these effects, the domestic industry will no longer be able to continue to pass through price increases to mitigate the effects of its cost increases and maintain profits.[44]

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[36] INV-R-184 Table C-1 (Nov. 23, 1994); see also CR at I-60, PR at II-36.

[37] INV-R-184 Table C-1 (Nov. 23, 1994). In addition, other export markets decreased as a source for Chinese pencils from 1992 to 1993.

[38] See INV-R-188 Table B-2 (Nov. 30, 1994).

[39] See Economics Memorandum EC-R-100 at 6-7 (Sept. 30, 1994); Tr. at 33-36, 102, 104-105.

[40] CR at I-94 - I-98; Economics Memorandum EC-R-100 at 6-7, 25-27 (Sept. 30, 1994); Tr. at 33-36, 50-53, 64-66, 69-71, 73-75, 102, 104-105, 146, 148, 171-73, 182; see also Pentech's Prehearing Statement at 11.

[41] See, supra, section on price effects in the section on material injury above.

[42] Evidence shows that the imported and domestic product are relatively substitutable. See EC-R-100 at 22, 35 (Sept. 30, 1994); Tr. at 28, 32-35,84-85.

[43] This impact also likely forces a shift of domestic production and sales away from the higher cost and higher value added products (high quality commodity pencils and decorated pencils) to the low end products (low quality, low cost, and low value commodity pencils) where purchasers purchase primarily on price and where Chinese products already have a significant presence and undersell domestically produced pencils. Such a shift will increase the importance of price alone and increase the downward price pressure in on commodity pencils, forcing competition in a way the domestic industry cannot compete.

[44] See Tr. at 33-36, 51-52, 104-105; CR at I-78- I-86, PR at II-47 - II-50; Economics Memorandum EC-R-100 at 5-7 (Sept. 30, 1994).

The Commission does not have separate data on importers' LTFV and non-LTFV end-of-period inventories.[45] End-of-period inventories of cased pencil imports from China were significant and rose 317 percent from 1991 to 1993 and were 310 percent higher in interim 1994 than interim 1993.[46] Inventories as a share of imports (LTFV and non-LTFV) were high during the period and rose from 29 percent in 1991 to 33 percent in 1993 and were at their highest level in interim 1994, at 73 percent, compared with 35 percent in interim 1993.[47] These high inventory levels support a finding that the subject imports in the United States will have an injurious effect on the U.S. industry, particularly in light of our assessment of the industry.

The Commission must also consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.[48] In April 1994, Mexico imposed a 451 percent dumping duty on pencils imported from China.[49] Although the volume of exports of cased pencils from China to Mexico was not substantial,[50] there is at least some potential for future injury from any diversion of those imports to the United States. These effects would, at a minimum, add to the impact that increased Chinese imports pose for the domestic industry.

Accordingly, we find the domestic industry is threatened with material injury by reason of LTFV imports from China.

III. EFFECT OF SUSPENSION OF LIQUIDATION OF ENTRIES

When the Commission makes a final affirmative determination on the basis of threat, we must make an additional finding as to whether material injury by reason of subject imports would have been found but for the suspension of liquidation of entries of such imports pursuant to 19 U.S.C. § 1673d(b)(4)(B). This finding determines the date of the imposition of duties -- either the date of suspension of liquidation or the date of the publication of the final order.

In this investigation, suspension of liquidation was effective on June 16, 1994, the date of Commerce's publication of its preliminary affirmative determination.[51] As discussed in the section above with respect to no present material injury by reason of LTFV imports, although import volumes from China were significant, imports that entered the United States do not appear to have had any significant price depressing or suppressing effects or to have adversely impacted the domestic industry. The increase in LTFV imports from China after suspension of liquidation was smaller than the increase from 1991 to 1993; therefore, having found no significant price depressing or suppressing effects and no adverse impact on the domestic industry for imports entered from 1991 to 1993, we also find in the negative with respect to whether material injury by reason of LTFV imports after June 16, 1994 would have occurred but for suspension of liquidation by Commerce. We determine that the domestic industry would not have been materially injured by reason of imports of cased pencils from China had there not been a suspension of liquidation.

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[45] Commerce found no dumping by two Chinese companies and excluded them from its order. The Commission's inventory data for imports, gathered before Commerce's order, includes the non-LTFV imports from these two companies. This is the smallest group or category of products that includes the subject merchandise for which data are available.

[46] INV-R-184 Table B-1 at B-4 (Nov. 30, 1994).

[47] Compare id. Table B-1 at B-3 with id. Table B-1 at B-4.

[48] 19 U.S.C. § 1677(7)(F)(iii)(I).

[49] CR at I-63 n.76, PR at II-37 n.76.

[50] See id.; Tr. at 138.

[51] 59 Fed. Reg. 30911 (June 16, 1994).

CONCLUSION

For the reasons discussed above, we find that the domestic industry producing cased pencils is threatened with material injury by reason of LTFV imports from the People's Republic of China.

SEPARATE VIEWS OF COMMISSIONER ROHR AND COMMISSIONER NEWQUIST

We find that the domestic industry producing certain cased pencils is materially injured by reason of imports of such pencils from the People's Republic of China which the Department of Commerce has determined are sold in the United States at less than fair value ("LTFV").

We concur in our colleagues' discussion of like product, domestic industry, and cumulation. Although we largely concur with their discussion of condition of the domestic industry, there are additional points we would like to provide as part of our analysis.

I. CONDITION OF THE DOMESTIC INDUSTRY

In Certain Cased Pencils from Thailand,[1] which was instituted simultaneously with the instant final investigation, we concluded that the domestic industry was experiencing material injury.[2] Nothing has occurred in the intervening months to change our assessment of the condition of the domestic industry. To the contrary, a procedural issue in this investigation -- exclusion of Pentech -- further bolsters that conclusion. Because we have concluded that Pentech benefitted financially by virtue of its imports of the subject imports from China, inclusion of Pentech's data in the Thailand investigation enhanced the relative health of the domestic industry.[3] Thus, the domestic industry in this investigation -- the industry without Pentech -- is in an even more injured condition than in the Thailand investigation.[4]

Accordingly, we find that the domestic industry is experiencing material injury.

II. MATERIAL INJURY BY REASON OF THE LTFV IMPORTS

In determining whether the domestic industry is materially injured by reason of the subject imports, the statute requires that we consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation;
> (II) the effect of imports of that merchandise on prices in the United States for like products; and
> (III) the impact of the imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States.[5]

In making this determination, the statute permits us to consider "such other factors as are relevant to the determination . . . ," including those within the conditions of competition that are distinctive to the affected industry.[6] We are not required to determine that LTFV imports

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[1] Inv. 731-TA-670 (Final), USITC Pub. 2816 (October 1994).

[2] Id. at I-11 n.50.

[3] Pentech could not be excluded in the Thailand investigation because it was not a related party with regard to imports from Thailand.

[4] See, e.g., Report at Table 10, with and without Pentech's data. Unless otherwise specified, references to "Report" denote the public report accompanying Certain Cased Pencils from Thailand,Inv. 731-TA-670 (Final), USITC Pub. 2816 (October 1994).

[5] 19 U.S.C. § 1677(7)(B)(i).

[6] 19 U.S.C. §§ 1677(7)(B)(ii), 1677(7)(C).

are "the principal, a substantial or a significant cause of material injury."[7] Rather, a finding that LTFV imports are a cause of material injury is sufficient.[8]

Imports of LTFV pencils from China[9] increased dramatically throughout the period of investigation, surging by 226% between 1991 and 1993.[10] Imports in interim 1994 (January to June) were nearly twice the level than in the same period 1993.[11] By value, subject imports from China followed a similar trend, increasing from $8.43 million in 1991 to $21.20 million in 1993.[12] The value of imports in interim 1994 was $11.71 million compared with $9.03 million in interim 1993.[13]

Imports of LTFV pencils from China captured a significantly increasing share of total U.S. consumption, by quantity, during the period of investigation, increasing 195% between 1991 and 1993.[14] In interim 1994, China's share of consumption was almost double that for the same period in 1993.[15]

We find the rapid increase in volume, value and market share of imports from China between 1991 and 1993 significant, particularly in light of the relatively small increase in total consumption during the period.

Unfair imports from China have had a demonstrable adverse effect on domestic prices. Throughout the period of investigation, the average unit value of the subject imports declined substantially, from $6.85 per gross in 1991 to $4.56 in 1993.[16] In interim 1994, the average unit value was just $3.40 per gross compared with $5.23 in interim 1993 -- a decline of 35%.[17] Simultaneous with the significant decrease in unit value of the subject imports between the interim periods, unit values of the domestic like product for the same period increased by a margin smaller than any other during the investigation.[18]

U.S. producers and importers of pencils from China provided quarterly sales price data for four types of pencils sold in the U.S. market. Direct price comparisons between the subject imports and the domestic like product were possible for three of the four types. In 41 of 42 comparisons, the subject imports from China undersold the domestic like product by margins ranging between 9.0% and 60.1%.[19] In addition, although there were irregular increases in the selling prices of both the domestic product and the subject imports between quarters, over the entire period of investigation, the broad trend for prices for both declined.[20]

In our view, this is a fairly price-sensitive industry where even a small quantity of unfair imports in the marketplace may have a discernible adverse effect on domestic prices.

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[7] S. Rep. No. 249, 96th Cong., 1st Sess. 57 and 74 (1979).

[8] See, e.g., Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[9] Although the Commission gathered some data concerning imports from Hong Kong (see Report at Table 17), for purposes of this affirmative determination, we have not included such data in our analysis.

[10] INV-R-188 at Table B-2.

[11] Id.

[12] Report at Table 17. The value of imports was obtained from official statistics of the U.S. Department of Commerce. We note that such statistics include a small quantity of fairly traded Chinese product, for which separate data were not available.

[13] Id.

[14] INV-R-188 at Table B-2.

[15] Id.

[16] Report at Table 17.

[17] Id.

[18] INV-R-188 at Table B-2.

[19] Report at Table 21.

[20] Report at Tables 19 and 20.

Purchasers most frequently cited price as one of the three most important factors in purchasing decisions.[21] Moreover, the vast majority of the subject imports are of raw pencils, which compete most directly with standard, black-lead commodity pencils.[22] Finally, as noted in the majority opinion, this is a mature industry producing a commodity product; it is rather unlikely that new uses for pencils will be discovered which will appreciably affect demand.[23]

Thus, we find in light of the price sensitive nature of the market, the falling unit value of the subject import's and their consistent and substantial underselling, that such unfair imports have depressed and suppressed domestic prices to a significant degree.

III. CRITICAL CIRCUMSTANCES

The Department of Commerce has made affirmative critical circumstances findings with respect to subject imports from Shanghai Foreign Trade Corp., Shanghai Lansheng Corp. and all other Chinese pencil manufacturers which were found to be dumping and which did not respond to Commerce's questionnaires. Because it found imports from China First Pencil Co. and Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. to not be dumped, Commerce did not make a critical circumstances determination with respect to these companies. Because we make an affirmative determination that imports from the People's Republic of China are a cause of material injury to the domestic industry, we are required by statute to decide "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[24]

Specifically, an affirmative critical circumstances determination is a finding that, absent retroactive application of the antidumping order for a period of 90 days prior to the suspension of liquidation, the surge of imports that occurred after the case was filed, but before Commerce issued notice of its preliminary determination (June 16, 1994), will prolong or cause a recurrence of material injury to the domestic industry. The relevant 90-day period of time for our inquiry is thus the last 13 days of the month of March 1994, all of April and May and the first 16 days of the month of June. We determine that such retroactive application is necessary.

In evaluating the effectiveness of retroactive application of the duties in preventing a recurrence of material injury, the statute directs us to consider among other factors:

> (I) the condition of the domestic industry;
> (II) whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid the potential imposition of antidumping duties;
> (III) whether foreign economic conditions led to the massive imports of the merchandise;[25] and
> (IV) whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.[26]

Monthly imports of all cased pencils from China, LTFV and non-LTFV, since the petition was filed in November 1993 dropped from November to December 1993, rose

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[21] Confidential Report ("CR") at I-96; Public Report ("PR") at II-53.

[22] CR at I-64, I-81; PR at II-38, II-48.

[23] See I-10.

[24] 19 U.S.C. § 1673d(b)(4)(A)(i).

[25] In these investigations we found that there was not evidence in the record that any foreign economic conditions led to any massive imports.

[26] 19 U.S.C.§ 1673d(b)(4)(A)(iii).

dramatically to an historic high in April 1994, then fell again from May to June 1994.[27] The Commission has no separate data on monthly imports of the Chinese companies determined to have been dumping during the period March 18 through June 16, 1994. However, the data available to the Commission allows for an estimate of the monthly LTFV Chinese imports derived from data on all Chinese imports during the relevant time period, using monthly import statistics covering March through June 1994.[28]

During January-June 1994, LTFV imports comprised roughly 94 percent of all imports from China.[29] Thus, we can estimate LTFV imports from China during March-June 1994 by applying this 94 percent estimate. This method reveals that in late March, April, May and early June 1994, LTFV imports were approximately 292,000 gross[30], 873,000 gross, 312,000 gross and 134,000 gross[31], respectively.[32] This estimate of LTFV imports reveals that LTFV imports during March 18-June 16, 1994 represent approximately 39 percent of combined LTFV imports since the petition was filed in November 1993. Retroactive suspension therefore would likely offset approximately 39 percent of LTFV cased pencil imports since the petition was filed.

In assessing whether there are continuing effects from the surge, we examined the data on U.S. importers' inventories of cased pencils. Reported end-of-period inventories of Chinese-produced cased pencils increased by 50.9 percent from 1991 to 1992, rose by 176.3 percent from 1992 to 1993, and increased by 309.7 percent from interim 1993 to interim 1994. The ratio of inventories to total shipments increased steadily over the period, rising more than 67 percentage points between January-June 1993 to the same period in 1994.[33] More than half of these inventories in 1993 were made up of raw pencils. The vast majority of these inventories of raw pencils went to Pentech which has benefited from LTFV imports. In examining pricing of Chinese cased pencils between March and June 1994, the Commission's pricing analysis reflected underselling by high margins.[34]

For these reasons, we determine that retroactive imposition of antidumping duties appears necessary to prevent recurrence of material injury caused by massive imports of the subject pencils from Shanghai Foreign Trade Corp., Shanghai Lansheng Corp. and all other Chinese pencil manufacturers.

IV. CONCLUSION

Based on the foregoing, we determine that the domestic industry producing certain cased pencils is materially injured by reason of imports of such pencils from the People's Republic of China which are sold in the United States at less than fair value. And we further make affirmative critical circumstances determinations with regard to imports from Shanghai Foreign Trade Corp., Shanghai Lansheng Corp. and all other Chinese pencil manufacturers.

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27 Report at Figure 10.

28 Id.

29 See INV-R-189 (Nov. 30,1994)(correcting INV-R-184 (Nov.23 1994) and Report Table B-1).

30 This represents the final 13 days, or 42 percent, of total LTFV imports during the month of March which, based on the estimate of 94 percent of total imports from China, were almost 696,000 gross.

31 This represents 16 days, or 53 percent, of total LTFV imports during the month of June which, based on the estimate of 94 percent of total imports from China, were almost 251,000 gross.

32 Report at Figure 10.

33 Report at Table 14.

34 Report at Table 21. The Commission's data apply specifically to the second quarter of 1994, April to June. While our critical circumstances determination must be made with respect to mid-March to mid-June 1994, we find this second quarter 1994 data to be the most probative on the record.

ADDITIONAL VIEWS OF VICE CHAIRMAN JANET A. NUZUM

I join the majority of my colleagues in making an affirmative determination in this final investigation. I also join in the Views of the Commission, which discuss like product, domestic industry, condition of the domestic industry and cumulation. These additional views present my analysis of the record, which led me to a negative finding on present material injury but an affirmative finding on threat of material injury.

I. NO MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

Some of the factors that justify an affirmative threat determination also provide some support for a finding of present material injury. I refer specifically to the fact that the domestic industry has experienced depressed financial performance in the face of consistent underselling and rising volumes of less-than-fair-value ("LTFV") imports.[1] On balance, however, I do not find the preponderance of the evidence to weigh in favor of a present material injury determination.

Volume of the subject imports. Certainly the volume of LTFV imports has been significant. Cased pencils imports from China, excluding those for which Commerce made final negative dumping determinations, increased steadily from *** gross in 1991 to *** gross in 1993, and reached *** gross in interim 1994 compared with *** gross in interim 1993.[2] Subject market share started at *** percent in 1991 and ended at *** percent in interim 1994.[3] Although consumption also increased during the period examined, imports rose at a faster rate.[4]

Price effects of the subject imports.[5] With regard to price effects, the subject imports undersold domestic product in 41 of 42 price comparisons. Reported prices for commodity Chinese pencils were stable but well below U.S. commodity pencil prices. Notwithstanding this consistent underselling, domestic prices rose for one commodity pencil item (product 1) and were fairly stable for the other (product 2). Prices for Chinese specialty and colored pencils trended downward while U.S. prices for these same types of pencils rose through most of the period examined. The record thus does not support a finding of price depression. I further conclude that the record does not provide substantial evidence of significant price suppression by reason of the subject import. U.S. producers have been able to increase prices of all types of pencils and, over the period examined, have concentrated increasingly on higher-end decorated and specialty market segments.[6]

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[1] Product not found to be unfairly traded is not subject to investigation. The Commission, however, was unable to adjust all of its data relating to Chinese cased pencils to exclude these relatively small volumes of fairly traded product. Specifically, importer and purchaser questionnaire respondents were unable to identify which prices or what inventories represented nonsubject Chinese pencils. See staff telephone notes.

[2] Supplemental Confidential Staff Report ("SCR") and Supplemental Public Report ("SPR") at B-3, table B-1.

[3] Id.

[4] Id.

[5] The pricing data were presented in the Confidential Staff Report in Invs. Nos. 731-TA-669 and 670 ("CR") at I-86 - I-95, including tables 19-21 and figures 12-14; and in the Public Report in Inv. No. 731-TA-670 ("PR") at II-50 - II-53, including the same tables and figures.

[6] See CR at C-6, C-7 and C-9; PR at C-5; tables C-3, C-4 and C-6.

As a result, domestic producers were able to maintain gross profit margins[7] in the face of significantly increased LTFV market share and underselling. On balance I do not find that the subject imports have -- to date -- had a significant adverse effect on prices of domestically-produced cased pencils.

Impact of the subject imports on the domestic industry. Domestic performance indicators also suggest that the industry is not currently experiencing material injury by reason of LTFV imports. Among these indicators I include steady increases during 1991-93 in domestic capacity, total value and unit value of domestic U.S. shipments, total value and unit value of export shipments, hours worked, total and hourly compensation, total value and unit value of net sales, gross profits and capital expenditures.[8] Domestic production rose overall, but not steadily, during 1991-93.[9] Operating income margins improved from 1991 to 1992, but then dropped in 1993 due to a temporary increase in SG&A.[10] The interim 1994 operating results, in contrast, were the strongest of the period examined.[11]

I therefore find that the industry has thus far met the growing competitive challenge posed by LTFV pencils from China. The industry nevertheless remains vulnerable to continued increases in LTFV imports, and to future adverse price effects.

II. THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[12] The Commission may not make such a determination "on the basis of mere conjecture or supposition."[13] In making my determination, I have considered all of the statutory factors that are relevant to this investigation.[14]

Volume of the subject imports. The volume of LTFV imports, as noted above, has risen rapidly during the period examined. There is no credible evidence that this trend is about to reverse itself. Increases in imports of noncommodity, decorated pencils have been particularly marked;[15] this is the type of product that the domestic industry has

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[7] CR at I-46, PR at II-28, table 10.

[8] SCR at B-7 - B-8, SPR at B-5, table B-2.

[9] Id. In contrast, capacity utilization, the volume of U.S. shipments, the number of production workers and productivity declined overall; and unit labor costs and the inventory-to-shipments ratio increased. Id. With the exceptions of unit values and hourly compensation, all of the above indicators showed adverse developments when comparing the 1994 interim period with the 1993 interim period. Id.

[10] Id. The increase in SG&A that accounts for the decline in operating income for the industry as a whole in 1993 is ***. See CR at I-45 - I-48, table 10 and I-49 n.61; PR at II-27, table 10 and II-26 n.61.

[11] SCR at B-8, SPR at B-5, table B-2.

[12] 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

[13] 19 U.S.C. § 1677(7)(F)(ii).

[14] 19 U.S.C. § 1677(7)(F)(i). Three statutory threat factors have no relevance to this investigation. Threat statutory factory (I) is not applicable in this investigation because no subsidies are alleged. Factor VIII on product shifting is not an issue because there is no evidence that foreign manufacturers of cased pencils produce any other products currently under investigation or subject to an order. Factor IX is inapplicable because this case does not involve a raw or processed agricultural product.

[15] Memorandum INV-R-197; CR at I-64, PR at II-38, Figure 8; Tr. at 33-35, 51-52, 104-105.

traditionally been able to sell at a higher price. The higher prices in this segment provide an incentive for continued concentration there. I therefore find it likely that future volumes of Chinese LTFV pencils in the U.S. market are likely to reach injurious levels.

Price effects of the subject imports. As I have also described above, the domestic industry has been able to increase prices and maintain gross profit margins in the face of consistent underselling. I note, however, that it is particularly in the higher-end specialty and colored pencil segments that Chinese pencils have shown price declines.

Either further price declines or further increases in the volume of noncommodity pencils are likely to have the future effect of forcing domestic producers to reduce prices or forgo price increases. The domestic industry will no longer be able to pass through cost increases and maintain profits. In sum, I find that prices of LTFV Chinese pencils are likely to have significant price depressing and/or suppression effects in the future.

Foreign industry capacity, production and exports to the United States.[16] Reported Chinese capacity to produce pencils expanded in 1992. Responding firms produced at near-capacity levels throughout the period examined. Despite these constraints, however, exports to the United States rose rapidly from 1991 through mid-1994. Future increases could be effected by diverting product from other export markets. As already noted, the product mix of the exports has also more recently shifted towards higher-end pencils. Thus, the lack of evidence of recent Chinese capacity or production increases, or of future increases in exports to the United States, is not dispositive and does not contradict an affirmative threat determination in this investigation. Rather I find that available information, including trends in exports to the United States during the period of investigation, supports an affirmative threat determination.

Importers' inventories. End-of-period inventories of all cased pencil imports from China[17] were significant and rose 317 percent from 1991 to 1993 and were 310 percent higher in interim 1994 than in interim 1993.[18] Inventories as a share of imports were high during the period and rose from 29 percent in 1991 to 34 percent in 1993. Inventories reached their highest level in interim 1994, at 73 percent, compared with 35 percent in interim 1993.[19] These inventory levels and trends support a finding that the subject imports in the United States will have an injurious effect on the U.S. industry.

Dumping findings in other countries. The Commission must also consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry.[20] In April 1994, the Government of Mexico imposed a 451 percent dumping duty on pencils imported from China.[21] Although the volume of exports of cased pencils from China to Mexico was not substantial,[22] there is at least some risk of injury from any diversion of Chinese product

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[16] Available data on the Chinese pencil industry are presented in the SCR at C-3 - C-4, SPR at C-3, table C-1. I have considered only the data representing those producers and/or exporters for which Commerce made affirmative final LTFV determinations. I note that the available data are not complete.

[17] I note again that the Commission was unable to segregate data on LTFV and non-LTFV end-of-period inventories.

[18] SCR at B-4, SPR at B-3, table B-1.

[19] SCR at B-3 - B-4, SPR at B-3, table B-1.

[20] 19 U.S.C. § 1677(7)(F)(iii).

[21] CR at I-63 n.76, PR at II-37 n.76.

[22] See id.; Tr. at 138.

from the Mexican market to the U.S. market. Although I believe the effects of any such diversion would be limited, these effects would, at a minimum, add to the impact that already increased levels of imports from China pose for the domestic industry.

In view of the rapid increase in LTFV imports from China, declining prices for and increased concentration in noncommodity pencils by China, and the overall weak financial condition of the domestic industry, I find that the industry producing cased pencils in the United States is threatened with material injury by reason of LTFV imports of cased pencils from China. I further find that the domestic industry would not have experienced material injury by reason of the subject imports but for the suspension of liquidation. I concur in the analysis of this issue as presented by Chairman Watson and Commissioner Bragg.

DISSENTING VIEWS OF COMMISSIONER CRAWFORD

On the basis of the information obtained in this investigation, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of cased pencils from the People's Republic of China found by the Department of Commerce ("Commerce") to be sold at less-than-fair-value (LTFV).

I concur in the conclusions of my colleagues with respect to like product, domestic industry, and in the discussion of the condition of the domestic industry.[1] These dissenting views provide an explanation of my determination on related party and my determination of no material injury or threat of material injury by reason of LTFV imports of cased pencils from China.

I. RELATED PARTY

Like my colleagues, I find that Pentech's operations are domestic production and that Pentech is a related party. I do not find, however, that appropriate circumstances exist to exclude Pentech from the domestic industry. First, nearly *** percent of Pentech's 1993 imports of subject products from China were raw pencils.[2] Pentech did not re-ship any of these raw pencils without further processing. Evidence gathered since our preliminary determination shows that raw pencils represent only about *** percent of the total unit cost of Pentech's specialty pencil, and another *** percent markup is added before sale.[3] Second, we now know that Pentech imported the subject imports primarily to continue production when it was unable to obtain a domestic source of low grade wood for its production operation.[4] These facts suggest that Pentech's primary interest lies in production. Finally, evidence in this final investigation

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[1] Regarding condition of industry described in the views of the Commission , the data I consider are slightly different because I include Pentech in the domestic industry. I examined and based my determination on the data in Table B-1 of the final report (INV-R-184, (Nov. 23, 1994) as corrected by INV-R-189, (Nov. 30, 1994)). These data include Pentech's operations and the operations of a producer who submitted a questionnaire response after our determination with respect to Thailand. Because the producer that filed a late response comprised only a small percentage of the domestic industry, the data I examined are virtually identical to that set forth in the Commission's determination with respect to Thailand because we also included Pentech in the industry data in that determination. See Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final, USITC Publ. 2816 (Oct. 1994). The data I examined in Table B-1 of the final report are, in general, only slightly higher for U.S. consumption, production, capacity, capacity utilization, shipments, exports, inventories, employment and total compensation and slightly lower for hourly total compensation, than those discussed in the determination with respect to imports from Thailand. Other data are the same as discussed in the Thailand determination.

[2] See INV-R-197 and Commission Questionnaires and phone notes regarding Pentech data.

[3] INV-R-147 at I-80 and I-81.

[4] Pentech indicated that it was compelled to import raw pencils because it could not secure a satisfactory domestic supply of low-cost wood or raw pencils from which to produce its decorated pencils (See Pentech's Posthearing Statement at 3 to 7). Pentech imported from China because no U.S. source would supply a cheaper grade of wood, nor would its domestic competitors supply "source sandwiches" or raw pencils (See Respondents' Prehearing brief at 2 and Richard Kalin's September 30, 1994 submission, on behalf of Pentech at 2 and 3). The submissions by John M. Peterson, of Neville, Peterson & Williams on September 26 and 28, 1994 on behalf of Petitioners supports Pentech's allegations that the cheapest grade of wood was not commercially available in the U.S. at the time of Pentech's initial inquiries. I note that the information available in this final investigation regarding related party issues were more clearly presented than in the preliminary investigation.

shows that Pentech's finished decorated pencil products do not compete in the commodity market segment in which U.S. producers have indicated that Chinese imports primarily compete.[5] For these reasons, I do not find that appropriate circumstances exist to exclude Pentech from the domestic industry. Thus, while I find the discussion of the data for the condition of all domestic producers useful, my analysis of the price effects of the dumped imports and the impact of the dumped imports addresses the effects on the entire domestic industry, including Pentech.

II. ANALYTICAL FRAMEWORK

The statute directs that we determine whether there is "material injury by reason of the dumped imports." Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they have caused material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh causes, only to determine if the dumping is causing material injury to the domestic industry. It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had imports been fairly valued.[6] I then determine whether the change in conditions constitutes material injury.

In my analysis of material injury, I evaluate the effects of the dumping on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[7] I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, I find that the domestic industry is materially injured by reason of the dumped imports.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

(I) the volume of imports of the merchandise which is the subject of the investigation,

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[5] INV-R-147 at I-81. See also discussion below regarding the lack of competition between cased pencil market segments.

[6] 19 U.S.C. § 1677(7)(C)(iii).

[7] In examining the quantity sold, I take into account sales from both existing inventory and new production.

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[8]

In assessing the effect of subject imports, I compare the current condition of the domestic industry with the condition that would have existed had imports been fairly priced.[9] Then, taking into account the condition of the industry, I determine whether any resulting change of circumstances constitutes material injury. For the reasons discussed below, I find that the domestic industry producing cased pencils is not materially injured by reason of LTFV imports from the People's Republic of China.

A. Volume of LTFV Imports

In 1993, the domestic industry's market share was *** percent by quantity, and the market share of subject imports from China was *** percent by quantity, up from *** percent in 1991. In 1993, U.S. shipments to the domestic market equalled *** gross and subject Chinese imports totaled *** gross. In terms of value, all Chinese imports accounted for *** percent of U.S. consumption during 1993.[10] Based on this information, I find the volume and market share of the subject imports to be significant.

B. Effect of LTFV Imports on Domestic Prices

The statute requires that we determine the effect of LTFV imports on the prices of domestic like products. In most cases, if LTFV imports had not been traded unfairly, their prices in the U.S. market would have increased. The statute directs, and my analysis seeks to determine, the effect that unfairly traded subject imports sold at some higher price would have had on the domestic like product prices. As will be explained below, the competitive conditions in the U.S. marketplace are such that I find that the subject imports are not having significant price effects on the domestic industry producing the like product.[11]

The ability of domestic industry producers to raise their prices depends on competitive conditions in the industry involving both demand side and supply side variables. Examining demand side variables helps us understand both the likely effect of higher subject import prices on subject import sales, and also whether purchasers would be willing to pay higher prices for the domestic like product, or buy more of it, if subject imports were not available or if their prices were increased. The willingness of purchasers to pay higher prices depends on how important price is to the purchase decision, the similarity of the domestic product and subject

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[8] 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. § 1677(7)(B)(ii).

[9] 19 U.S.C. § 1677(7)(C)(iii).

[10] Table B-1, INV-R-184 at B-3. Data for subject imports only, not including Chinese producers Guangdong and China First, were not available by value of shipments. However, I note that imports from these two Chinese producers, which were not found to be selling at LTFV, totaled *** gross in 1993. This represents approximately *** percent of total imports from China, by quantity, during 1993. Thus See Table C-1, INV-R-184 at C-32 and Table B-1, INV-R-189 at B-3.

[11] Generally speaking, there can be circumstances where competitive conditions would prevent a significant increase in domestic like product prices, even if subject imports were traded fairly. Under such conditions, significant effects on domestic prices cannot be attributed to the unfair pricing of subject imports.

imports, the availability and similarity of nonsubject imports and alternative products, their prices relative to domestic like product prices, and the bargaining position of buyers relative to sellers.

Examining supply side variables helps us understand whether competitive conditions in the market would prevent domestic industry producers from raising their prices or sustaining a price increase. These variables include the number of producers, unused capacity and the availability of non-subject imports and alternative products. If a number of producers are producing similar goods and some have unused capacity, they can be expected to beat back any producer's attempted price increase by increasing their production and shipments to the market. This result would also occur if additional supply could be provided by diverting shipments from non-U.S. markets. Similarly, the availability of nonsubject imports or alternative writing instruments in the market can impede the ability of producers to raise their prices or to sustain a price increase. With even moderate substitutability between the domestic like product and nonsubject imports and/or alternative writing instruments, any attempt by domestic producers to raise prices would be beaten back. A discussion of the demand and supply characteristics of this market follows.

Market Demand.

To determine the nature and extent of any price effects on the domestic industry caused by the dumping, I ask the following question. Would purchasers in the cased pencils market have been willing to pay a higher price for subject imports, or for domestic cased pencils, or would they have switched to other products or to non-subject imported pencils, or ceased their purchases altogether, had all imports from China been fairly traded? I begin by examining what prices of subject imports would have been had they not been dumped. In this investigation, separate dumping margins were calculated for four specific Chinese exporters that participated in the Commerce investigation.[12] Non-responding Chinese companies were assigned the highest margin (44.66 percent) alleged by petitioners, as recalculated by Commerce.[13] [14] Therefore, the prices of these imports would have risen significantly had they been sold at fair value.

Overall U.S. demand for pencils is influenced by population changes, especially in the school-age population. From 1991 to 1993, the overall U.S. population increased by 2.3 percent and the school-age sector increased by 1.5 percent. From 1991 to 1992, U.S. consumption of

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[12] The margins are as follows: Company A China First and Company B Guangdong, zero percent; SFTC, 8.31 percent; and Shanghai Lansheng, 17.45 percent.

[13] In its investigations of LTFV imports, Commerce typically selects a six month period and examines a subset of total subject imports during this period for evidence of LTFV sales. In this investigation, Commerce chose the six month period from June 1, 1993 through November 30, 1993. During this time, a total of *** gross of subject imports were imported from China. Commerce examined *** gross of these subject imports for evidence of sales at LTFV. Of those imports examined, *** gross were found to have been sold at fair prices and *** were found to have been sold at LTFV (See INV-R-184 at I-5&6 and Figure 10, INV-R-147 at I-73). In Commerce's final determination, the *** gross of subject imports during the six month period that were not examined by Commerce were assumed to have been sold at LTFV and were assigned the BIA margin of 44.66 percent. Therefore, one can conclude that *** gross, or *** percent, of the *** gross of Chinese imports during the period examined by Commerce were sold at fair value.

[14] Data from the Commerce investigation further indicate that *** gross of Chinese imports examined by Commerce were sold at fair value. *** of these fairly traded imports were from two companies that were determined to have zero margins and are excluded from Commerce's order. Therefore, imports from these companies are not considered subject imports. For the remaining Chinese imports that were found not to be dumped, which represented *** percent of all subject imports, it is likely that no price increase would have occurred since they were already found by Commerce to be fairly priced. Therefore, U.S. purchaser decisions would not have been altered with respect to this group of fairly traded imports.

cased pencils increased by 10 percent, but only increased by 0.1 percent from 1992 to 1993.[15] However, unit value of domestic product increased in each year from 1991 to 1993,[16] and reported average prices of the domestic commodity pencils fluctuated throughout.[17] This suggests that in the overall market, consumers are not overly sensitive to changes in price. The important consideration here, however, is the market demand elasticity for domestic like products. This elasticity is determined by the variables discussed below.

__Subject Imports vs. Domestic Like Product__. The effect of an increase in the prices of unfairly traded subject imports depends on a number of variables. I begin by examining the similarity, or substitutability, of subject imports and domestic like products. Most U.S. purchasers reported that there are no differences in the __types__ of pencils produced in China and the U.S.[18] Both countries supply the various segments of the U.S. pencil market, including commodity pencils, colored pencils, specialty pencils, and decorated pencils. This suggests that subject imports and U.S. like products may be good substitutes.

However, several factors diminish this substitutability and therefore the competition between the domestic and subject import products. First, U.S. producers have indicated that subject imports compete primarily in the commodity pencil market.[19] But half of all Chinese imports are not commodity pencils.[20] *** percent of Chinese imports in 1993 were raw pencils. No domestic producers sell raw pencils on the open market. Thus over *** of imports from China do not compete with domestic like products in the U.S. market.[21] An additional *** percent of subject imports in 1993 were other noncommodity pencils, such as colored and decorated pencils. The record suggests that price is less important in the decorator market.[22] The record further indicates that competition across segments of the pencil market is limited.[23] As such, the substitutability between subject decorated or other non-commodity pencils and U.S. commodity or other pencils types is attenuated at best. Therefore, at least one-half of Chinese imports are not directly substitutable with domestic like products and do not compete directly with U.S. products on the basis of price.[24]

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[15] EC-R-100 at 12 and 13.

[16] Table B-1, INV-R-184 at B-4.

[17] Tables 19 and 20, INV-R-147 at I-88 and I-89.

[18] EC-R-100 at 22.

[19] U.S. producers stated that the imported products from China (and Thailand) compete, for the most part, within the standard, black-lead commodity pencil category, and specifically with the lowest-priced pencil in this category, the economy pencil. INV-R-147 at I-81.

[20] See INV-R-197. Data in Figure 8, INV-R-147 at I-65 suggest that a much smaller percentage of imports from China are commodity pencils. However, this figure does not account for all imports.

[21] Since Pentech's finishing operations are considered domestic production, the appropriate point of comparison of the subject imports of raw pencils is their affect, in their unfinished state, on domestic like products. Since there are no domestic producers that sell raw pencils on the open market, subject imports of raw pencils do not compete directly with domestic like products.

[22] See Respondents' Post-Hearing Brief, Attachment 8 at 2. Regarding specialty pencils, the record indicates that their prices can range widely depending on the complexity of the specific design or the type of topper. INV-R-147 at I-82.

[23] The Chairman of Faber, which accounted for over *** of total reported U.S. production in 1993, argued that prices for a specific pencil type do not influence prices for other pencil types. This lack of substitutability across pencil types was also argued by respondents. INV-R-147 at I-80 and I-82. __See also__ Transcript at 87-88, 93, 117-118, 176-77.

[24] There is no evidence indicating which types of Chinese pencil imports were sold at unfair value. Much of the data available does not provide a breakdown of fair and unfair imports. For example, there is no evidence regarding the composition of imports from Guangdong and China First, which accounted for *** percent of 1993 imports and which Commerce determined were not dumping their products in the (continued...)

Second, even within the commodity pencil market segment, substitutability is somewhat limited due to quality differences.[25] U.S. producers stated that prices for all pencils within the commodity category, including medium and high-end commodity pencils, are influenced by prices of low-end economy pencils.[26] However, the majority of U.S. purchasers reported that the quality of the domestic product is superior to that of the pencils imported from China. A number of purchasers reported buying higher priced domestic pencils rather than imports from China for reasons including differences in quality, customer preferences, reliability of supply, delivery speed, service, lower minimum order size, and brand variety.[27]

In sum, had subject import commodity pencils been sold at fair prices, the substantial price increases would have led purchasers to seek alternative sources of supply. Purchasers of noncommodity subject imports would find limited domestic like products that are directly substitutable. However, based on evidence of competition in the commodity pencil market, I conclude that domestic and subject import commodity pencils are substitutable, at least to some extent. Therefore, purchasers would have been willing to switch at least some of their purchases from subject imports to domestic like products if subject import prices were increased substantially. The extent to which domestic purchasers would have switched to domestic like products depends on their options, specifically on the availability and similarity of nonsubject imports and alternative writing products.

<u>Nonsubject Imports</u>. Purchasers would have shifted from higher priced subject imports to domestic cased pencils only, to the extent they were more attractive than other options, such as nonsubject imports. Nonsubject imports held a 9.3 percent market share, by quantity, in 1993.[28] If nonsubject imports are good substitutes for higher priced subject imports or for the domestic like products, then purchasers may have chosen them rather than the domestic like product. A majority of purchasers stated that the quality of pencils from non-subject countries is similar to that of domestic pencils.[29] Virtually all responding importers and 9 of 11 responding purchasers reported that there were no significant differences in the quality of pencils from subject and from non-subject countries.[30] Six of nine responding purchasers reported that prices for pencils from non-subject countries were lower than domestic pencils while the remaining three reported that prices were the same.[31] Therefore, domestic industry would have won some, but not all the market share lost by higher priced subject imports, but any attempted increase in the price of domestic cased pencils would have shifted demand more towards the nonsubject imports and other good substitutes.

<u>Alternative Writing Instruments</u>. Another alternative purchasers would have considered, if dumped subject imports were priced higher, is substitute writing instruments. Some U.S. importers and one large U.S. producer, Faber, reported that substitution with alternative products is somewhat limited for the lowest-priced commodity pencil.[32] Other

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[24] (...continued)
U.S. market. Nor is there evidence indicating the composition of SFTC's imports, *** percent of which Commerce found to be fairly priced.

[25] I note that in 1993, *** percent of U.S. producers' total sales were of commodity pencils. EC-R-100 at 4.

[26] INV-R-147 at I-82.

[27] EC-R-100 at 25; <u>see also</u> INV-R-147 at I-97 and I-98; Transcript at 33,35, 50-52, 64-66, 69-71, 73-74, 146, 148, 171-73, 182; Pentech's Prehearing Statement at 11. Respondents claim that less than 25 percent of U.S. producers' sales are of commodity pencils to the retail mass market segment. See Respondents' Post-Hearing Brief, Attachment 8, p4).

[28] Table B-1, INV-R-189 at B-3.

[29] EC-R-100 at 26.

[30] EC-R-100 at 26.

[31] EC-R-100 at 26.

[32] EC-R-100 at 13.

producers, importers, and purchasers reported several products that can easily substitute for cased pencils, such as mechanical pencils, some pens, and crayons.[33] Therefore, some purchasers of subject imports would have shifted to these products, rather than the domestic product, if they had been fairly traded.

Bargaining Position of Buyers. Purchasers have become increasingly concentrated. Smaller regional distributors are being replaced by national catalog wholesalers or superstores. This shift has increased purchasers' buying power. It has also created downward pressure on prices, as the larger purchasers demand lower prices for their increased quantity of purchases.[34] Had subject imports not been available in the market or sold only at higher prices, buyer purchasing power would have limited any attempt by domestic producers to increase their prices.

Market Supply.

Supply Elasticity of Domestic Industry. The ability of domestic producers to raise prices is also limited by supply side conditions. The capacity utilization of domestic cased pencil producers was *** percent in 1993.[35] U.S. producers exported *** gross of pencils abroad in 1993. Thus the domestic industry had sufficient available capacity as well as substantial levels of exports that could be diverted to the domestic market to fill the demand supplied by subject imports, had they all been sold at fair value.

Level of Competition. The domestic industry consists of a large number of producers that compete with each other for sales to the same customers. The number of competitors together with their unused capacity create a competitive environment that would have prevented any member of the domestic industry from issuing a price increase and making it stick.

Further competitive discipline would have come from fairly traded nonsubject imports, which were present in the U.S. market throughout the period of investigation and represented a significant alternative source of supply for purchasers. In 1993, the market share of nonsubject imports was 9.3 percent.[36] As discussed above, the available information regarding the substitutability between Chinese and nonsubject imports suggests that there are no quality differences between the two.[37]

Finally, competitive discipline would also have come from the presence of alternative writing instruments such as mechanical pencils. As discussed above, there are several products that can easily substitute for pencils. Producers in those markets would have competed for market share had subject imports been priced higher and domestic producers sought a price increase.

Summary of Price Effects

To summarize, had subject imports not been dumped, their prices would have been higher and their sales reduced. In such circumstances, purchasers would have increased their purchases of the domestic like product, nonsubject imports and alternative writing instruments. Domestic producers should have been able to increase their prices. However, the demand factors discussed above would have acted as constraints on the ability of domestic producers to win larger sales or increase their prices. Both nonsubject imports and other writing instruments were available to purchasers and appear to be reasonable substitutes. Their presence in the market would have reduced the likelihood that purchasers would have been willing to pay higher

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[33] EC-R-100 at 13.

[34] EC-R-100 at 6 and 7; see also Transcript at 33-36, 102, 104-105.

[35] Table B-1, INV-R-184 at B-4.

[36] Nonsubject imports increased by 22.4 percent from 1992 to 1993. See Table B-1, INV-R-184 at B-4.

[37] EC-R-100 at 26.

prices for domestic like products. And buyers' increasing purchasing power would have further hindered the ability of domestic producers to increase their prices.

On the supply side, competition among domestic producers and with suppliers of nonsubject imports and alternative writing instruments would also have acted to prevent the domestic industry from increasing its prices. Thus, domestic industry's inability to raise its prices is a function of demand and supply conditions in the cased pencil market, not due to subject imports. Even if all subject imports had been priced fairly, the domestic industry would not have been able to raise its prices significantly. Consequently, I find that subject imports did not have significant price effects.

C. Impact of Subject Imports on the Domestic Industry

In assessing the impact of subject imports on the domestic industry, I consider, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.[38] These factors either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects. In this case, I find that the domestic industry's output was not adversely affected by the dumping of Chinese imports.

As discussed above, I find that fewer subject imports would have been sold if they all had been sold at fairly traded prices. The impact of these lost Chinese sales on the domestic industry's output and sales depends on three variables: (1) capacity utilization rates of domestic producers and whether they would have been able to increase production to satisfy additional demand;[39] (2) the attractiveness, or substitutability, of domestic like product relative to subject imports, nonsubject imports and/or alternative writing instruments; (3) the availability of competing nonsubject imports and other writing instruments.[40]

Following I examine variables that affect whether purchasers of subject imports would have switched to the domestic like product if the subject imports had all been fairly priced.

Domestic Industry Capacity Utilization.

As discussed above, the domestic industry consists of a large number of producers that compete with each other for sales to the same customers. The capacity utilization rate of domestic cased pencil producers was *** percent in 1993 and domestic producers exported a significant amount of cased pencils abroad.[41] Thus the domestic industry had sufficient available capacity and could divert export shipments to the domestic market to fill all the demand supplied by unfairly traded subject imports. Therefore, if demand for the domestic like product had increased as a result of all subject imports being priced at fair value, the domestic industry would have been able to increase its production to satisfy that demand.

Substitutability

Whether the domestic industry could have increased its sales depends on whether purchasers of subject imports would have been likely to switch to domestic cased pencils had the price of all subject imports been increased to fairly traded prices. That, in turn, depends on the substitutability of the products.[42]

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[38] 19 U.S.C. § 1677(C)(iii).

[39] Elasticity of domestic supply.

[40] Elasticity of nonsubject import supply.

[41] Table B-1, INV-R-184 at B-4.

[42] See discussion below regarding the availability of nonsubject imports and alternative writing instruments.

If subject imports and the domestic like product are not similar, *i.e.*, not good substitutes, purchasers are unlikely to switch to the domestic like product even if the price of subject imports increases. Purchasers would continue to buy subject imports at the higher price or would switch to nonsubject imports or alternative products, to the extent that they are substitutable and available, rather than to the domestic like product, to satisfy their needs. In that case, reduced demand for subject imports would translate into increased demand for nonsubject imports and alternative products, but the domestic industry would not increase its sales of the like product. In this investigation, subject imports and domestic like product appear to be somewhat good substitutes, at least for commodity pencils. However, a significant percentage of subject imports were found to be sold at fair prices. Eliminating dumping would not have changed their prices and they would have remained in the market.[43] Moreover, the availability and substitutability of nonsubject imports and alternative writing instruments would have affected the ability of the domestic industry to win market share had subject import prices been at fair value. As discussed above, there is evidence that nonsubject imports compete with subject imports, and the record indicates that several alternative writing products, such as mechanical pencils, can easily substitute for cased pencils.[44]

<u>Nonsubject Import Supply and Alternative Writing Instruments</u>.

The third factor that affects the ability of the domestic industry to increase sales when subject import prices increase is the availability and attractiveness of nonsubject imports and alternative writing instruments. Had all subject imports been traded at fair prices, purchasers may have switched their purchases to nonsubject imports or alternative writing instruments, as well as the domestic like product. As discussed above, nonsubject imports were present in the U.S. market throughout the period of investigation and had a 9.3 percent market share, by quantity, in 1993.[45] The data show a 22.4 percent increase, by quantity, in nonsubject imports from 1992 to 1993.[46]

<u>Summary of Impact</u>

In weighing the effect of these and other factors on domestic output and sales, I conclude that, had all subject imports been sold at fair value, some purchasers would have been willing to switch to the domestic like product, and domestic producers would have been able to increase their production to satisfy the increased demand. However, purchasers would have continued to purchase a significant amount of subject imports and would likely have purchased some additional amount of nonsubject imports and\or alternative writing products. I conclude that of the partial reduction in sales of subject imports, the domestic industry would have captured only some of the sales lost by subject imports. This increase in demand for the domestic like product would not have increased output and sales significantly. Nor would the domestic industry have been able to increase its prices significantly. With only a minimal price effect, and an insignificant increase in domestic like product sales, domestic revenues would not have increased significantly, even if all subject imports had been fairly priced.

Therefore, I find that the domestic industry would not have been materially better off if all subject imports had been priced fairly, and determine that the domestic industry is not materially injured by reason of subject imports from China.

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[43] The results from the Commission's partial equilibrium COMPAS model suggest that between one-half and just over four-fifths of 1993 Chinese shipments to the U.S., by value, would have remained in the U.S. market, had all subject imports been fairly priced. See EC-R-117 at 4.

[44] EC-R-100 at 13.

[45] Table B-1, INV-R-189 at B-3.

[46] Table B-1, INV-R-184 at B-4.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

I have considered the enumerated statutory factors that I am required to consider in my determination.[47] A determination that an industry "is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."[48]

I am mindful of the statute's requirement that my determination must be based on evidence, not conjecture or supposition. Accordingly, I have distinguished between mere assertions, which constitute conjecture or supposition, and the positive evidence[49] that I am required by law to evaluate in making my determination.

The information indicates that there was no increase in the production capacity for LTFV cased pencils from 1992 to 1993. Nor is there any increase projected for 1994 or 1995.[50] In addition, there has been a small decrease in capacity utilization among firms producing LTFV imports from 1992 to 1993.[51] As a result, I find that there has been no increase in production capacity or sufficient increase in unused capacity to result in a significant increase in LTFV imports in the United States. Furthermore, the overall Chinese capacity utilization for cased pencils is very high, leaving no significant under-utilized capacity. Thus I do not believe that the unused Chinese production capacity constitutes evidence of a real threat or imminent and actual injury.[52]

With respect to market penetration of subject imports, reported LTFV cased pencils imports increased rapidly during the period of investigation.[53] However, I note that 58 percent of the increase between 1991 and 1993 is accounted for by subject imports of noncommodity cased pencils.[54] Recall that U.S. producers alleged that subject imports compete primarily with the commodity pencil market segment. Thus I do not believe that the increase in market penetration constitutes evidence of a real threat or imminent and actual injury.

There is no evidence that Chinese producers of the LTFV imports are likely to divert shipments to the U.S. from other markets. Reported shipments to third markets by Chinese producers of LTFV products remained the same in 1991 and 1993.[55] Reported Chinese home market shipments by producers of LTFV imports increased by more than 25 percent from 1991 to 1993 and are projected to remain steady from 1994 to 1995.[56] Reported inventories of Chinese producers of LTFV products decreased by 25.7 percent, from *** gross to *** gross, between 1991 and 1993.[57]

With respect to inventories of subject imports in the United States, there has been no increase that would provide sufficient evidence of a threat of material injury. Although U.S. inventories of Chinese cased pencils increased between 1991 and 1993 from 383,000 gross to 1,597,000 gross, the ratio of such inventories to total imports of subject imports decreased from

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47 19 U.S.C. § 1677(7)(F)(i).

48 19 U.S.C. § 1677(7)(F)(ii).

49 <u>See American Spring Wire Corporation v. United States</u>, 590 F. Supp. 1273 (Ct. Int'l Trade 1984).

50 Table C-1, INV-R-184 at C-3.

51 Ibid.

52 I note that Chinese capacity utilization was *** percent in 1993. Table 15, INV-R-147 at I-62.

53 Table B-1, INV-R-189 at B-3.

54 See INV-R-197.

55 Table C-1, INV-R-184 at C-4.

56 Table C-1, INV-R-184 at C-4.

57 Table C-1, INV-R-184 at C-3.

54.9 percent to 48.6 percent.[58] Moreover, end of period 1993 inventories only represent 7.4 percent of U.S. consumption in 1993. I discount the rapid increase in inventories from interim 1993 to interim 1994, attributing the increase in large part to the filing of the petition on November 16, 1993. The monthly data on subject imports show that imports increased during the months between the filing of the petition and the beginning of the 90 day period prior to suspension of liquidation.[59] This increase was far in excess of past patterns; the first quarter subject import volume as a percentage of second quarter subject import volume rose from 49.3 percent to 125.6 percent from 1993 to 1994.[60] Moreover, petitioner has argued that most of the imports during the period between the filing of the petition and suspension of liquidation have been stockpiled, primarily by Pentech, for use after Commerce's preliminary determination went into effect.[61] This is particularly relevant since, as discussed above, U.S. producers have argued that Chinese imports compete primarily within the commodity market segment, whereas Pentech competes primarily in the decorated pencil market. Therefore, I find that U.S. inventories of LTFV cased pencils do not constitute sufficient evidence that any threat of material injury is real or that actual injury is imminent.

In my determination that there is no material injury by reason of dumped imports, I demonstrated that LTFV imports have had no significant effect on domestic prices. I find no positive evidence that this will change in the immediate future. Therefore, I conclude that there is a very low probability that dumped imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices.

I find no evidence of any other demonstrable adverse trends that indicate the probability that LTFV imports will be the cause of actual injury. In addition, I find no positive evidence to support a conclusion that the potential for product-shifting represents a threat that material injury is real or that actual injury is imminent. [62]

For the reasons stated above, I find that the domestic industry is not threatened with material injury by reason of LTFV imports of cased pencils from China.

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[58] Table 14, INV-R-147 at I-59. I note that Table B-1, INV-R-184 at B-4 and INV-R-189 at B-3 indicate that the ratio of total inventories to total imports from China increased from 29.3 percent to 33.8 percent.

[59] Figure 10, INV-R-147 at I-73.

[60] Figure 10, INV-R-147 at I-73.

[61] Petitioner's Pre-Hearing Brief at 67 and 68. Petitioner's allegation is supported by data on Pentech's end-of-period inventories of unfinished pencils for the first half of 1994, which totaled *** gross. Pentech's end-of-period inventories in June 1993 were *** gross and in December 1993 were *** gross. See Commission Questionnaires and staff notes.

[62] I note that statutory threat factors I (regarding subsidies) and IX (regarding agricultural products) are not applicable to this investigation. In addition, I did not find any significant evidence of actual and potential negative effects on the existing development and production efforts of domestic industry. Finally, pursuant to 19 U.S.C. § 1677(7)(F)(iii), the Commission considers whether antidumping findings or remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. I note that the recent imposition of antidumping duties by Mexico on pencils from China is unlikely to have a significant effect on Chinese pencil exports to the U.S. China only exported 143,140 gross to Mexico in 1993. This amount represents only *** percent of China's 1993 exports of cased pencils to the U.S. Thus even if all of the Mexican supply was diverted to the U.S. market, it would not have a significant effect. See submission dated 9/14/94, filed by Debevoise & Plimpton on behalf of Chinese respondents, Francis J. Sailer and Ariadne D. Maikris of counsel, for data on Chinese exports to Mexico and see Table B-2, INV-R-188 at B-7 for total Chinese exports to the U.S.

PART II

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of certain cased pencils[1] from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission (Commission), effective June 16, 1994, instituted investigation No. 731-TA-669 (Final) under section 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation was given by posting a copy of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of July 7, 1994 (59 F.R. 34865).[2]

BACKGROUND

This investigation results from a petition filed on November 10, 1993, by counsel on behalf of the Pencil Makers Association, Inc. (PMA), and the individual companies comprising its membership,[3] alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain cased pencils from China and Thailand.[4] In response to the petition, the Commission, effective November 10, 1993, instituted investigations Nos. 731-TA-669 and 670 (Preliminary) under section 733 of the Act (19 U.S.C § 1673b(a)). On December 20, 1993, the Commission determined that there was a reasonable indication of such material injury. Commerce subsequently made a final affirmative LTFV determination with respect to Thailand (59 F.R. 44965, Aug. 31, 1994) but delayed its final LTFV determination concerning China.[5] The Commission conducted injury investigations for both China and Thailand concurrently and held a hearing in connection with the two on August 25, 1994. It made a final negative determination of injury in the investigation concerning Thailand on October 5, 1994 (*Certain Cased Pencils From Thailand: Investigation No. 731-TA-670 (Final)*, USITC publication 2816, October 1994). This report contains only information submitted to the Commission after the case on Thailand was completed (see the following paragraph) and information related specifically to Commerce's final LTFV determination on China, and is intended to be used in conjunction with the Commission's report on investigation No. 731-TA-670 (Final), which contains information relevant to both investigations.

Since the Commission's final determination in the investigation concerning Thailand, a producers' questionnaire response was submitted on behalf of Industries for the Blind, whose

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[1] For purposes of its investigation, Commerce defined "certain cased pencils" as pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or manmade materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. Specifically excluded from the scope of the investigation are mechanical pencils, cosmetic pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks. Certain cased pencils are provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Copies of cited *Federal Register* notices are presented in app. A.

[3] The PMA was a "trade association representing the domestic pencil manufacturing industry." Effective Jan. 1, 1994, the PMA ceased to exist as a separate entity and now exists as the Pencil Section of the Writing Instrument Manufacturers Association (WIMA). Petitioner's membership consists of eight manufacturers of cased pencils and one manufacturer of cosmetic pencils.

[4] The petition was subsequently amended to include an allegation of critical circumstances with respect to imports of the subject merchandise from China. As set forth under section 733(e) of the Act (19 U.S.C. § 1673(b)(e)), a petitioner may allege critical circumstances by amending the original petition more than 20 days before the date Commerce is due to make its final determination.

[5] Following the filing of an amendment to the petition alleging critical circumstances, Commerce preliminarily determined that critical circumstances exist with respect to imports from China (59 F.R. 44128, Aug. 26, 1994).

pencils operations are in Milwaukee, WI. A summary of the data collected in this investigation, including information supplied by Industries for the Blind,[6] is presented in appendix B.

THE NATURE AND EXTENT OF SALES AT LTFV

On November 8, 1994, Commerce published in the *Federal Register* its final determination that imports of certain cased pencils from China are being, or are likely to be, sold in the United States at LTFV (59 F.R. 55625). Four Chinese producers and/or exporters, China First Pencil Co., Ltd. (China First), Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), Shanghai Foreign Trade Corp. (SFTC), and Shanghai Lansheng Corp. (Lansheng), requested and received separate LTFV dumping margins. Because all other producers/exporters failed to respond to Commerce's request for information, the countrywide dumping margin for those producers/exporters was based on best information available. In determining whether sales by China First, Guangdong, Lansheng, and SFTC were made at LTFV during its period of investigation (POI), which covered the period June 1, 1993, through November 30, 1993, Commerce compared the U.S. price of the subject merchandise to its foreign market value. U.S. price was based on purchase price, which, for those exporters that were assigned separate rates, was based on packed, f.o.b. foreign-port prices to unrelated purchasers in the United States, after allowing for certain deductions and allowances. As in past antidumping investigations, Commerce treated China as a nonmarket economy and, as such, based foreign market value on the factors of production (i.e., materials, labor, and energy), valued in a comparable market economy that is a significant producer of comparable merchandise. India was used as the preferred surrogate for purposes of valuing the factors of production.

The final weighted-average dumping margins as determined by Commerce for China First, Guangdong, Lansheng, SFTC, and all other producers/exporters in China are shown in the tabulation that follows (in percent):

Manufacturer/producer/exporter	Dumping margin
China First/Company A[1]	0.00
China First/Any other manufacturer	44.66
Guangdong/Company B[2]	0.00
Guangdong/Any other manufacturer	44.66
SFTC[3]	8.31
Lansheng[3]	17.45
All others[3]	44.66

[1] Represents ***.
[2] Represents ***.
[3] Commerce also made an affirmative final determination of critical circumstances with respect to these firms.

The combined volume of sales of certain cased pencils made by China First, Guangdong, Lansheng, and SFTC that Commerce examined during its POI totaled *** gross, valued at $***. Of the total, Commerce determined that sales totaling *** gross, valued at $***, were fairly traded while sales totaling *** gross, valued at $***, were made at LTFV. Separately, all of the sales that were made by Lansheng were found to be at LTFV. These sales totaled *** gross and were valued at $***. Sales made by SFTC during the POI totaled *** gross, valued at $***, of which sales totaling *** gross, valued at $***, were found to have been made at LTFV. All of the sales examined by Commerce belonging to China First and

[6] This firm accounted for *** percent of aggregate U.S. production of certain cased pencils in 1991, *** percent in 1992, and *** percent in 1993 and Jan.-June 1994. It did not supply profit-and-loss data.

Guangdong during the POI were found to be fairly traded. These sales totaled *** gross, valued at $***, for China First and *** gross, valued at $***, for Guangdong.

Data on the cased pencil operations of those Chinese producers and exporters that received separate dumping margins by Commerce are shown in table C-1, appendix C. Market shares of fairly traded and unfairly traded U.S. imports of certain cased pencils from China are shown in table C-2.

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigations Nos. 731–TA–669 and 670 (Final)]

Certain Cased Pencils from the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–669 and 670 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) and Thailand of certain cased pencils (with leads encased in a rigid sheath), provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain cased pencils from China and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 10, 1993, by the Pencil Makers Association, Inc., Marlton, NJ.

Participation in the Investigations and Public Service List

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will

[1] As defined by Commerce, the products covered by these investigations are certain cased pencils of any shape or dimension, which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or manmade materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened.

Specifically excluded from the scope of these investigations are mechanical pencils, cosmetic pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks.

make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on August 12, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on August 25, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 17, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 19, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is August 19, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 2, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 22, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: June 28, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-16473 Filed 7-6-94; 8:45 am]

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Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-827]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China

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

EFFECTIVE DATE: November 8, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3798 or (202) 482-5055, respectively.

Final Determination

The Department of Commerce ("the Department") determines that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on June 8, 1994, (59 FR 30911, June 16, 1994), the following events have occurred.

From July 4 through 15, 1994, Department officials conducted verification of the responses of the responding exporters, Shanghai Foreign Trade Corporation (SFTC), Shanghai Lansheng Corporation (Lansheng), Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), and China First Pencil Co., Ltd. (China First), a responding exporter and manufacturer; and the responding manufacturers Shanghai Three Star Stationery Industry Corporation (Three Star), and Anhui Stationery Company (Anhui).

On July 22, 1994, petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from the PRC. On August 10, 1994, the Department published in the **Federal Register** a notice of postponement of the final determination (59 FR 40865). On August 26, 1994, the Department published in the **Federal Register** a preliminary affirmative determination of critical circumstances (59 FR 44128).

Petitioner and respondents submitted case and rebuttal briefs on September 21 and October 3, 1994, respectively. A public hearing was held on October 5, 1994.

Scope of Investigation

The products covered by this investigation are certain cased pencils of any shape or dimension 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 this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Class or Kind of Merchandise

At the time of our initiation, the Department solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents first argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils.

In addition, the Asia Pencil Association, an interested party in this investigation, argued that specialty pencils (*e.g.*, carpenter and art pencils) constitute a separate class or kind of merchandise. However, the information submitted in support of its claim was insufficient to allow us to make a preliminary determination that specialty pencils are a separate class or kind of merchandise and no new information on specialty pencils has been submitted since the preliminary determination.

Based on the information provided, the Department preliminarily determined that neither specialty pencils nor raw blanks constituted a separate class or kind of merchandise.

In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. Those arguments were filed too late to be considered for the preliminary determination and were to have been addressed fully in this determination. However, in their case brief of September 21, 1994, respondents argued that there are three classes or kinds of merchandise: Commodity, colored and designer. The Department will therefore address only respondents' most recent argument about the appropriate number of classes or kinds of merchandise under investigation.

In order to establish whether cased pencils represent a single class or kind of merchandise, we examine below each of the criteria used by the Department to determine class or kind as described in 19 CFR 353.29(i) (1) and (2) and *Diversified Products Corp. v. United States*, 6 CIT 155, 572 F.Supp. 883 (1983).

Physical Characteristics

Respondents argue that commodity pencils are invariably hexagonal with a graphite core and a plain paint finish, colored pencils have a chemical-intensive core and designer pencils are round with a graphite core and "proprietary artwork" designs.

Petitioner argues that, while the outward physical form of pencils sometimes differs, the production process is identical, except for the finishing. Petitioner submits that some commodity pencils are round while some designer pencils are hexagonal as well as triangular; that graphite pencils come in varying degrees of hardness due to varying chemical composition; and that the chemical core for colored pencils does not distinguish it from all other "disposable, delible, portable marking instruments that require sharpening to renew the core."

The cased pencils described in the scope of this proceeding are disposable writing instruments. Two essential elements are present in all cased pencils. These are (1) a core which contains the material that, when the pencil is put to use, leaves a mark on a surface and (2) the casing in which the core rests. As such, we conclude that the physical characteristics of all pencils within the scope are similar.

Regarding respondents' argument that the chemical-intensive cores of colored pencils should serve to distinguish them from other pencils in the scope, we note that the core composition of commodity pencils also varies based on the desired hardness and blackness of the pencil. Hence, we do not find this to be a basis for distinguishing colored from other pencils.

With regard to shape, petitioner and respondents have submitted conflicting arguments. Based on the evidence on this record, the Department determines that commodity and designer pencils do not always have different shapes. Finally, with regard to the proprietary artwork on designer pencils, the difference from commodity pencils includes the application of foil, paint, ferrules, erasers, or some form of eye-catching topper. While these add-ons make the pencils physically different from commodity pencils, they do not change the basic physical characteristics of the product, *i.e.*, a core encased in wood or other material.

Customer Use and Expectations

Respondents argue that commodity pencils are used in schools and businesses for writing; colored pencils are usually for children and always for coloring (not writing); and designer pencils are for collecting. In addition, respondents argue that marks made by most colored pencils are not able to be erased, while those of graphite pencils are. Petitioner contends that the customer use and expectation of all pencils is to make a mark on a surface.

We agree that the expectations and uses of colored pencils are various and may differ from the expectations and uses of commodity and designer pencils. With respect to designer pencils, however, there is no evidence to support respondents' claim that these pencils are solely for collecting. While they are collectable, they are also used as writing instruments. Therefore, we have no basis to distinguish designer pencils from commodity pencils in terms of customer use and expectations.

Channels of Trade

The channels of trade for PRC pencil sales are similar for all pencil types. The producer and/or exporter sells either directly to retail customers or distributors in the United States. The distributors then sell to either retailers or end-users in the United States. According to petitioner, U.S. produced pencils are also sold by manufacturers to retail customers or distributors. These distributors may also sell to retailers, businesses or schools. Hence, we find that all pencils within the scope of this proceeding are sold in the same channels of trade.

Manner in Which Pencils Are Advertised and Displayed

There is conflicting evidence on the record in this investigation with respect to the manner in which pencils are advertised and displayed. Petitioner points to a China First catalog submitted in response to section A of our questionnaire. Petitioner argues that since all types of pencils are included in the China First catalog (some individual pages include a number of different types of pencils), we should conclude that the manner in which pencils are displayed is similar regardless of pencil type. Petitioner also submits that different types of pencils are often displayed together in retail outlets.

Conversely, respondents submit that the manner of displaying and advertising pencils is particular to the type of pencil being offered for sale. Respondents contend that colored pencils are not offered for sale in office supply stores and commodity pencils cannot be found in toy stores and party shops. Respondents contend that even in the unusual event that commodity, colored, and designer pencils were offered for sale in the same store, they would not be displayed together.

Based on our research, both petitioner and respondents are correct. Specialty stores such as party shops do not usually stock commodity pencils. On the other hand, office supply stores or pharmacies such as "Staples" or "CVS" carry all three pencil types (commodity, colored and designer). In some instances they are displayed together, in other instances they are displayed separately.

Conclusion

Based on the arguments presented and our own research and analysis, the Department is not persuaded that a determination of three separate classes or kinds of merchandise is warranted in this investigation. Although the products differ in certain respects, on the whole the similarities greatly outweigh the dissimilarities. In its *Notice of Final Determination of Sales at Less Than Fair Value: Antifriction Bearings from West Germany*, 54 FR 18992 (May 3, 1989), the Department stated that "the real question is whether the differences are so material as to alter the essential nature of the product, and therefore, rise to the level of class or kind differences." In this instance, the differences do not alter the essential nature of the product. In addition, although such a finding is not dispositive to this analysis, the ITC recently issued its report on Cased Pencils from Thailand stating that "all cased pencils . . . have similar physical characteristics and uses." (ITC Publication 2816, at I–8). Therefore, we conclude that commodity, colored and designer pencils are a single class or kind of merchandise.

Period of Investigation

The period of investigation (POI) is June 1, 1993, through November 30, 1993.

Separate Rates

The four participating exporters, SFTC, Guangdong, China First, and Lansheng have each requested a separate rate. SFTC and Guangdong are companies owned by "all the people." China First and Lansheng are shareholding companies, both of which were previously owned by "all the people." China First issued shares in 1992 and Lansheng issued shares in September 1993. In the preliminary determination, Guangdong, SFTC, and Lansheng received separate rates. With respect to China First, we preliminarily determined that, due to the lack of information on the record regarding China First's ownership structure, we could not grant China First a separate rate at that time.

In the *Final Determination of Sales at Less Than Fair Value: Compact Ductile Iron Works from the People's Republic of China*, 58 FR 37909 (July 14, 1993) (*CDIW*), the Department determined that state-owned companies, *i.e.*, those owned by the central government, were not eligible for separate rates. In the *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*), we found that the PRC central government had devolved control of state-owned enterprises, *i.e.*, enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for individual rates, if they met the criteria developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*.

In this investigation, and in the recent final determination involving paper clips from the PRC (59 FR 51170, October 7, 1994), we have examined companies that had been "owned by all the people," but are now shareholding companies with varying levels of government ownership. When these companies were "owned by all the people," the central government devolved control of them. Hence, we focused our examination on whether the change in ownership form to shareholding companies altered that devolution of control. We found that it did not. Significantly, we found that the government (whether the central government or the Government of Shanghai) did not vote the shares. (*See*, verification reports of Lansheng and China First.) Although the government held its shares on behalf of the people, in one case those shares were voted by the company's former general manager (Mr. Lansheng), and in the other by the workers (China First).

Because we have found that the government has, in effect, severed the voting rights from the shares it holds in trust on behalf of the people and bestowed those rights on the enterprises themselves, we determine that Lansheng and China First do not fall within the prohibition set out in *CDIW*. Hence, the Department has applied the criteria developed in *Sparklers* and amplified in *Silicon Carbide* to determine whether these companies, as well as the companies "owned by all the people," should receive separate rates. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has 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 disposition of profits or financing of losses (*see Silicon Carbide*).

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (*1988 Law*); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (*Export Provisions*). The *1988 Law* states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the *1992 Regulations* (see Article IX).

While the PRC government has devolved control over state-owned enterprises, the government has continued to regulate certain products through export controls. The *Export Provisions* list designates those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the constraints of these provisions.

Consistent with *Silicon Carbide*, we determined that the existence of these laws demonstrates that Guangdong and SFTC, companies owned by "all the people," are not subject to *de jure* control.

Since Lansheng and China First were initially companies owned by "all the people," the laws cited above establish that the government devolved control over such companies. The only additional law that is pertinent to the *de jure* analysis of Lansheng and China First as share companies is the *Company Law* (effective July 1, 1994). While Lansheng and China First indicated that they were organized consistent with the *Company Law*, the law did not enter into force until seven months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the companies were owned "by all the people." Therefore, we have determined that Lansheng and China First are not subject to *de jure* control.

In light of reports[3] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

[3] *See* "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93-133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess)

De Facto Control Analysis

We analyze below the issue of *de facto* control based on the criteria set forth in *Silicon Carbide*.

Guangdong

In the course of verification, we confirmed that Guangdong's export prices are not set, or subject to approval, by any government authority. This point was supported by Guangdong's sales documentation, company correspondence, and confirmed through questioning of a Shanghai Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. pencil sales, we also noted that Guangdong is able to negotiate prices with its customers without government interference or influence.

We confirmed, through an examination of bank documents, that Guangdong has the authority to borrow freely, independent of government authority. We further found that, although required to exchange 20 percent of its foreign exchange proceeds at the official exchange rate, Guangdong retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. Guangdong's financial and accounting records supported this conclusion.

Finally, we have determined that Guangdong has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that management is elected by the Employee's Congress, which is made up of 60 percent workers and 40 percent department chiefs. First candidates are nominated by the workers in each department. The Employee's Congress then reviews the qualifications of potential candidates and elects them. A review of the documentation of the election process indicated that COFTEC then confirms Guangdong's election of management. Based on an analysis of all these factors, we have determined that Guangdong is not subject to *de facto* control by governmental authorities.

SFTC

During verification, we established that SFTC's export prices are set by the company and do not require approval by any governmental authority. SFTC has the authority to negotiate and sign contracts and other agreements independent of any government authority as evidenced by our examination of correspondence and written agreements and contracts. We also confirmed that SFTC retained proceeds from its export sales and made independent decisions regarding disposition of profits by examining bank account records, financial records, and purchase contracts.

Based on our examination of management appointment announcements and other correspondence, we have determined that SFTC had autonomy from the government in making decisions regarding the selection of management. Management was elected by 50 departmental staff representatives. These representatives were themselves elected by workers in each department. Documentation provided by SFTC demonstrated that the provincial government merely acknowledged SFTC's election of management. In light of the above evidence of the lack of *de facto* government control, we have concluded that SFTC is entitled to a separate rate.

Lansheng

In conducting a *de facto* analysis of Lansheng, we have examined the factors set forth in *Silicon Carbide*, and whether the change in corporate structure alters our conclusion regarding those factors. Lansheng's sales documentation and correspondence support the conclusion that no government entity exercises control over Lansheng's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that Lansheng has the authority to negotiate and sign contracts and other agreements without interference from any governmental entity. We confirmed during verification that this situation did not change after Lansheng became a share company.

Before Lansheng became a share company, the general manager of its predecessor company, Shanghai Stationery & Sporting Goods Import and Export Company (Shanghai Stationery), was elected on February 27, 1993. The election proceeded in the following manner.

First, for every ten employees, there was one elected representative. Second, the representatives then elected the general manager. Third, once the general manager was elected, the company sent a letter, announcing the election to COFTEC. COFTEC then approved the election process and sent a letter of congratulations to the company. While COFTEC technically had the authority to reject an elected manager, it reportedly had never done so.

After Lansheng became a share company, the same manager continued to lead the company. At the first general shareholders' meeting, when Lansheng's Board of Directors was elected, the shares held by the State Asset Management Bureau (SAMB) were voted by the general manager of the former company, Shanghai Stationery. Subsequently, the newly elected Board of Directors appointed the former general manager as Chairman of the Board for Lansheng. The evidence on the record regarding the election of management indicates that no representative of the SAMB was present at, or participated in, the election of the Board of Directors or the decision to retain current management. Moreover, the chairman's authority to vote the shares held by the government supports the conclusion that the chairman and the board, rather than the government, have the authority to appoint the company's management.

We also found that Lansheng retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through examination of Lansheng's bank account records and bank loan applications.

As indicated above, the record indicates that Lansheng's change to a share company did not have any effect on the government's devolution of control over Lansheng. The evidence shows that, following its conversion to a share company, 25.1 percent of Lansheng's shares were sold publicly, with the proceeds returning to the company as new capital investment. The remaining 74.9 percent of the shares represents the value of the assets in the original company, Shanghai Stationery (which was owned "by all the people"). Evidence on the record indicates that these remaining shares are held in trust by the SAMB, just as its assets were held in trust when Lansheng was owned "by all the people." The company's management, which has remained the same throughout its transition to a share company, votes these shares at the general shareholders' meetings of Lansheng. This evidence supports the conclusion that, under the new corporate structure, the government has not exerted control over Lansheng through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

China First

China First has been a public company since 1992. China First's shareholders include both the state and individual PRC and foreign investors. At verification, through an examination of the minutes from the 2nd Annual Shareholders Meeting, company records, and discussions with government and company officials, we found that the holder of the state-owned shares was the "Office for State Assets Administration of the Shanghai Municipality" (SAASM) and that SAASM's shares are voted by the company's employee shareholders. We also note the record shows that, as of verification, more than 50 percent of China First's shares were held by private, individual investors, both foreign and Chinese.

In conducting a *de facto* analysis of China First, we have examined the factors set forth in *Silicon Carbide*. China First's sales documentation and correspondence supports the conclusion that no government entity exercises control over China First's export prices. Additionally, our examination of numerous contracts with domestic and foreign trading companies demonstrates that China First has independent authority to negotiate and sign contracts and other agreements, such as joint ventures.

China First holds a general shareholders meeting annually. At this meeting the shareholders elect the Board of Directors, each of whom serves a three year term. Employees vote the shares held by the government in selecting the Board. The Board of Directors in turn selects the company's management. Because the state-owned shares represent a minority interest and because those shares are, in fact, voted by employee shareholders, the evidence supports the conclusion that the government does not control selection of the Board of Directors or other members of management.

We also found that China First retained proceeds from export sales and made independent decisions regarding the disposition of profits and financing of losses both before and after becoming a share company. This point was supported through an examination of China First's financial and accounting records, and bank accounts. The evidence supports the conclusion that, under the corporate structure of China

First, the government has not exerted control through the exercise of shareholder rights or otherwise; operational control remains in the hands of company management.

Conclusion

In the case of Guangdong, SFTC, Lansheng and China First, the record demonstrates an absence of *de jure* and *de facto* government control. Accordingly, we determine that each of these exporters should receive a separate rate.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (*See, e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 511680 (October 7, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, the Department has treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, respondents have urged the Department to employ the alternative methodology provided in section 773(c)(2) of the Act, *i.e.*, the export price of a pencil from a comparable market economy. In particular, they have argued that because the primary input into PRC pencils, lindenwood, cannot be valued exactly, the Department is compelled to employ the alternative valuation of FMV. Petitioner argues against using the alternative methodology for FMV. Instead, petitioner suggests that prices for jelutong wood be used to value lindenwood, as the Department did in the preliminary determination.

We have determined that the absence of a price for lindenwood in the surrogate country does not preclude us from using the factors of production methodology. However, we have not used the jelutong prices relied upon in our preliminary determination. For further discussion of the arguments regarding the alternative methodology, *see*, Comment 1, below.

Surrogate Country

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) significant producers of comparable merchandise. Of the countries that have been determined to be economically comparable to the PRC, evidence on the record of this case indicates that India, Pakistan and Indonesia are significant producers of pencils (see, Calculation Memorandum, attachment 1, October 31, 1994). In order to select the surrogate from among these countries that meet the statutory criteria, we have reviewed the data that has been submitted and that we have been able to develop on factor values from these countries.

With respect to Pakistan, we have not located data for a significant number of the Chinese production factors. Among the missing factors are: certain packing materials, polyvinyl acetate, semi-skilled labor, SG&A, profit, and all transportation rates except trucking for a distance of 1000 km. For Indonesia, we have data for even fewer factors. In India, we have factor values for all inputs (other than wood, as discussed below, and tallow). Moreover, we have obtained 1993 values for India, the most recent time period available for data from any surrogate country. Because India meets the statutory criteria for surrogate country selection, and because we have more complete Indian data, we determine that India is the preferred surrogate market in the instant investigation. Therefore, except for certain inputs described below, we have relied on Indian prices to value the Chinese factors of production.

Fair Value Comparisons

To determine whether sales of pencils from the PRC to the United States by China First, Guangdong, SFTC, and Lansheng were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We do not have verified factors of production for a portion of SFTC's U.S. sales discovered at verification. For these sales, we have applied best information available (BIA). (*See* "Best Information Available" section of this notice.)

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country. In two instances, sales were made on a C&F basis. For these sales, we adjusted for freight expenses.

Foreign Market Value

As discussed above, we calculated FMV, based on the factors of production reported by the factories which produced the subject merchandise for the three exporters. The factors used to produce pencils include materials, labor, and energy. We made adjustments to materials usages to account for the resale of scrap materials, where applicable.

In determining the appropriate surrogate value to assign to each factor of production, we used publicly available published information (PAPI), where possible. The PAPI used was: (1) an average non-export value; (2) most current; (3) product-specific; and (4) tax-exclusive.

The following materials were not valued in India:

Wood

The wood used by the Chinese producers in pencil production (Chinese lindenwood) has been the subject of much debate in this investigation. Wood is the most significant input into a finished pencil. (For the domestic industry, it accounts for approximately 50 percent of the cost.)

Prior to the preliminary determination, we consulted industry experts who told us that jelutong was "quite similar" to lindenwood and that "in price, property and uses, American basswood is nearly indistinguishable from lindenwood." Although we had this information at the time of the preliminary determination, we did not have a surrogate value for basswood. Instead, we used a basket category of woods imported into India to assign a value to lindenwood. This category did not include lindenwood or basswood but did include jelutong, which the record indicated was used to produce pencils in Indonesia.

Since the preliminary determination, both respondents and petitioner have provided information on the price and quality of basswood, the most similar wood to lindenwood. The prices are those charged by U.S. producers to U.S. customers. Despite extensive research, no surrogate market or world prices for basswood have been found.

Having determined that basswood is most similar to lindenwood, we have used U.S. basswood prices to value the wood input. Although section 773(c)(4) directs the Department to value the NME factors of production in a comparable surrogate country that is a significant producer of comparable merchandise, this is required only to the extent possible. In this case, where wood is such a significant input and where the only alternative to the basswood price, a price for jelutong, is so much higher than the most comparable wood, we have determined that it is appropriate to use the most comparable wood even though we can only find prices for this input in the United States.

Erasers, Ferrules and Paint

Respondents provided information which led us to question the quality of the Indian PAPI for erasers, ferrules, paint, animal glue and foil. Based on a comparison of the Indian values to the Pakistani values and the values provided in the petition for these inputs (the only other sources of prices for these inputs), we determine that the Indian values for ferrules, erasers and paint were aberrational. Therefore, we valued these factors using Pakistani import statistics (see, Calculation Memorandum, October 31, 1994).

Tallow

Tallow is not imported or, to the best of our knowledge, sold in India or Pakistan. Therefore, we have valued this input in Indonesia. As discussed above, Indonesia has been found to be economically comparable to the PRC and to be a significant producer of pencils.

Non-material Inputs

We used Indian transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as BIA, the most expensive distance/modes combination (*i.e.*, the longest truck rates) that was available in India. We were unable to obtain values for two modes of transportation (man-drawn carts, inland water transport). Therefore, we assumed that these forms were competitive with trucking rates over similar distances.

To value electricity, we used PAPI from the Asian Development Bank on Indian rates. To value coal and natural gas, we used Indian Import Statistics for 1993, the Monthly Statistics of Mineral Production, and the Indian Bureau of Mines dated November 1992, respectively. To value water, we used the Indian industrial schedule from the *Water Utilities Data Book*.

For all material and energy values that were for a period prior to the POI, we adjusted the factor values to account for inflation between the applicable time period and the POI using wholesale price indices published in *International Financial Statistics* (*IFS*) by the International Monetary Fund.

To value labor amounts, we used the International Labor Office's *1993 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor values to account for inflation between the applicable time period and the POI using the consumer price indices published in *IFS*.

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin* (RBI), December 1993. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. However, we used the statutory minimum of eight percent for profit because the profit percentage derived from the RBI data was less than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. Packing materials were valued using Indian PAPI. These prices were adjusted to include the freight costs for the delivery of packing materials to the factories producing pencils.

Best Information Available

Because information has not been presented to the Department to prove otherwise, only SFTC, Guangdong, China First and Lansheng are entitled to separate dumping margins. Other exporters identified by the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. Lacking responses from these companies, we are basing the PRC country-wide rate on BIA in accordance with section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina* (*Argentina Steel*), 58 FR 7066, 7069–70 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Here, the non-responding companies failed to cooperate. Therefore, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and on the basis of petitioner's updated information submitted in May 1994. Also, in recalculating the petition rate, we substituted the U.S. basswood price discussed above for the wood value used by petitioner. In making this change we relied on PRC wood usage factors because of the possibility that the amount of wood used to produce a pencil will vary depending on wood type.

We are also applying BIA to a portion of SFTC's sales. SFTC was cooperative in this investigation. However, we are lacking the necessary data for FMV calculations for three sets of pencil sales. We do not find these deficiencies sufficient to call into question the overall reliability of SFTC's data. Therefore, we are applying partial BIA to these sales. As partial BIA, we applied the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the examination of relevant sales and financial records, and original source documentation.

Continuation of Suspension of Liquidation

For China First and Guangdong we calculated a zero margin. Therefore, in accordance with 19 CFR 353.21 and consistent with *Jia Farn Manufacturing Co., Ltd.* v. *United States*, Slip Op. 93–42 (March 26, 1993), we will exclude from the application of any order issued imports of subject merchandise that are sold by either China First or Guangdong and manufactured by the producers whose factors formed the basis for the zero margin. Under the NME methodology, the zero rate for each exporter is based on a comparison of the exporter's U.S. price and FMV based on the factors of production of a specific producer (which may be a different party). The exclusion, therefore, applies only to subject merchandise sold by the exporter and manufactured by that specific producer. Merchandise that is sold by the exporter but manufactured by other producers will be subject to the order, if one is issued. This is consistent with *Jia Farn* which held that exclusion of merchandise manufactured and sold by respondent did not cover merchandise sold but not manufactured by respondent. Therefore, merchandise that is sold by China First or Guangdong but produced by another producer is subject to suspension of liquidation at the "all others" cash deposit rate.

In accordance with sections 733(d)(1) and 735(c)(4) (A) and (B) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after March 18, 1994, (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**), except entries of the excluded merchandise described above. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
China First/Company A	0.00
China First/Any other manufacturer	44.66
Guangdong/Company B	0.00
Guangdong/Any other manufacturer	44.66
SFTC	8.31
Shanghai Lansheng	17.45
All Others	44.66

Critical Circumstances

On August 22, 1994, the Department issued its preliminary determination that critical circumstances exist in this investigation with respect to pencils exported by SFTC, China First, Lansheng, and "all others."

Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A) (1) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is subject of the investigation at less than its fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Because we have determined that Guangdong and China First in connection with their responding suppliers have not sold cased pencils to the U.S. at less than fair value during the POI, we determine that critical circumstances do not exist with respect to these companies. Therefore, we have limited our analysis of critical circumstances to SFTC and Lansheng.

History of Dumping

As stated in our preliminary determination of critical circumstances, in April 1994, the Government of Mexico published an antidumping duty order on certain cased pencils produced and exported from the PRC. On this basis, we determine that there is a history of dumping elsewhere of the class or kind of merchandise under investigation.

Massive Imports

In accordance with 19 CFR 353.16(f) and 353.16(g), to determine whether imports have been massive over a relatively short period of time, we consider: 1) the volume and value of the imports; 2) seasonal trends (if applicable); and 3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

The U.S. volume and value information submitted by the respondents in this investigation and used by the Department in its preliminary determination of critical circumstances is unchanged. Based on this information, we find that imports of pencils from the PRC have been massive over a relatively short period of time for both SFTC and Lansheng. Also, for the non-responding exporters, we have assumed as BIA that imports have been massive.

Therefore, the statutory criteria for finding critical circumstances have been met for SFTC and Lansheng and all non-responding PRC exporters of pencils.

Interested Party Comments

Comment 1: Respondents argue that section 773(c)(1) of the Act requires the Department to value the specific input used by the PRC producer based on the best available information regarding values in the surrogate country or countries. Absent an acceptable surrogate value for each factor, the Department must consider the use of the exception provided for in the statute at section 773(c)(2) of the Act. This is especially so where, as here, the Department lacks a surrogate value for the single most significant input, lindenwood.

Respondents submit that the Conference Report to what became the Trade and Competitiveness Act of 1988 shows Congress' recognition that in some cases the Department will be unable to develop adequate and usable sources of surrogate factor values (which, in turn, will deprive nonmarket economy producers and exporters of any notion of fairness), requiring resort to the alternative provided in the statute, *i.e.*, export prices of comparable merchandise from an economically comparable country. *See*, Omnibus Trade & Competitiveness Act of 1988—Conference Report, Rep. No. 100–576, 100th Cong., 2d Sess. at 592 (1988). Respondents assert that this Conference Report reflects Congress' desire to provide nonmarket economy countries with some semblance of realism and reasonableness in the determination of their foreign market values.

Petitioner argues that the statute provides a clear preference for the factors of production methodology over the alternative, export prices of comparable merchandise from an economically comparable country. Petitioner asserts that the Department can only use the export price alternative if the Department finds that the available information is inadequate for purposes of determining the FMV of the subject merchandise. In this case, the price of jelutong is acceptable for valuing the Chinese wood price.

Petitioner claims further that the Indian export data regarding pencils provided by respondents covers too few pencils and provides no information with respect to the quality of those pencils. Therefore, petitioner contends, the Indian export data provide an inadequate basis for determining FMV. The Department should not reject the adequate and detailed surrogate value data in favor of deficient export data.

DOC Position: The statute states that the Department shall "determine the foreign market value of the merchandise on the basis of the value of the factors of production utilized in producing the merchandise," and furthermore that, "the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." *See* section 773(c)(1) of the Act. The Act further provides that, if the Department finds the available information inadequate for purposes of determining foreign market value based on the factors of production, the Department shall base FMV on the price at which comparable merchandise is produced and exported in one or more market economy countries at a comparable level of economic development to that of the nonmarket economy. *See,* section 773(c)(2).

In this investigation, we have determined that we have sufficient information on factor values to rely on the factors of production methodology. Although we do not have a value for the specific wood used by PRC producers, the Department may exercise its discretion in selecting a comparable input by which to value this factor.

In *Ceiling Fans From the People's Republic of China: Notice of Court Decision; Exclusion From the Application of the Antidumping Duty Order, in Part; Termination of Administrative Reviews; and Amended Final Determination and Order* (59 FR 9956, March 2, 1994), the Department stated that ". . . section 773(c)(1) of the Act provides for valuation of factors of production on the best available information from an appropriate surrogate country, not on the basis of perfectly conforming information." In this instance, we have evidence that basswood is virtually indistinguishable from lindenwood. Therefore, as explained in FMV section of this notice, we have used basswood as a surrogate value for lindenwood.

Moreover, we are not persuaded that the use of the statutory exception in this investigation would increase the accuracy of our calculations. The comparison of an average Indian export price with each of the several different pencil types exported to the U.S. by the PRC respondents could lead to significant distortions and inherent unfairness. Because the Indian export price may reflect a wide variety of pencil types, PRC exporters selling lower value-added pencils, *e.g.*, raw or semi-finished, could be severely penalized by such an approach. Similarly, PRC exporters of higher value-added pencils, *e.g.*, colored, foil, or designer, could profit.

Absent some workable method for adjusting the average Indian export price to reflect the differences in merchandise exported by the respondents, we cannot agree that the export price methodology yields a better measure of FMV in this case.

Comment 2: Respondents argue that, if the Department does not use the export price of Indian pencils as FMV, then it must reject the use of jelutong as a surrogate for lindenwood.

Wood is the single most significant input used in the production of wooden cased pencils, as petitioner's own figures demonstrate. All respondents use lindenwood exclusively in the production of pencils. Respondents submit that lindenwood is a very low-quality wood with little alternative commercial use. The basket of woods chosen by the Department in its preliminary determination as a surrogate value for lindenwood is a group of tropical timbers, whereas lindenwood is a temperate hardwood. Respondents submit that, at the very least, the basket of woods should include lindenwood. Therefore, respondents argue that the basket category is unacceptable for use as a surrogate for lindenwood.

Petitioner argues that the Department properly relied upon the price of jelutong for valuing the wood input. Based on the evidence developed by the Department, jelutong is "quite similar" to lindenwood. Also, petitioner asserts that jelutong is used to produce pencils.

Petitioner submits that the Department has previously found it appropriate to rely on available information for the price of a similar input material when surrogate information for the identical material is not available. *See, Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China,* 59 FR 28053, 28058 (May 31, 1994). Thus, according to petitioner, because the record demonstrates that jelutong and lindenwood are similar types of wood, jelutong is an adequate surrogate and meets the statutory requirement.

DOC Position: All parties agree that wood is the single most significant input used in the production of wooden cased pencils. Thus, the Department has taken great care in its determination of the appropriate surrogate value for PRC lindenwood. In light of information submitted by both petitioner and respondents and the Department's own research after the preliminary determination, we determine that the value of jelutong and/or the Indian basket category of tropical woods used in the preliminary determination is not an adequate surrogate for lindenwood. We find the jelutong value inappropriate because our research indicates that, although jelutong is used in pencil production, it is an entirely different genus of wood. Jelutong is a tropical soft timber and lindenwood is a temperate hardwood. Simply because both woods are used to produce pencils does not, in our estimation, indicate that they are comparable in quality or value. Indeed, when the price of jelutong is compared to the price of basswood, the wood identified as most comparable to lindenwood, it reveals that the value of jelutong is not comparable.

Moreover, we note that the Indian import value used for logs in the preliminary determination was based on a basket category. The basket category is made up of seven types of wood; three of these are similar in properties and use to lindenwood, four are not as similar. Therefore, even if we were to agree with petitioner that jelutong is an acceptable surrogate for lindenwood, it is questionable whether this basket price even reflects a value for jelutong.

The price used in the preliminary determination for sawn jelutong, in contrast to the price for logs, is a world market price. Therefore, the problem of jelutong is twofold: it is less similar to lindenwood than is basswood and it is reported in a basket category for one of the two forms in which PRC producers purchased lindenwood.

Comment 3: Petitioner argues that, should the Department decide to use a U.S. price for basswood, it should not use the price provided by respondents. Petitioner argues that the type of basswood described in respondents' submission is not suitable for pencil production. Specifically, the information submitted by respondents is for grade 4/4 FAS+ (FAS+ indicates highest quality) basswood, whereas pencil production requires at least grade 12/4. In support of this, petitioner points to a study which it submitted which shows that U.S. producers would use 12/4 and 16/4 basswood.

DOC Position: One PRC producer who supplies pencils to a PRC exporter purchases wooden slats, rather than logs or sawn timber, to produce pencils. Slats are thin pieces of wood that are further processed than logs. The U.S. prices we have for basswood which has been processed beyond the log stage (*i.e.*, sawn lumber) are for grade 4/4 (submitted by respondents) and for grades 12/4 and 16/4 (obtained by the Department). None of these grades corresponds to the actual input purchased by the PRC company in question (e.g. slats).

Lacking information on the specific input used by the PRC producer, we have relied on petitioner's study as indicative of the grades of sawn lumber that would be used to produce pencils. Moreover, we also note that the prices submitted by respondents were for September 1994, after the POI.

Petitioner's submission also indicated that U.S. producers would use FAS+ and 1C (number 1 common) quality wood. Therefore, we averaged the prices during the POI of 12/4 and 16/4 basswood at FAS+ and 1C quality levels.

The other PRC producers in this investigation purchase logs of lindenwood for their pencil production. We obtained basswood log price listings during the POI from another publication (*see*, Calculation Memorandum, October 31, 1994) and we used POI prices for log basswood for these producers.

Comment 4: Respondents argue that the Department should review its determination of India as the most appropriate surrogate, and in light of new information, determine that Pakistan is the most appropriate surrogate. Specifically, a comparison of revised 1994 World Bank statistics in the *World Development Report* shows that Pakistan's economy is more comparable to that of the PRC than India's, based on per capita GNP and growth rates. Moreover, the Pakistani factor value data is more timely, *i.e.*, closer to the POI, and reflects larger, "commercially viable" import quantities.

Petitioner claims that India should remain the preferred surrogate because the Department has consistently determined it to be the appropriate surrogate for the PRC, based on the criteria set forth in section 773(c)(4) of the Act. Furthermore, according to petitioner, the statute does not require that the Department choose the *most* comparable surrogate, but rather only that the Department base its surrogate determination on a country: (1) whose economy is comparable to that of the PRC, and (2) which is a significant producer of comparable merchandise. In petitioner's view, Pakistan does not meet the second criterion. Finally, petitioner argues that the Pakistani factor values placed on the record by respondents do not cover all the inputs.

DOC Position: Based on World Bank data, the Department has identified a number of countries that are at a level of economic development comparable to the PRC. Among these comparable countries are Pakistan, India, and Indonesia. We have also determined that Pakistan, India, and Indonesia are significant producers of pencils (see, Concurrence Memorandum, October 31, 1994). Therefore, all three countries meet the statutory criteria for being selected as the surrogate in this investigation.

In this case, India is the country where, in comparison to other potential surrogates, we have been able to obtain values for the overwhelming majority of factors. (Pakistani values were available for approximately half the factors, Indonesia less than that.) Therefore, we have chosen India as our primary surrogate and we are valuing most of the factors there. This is consistent with our practice of attempting to use a single country, where possible, for valuing factors. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 29705 (July 6, 1992).

We also note that we have been able to obtain Indian data that is contemporaneous with the Pakistani data submitted by respondents. Therefore, while we agree that "timeliness" of the data may be a reason to select one potential surrogate over another, that issue does not arise in this case. (Respondents' comment regarding "commercially viable" amounts is addressed in the context of the Department's decisions with respect to specific factors.)

Comment 5: If the Department continues to use India as the surrogate country, respondents argue that certain Indian factors data are skewed. Therefore the Department should reject these Indian factors in favor of more reasonable, commercially justifiable and current data submitted by respondents. Specifically, they contend that Pakistani factor values for erasers, ferrules, plastic foil, animal glue and paint represent more reasonable surrogate values than the information used by the Department in its preliminary determination. They state that the time period covered by the Pakistani data is broader and more recent, the Pakistani values are based on more commercially viable import volumes, and for erasers, ferrules and animal glue, the Pakistani values are more aligned with the U.S. industry cost data submitted by petitioner.

Petitioner argues that Pakistani data represent a larger volume of merchandise simply because Pakistani tariff categories are broader than Indian tariff categories, which are based on the HTS. Petitioner further asserts that it is the Department's practice to use data from a single country where possible in valuing factors of production. Finally, petitioner claims that it is meaningless that some of the Pakistani data are closer to the costs of the U.S. pencil industry. The United States is not a surrogate country, therefore, U.S. prices are irrelevant to the calculation of FMV.

DOC Position: Although we have selected India as the appropriate surrogate country in this investigation, this does not mean that we are required to use those Indian factor values that we find to be aberrational. We have analyzed the Indian factor values for erasers, ferrules, paint, animal glue, and plastic foil. We compared these factor values with Pakistani and U.S. values based on U.S. costs taken from the petition and found the Indian factor values for erasers, ferrules and paint to be aberrational. (*See*, Calculation Memorandum, October 31, 1994.) Therefore, we have used import statistics from Pakistan, another country which is economically comparable to the PRC and which is a significant producer of comparable merchandise, in order to value these three factors as accurately as possible.

We agree with petitioner that, when possible, the Department's preference is to use a single surrogate market to value the factors of production. However, as stated above, when the facts of a case indicate that this will not permit accurate valuation of the input, we are not required to do so. Where necessary, we have used factor values from multiple countries in a number of recent NME investigations. *See, Final Determination of Sales at Less Than Fair Value: Paper Clips from the People's Republic of China* 59 FR 51168 (October 7, 1994); *Final Determination of Sales at Less Than Fair Value: Headwear from the People's Republic of China* 54 FR 11983 (March 23, 1989); and *Final Determination of Sales at Less Than Fair Value: Shop Towels from the*

People's Republic of China 55 FR 34307 (August 22, 1990).

We disagree with petitioner's claim that U.S. prices are irrelevant. Where, as here, questions have been raised about PAPI with respect to particular material inputs in the chosen surrogate, it is the Department's responsibility to examine that PAPI. To make this examination, we relied on the data on the record—Pakistani and U.S. values. For these inputs, U.S. values served to corroborate the claim that certain Indian PAPI for these factors was unreliable.

Comment 6: Petitioner argues that the Department should use nitrocellulose-based lacquer classified under HTS item number 3208.90.09 to derive a value for the lacquer used by respondents in pencil production. Petitioner submits that given the properties of the two HTS categories of lacquer that have been considered by the Department to value the PRC producer's lacquer, nitrocellulose-based lacquer is the most appropriate.

DOC Position: As stated above, we have found the Indian price for paint (lacquer) to be aberrational and have, therefore, used Pakistani data to value paint. Pakistani import statistics are reported in the Standard International Trade Classification (SITC) format which is a United Nations sanctioned nomenclature. Due to the nature of the SITC system, there are fewer product categories, which means that a greater variety of items is included in each category. Pakistani data on specific subcategories of lacquers are unavailable. The SITC subheading we used was 5334202 which encompasses both the HTS subheading proposed by petitioner and the one used by the Department in the preliminary determination. The description of SITC subheading 5334202 is "lacquers."

Comment 7: Petitioner argues that the Department should rely on the actual expense and profit percentages for the Indian pencil industry, rather than the amounts in the petition, for the calculation of the "all others" rate. The actual data concerning expense and profit percentages is the best available information and, therefore, would provide an "all others" FMV that better reflects the actual surrogate values for these items.

Petitioner further states that the Department should adjust the "all others" rate to reflect transportation costs reported by the Chinese respondents. Petitioner suggests that the Department apply the highest transportation cost, port handling and loading charge, and containerization fee reported by respondents. Petitioners submit that non-responding PRC exporters should not be rewarded for their non-cooperation by receiving the benefit of a margin that does not reflect all costs.

DOC Position: We disagree with petitioner. We do not believe it is appropriate to adjust petition data only where the values would increase. Although an adverse inference is drawn when exporters do not cooperate, this does not mean that the BIA rate should be as high as possible.

In this case we have made one adjustment to the petition data based on surrogate values developed in the course of this investigation. This adjustment was to revalue the wood input using basswood prices. We made this adjustment because, based on what we have learned, the most similar wood to lindenwood is basswood. Having rejected jelutong as a surrogate for lindenwood, it would not be appropriate to use jelutong even in a BIA situation.

Comment 8: Petitioner argues that the Indian import data do not convey the full value of the materials in India because they exclude Indian customs tariffs applicable to these materials. In valuing the imported materials, the Department should apply the *ad valorem* tariff rate imposed by the Indian government.

Respondents argue that both India and Pakistan have drawback schemes whereby exporters are reimbursed for or exempted from the payment of import duties collected on inputs. Thus, the added cost of import duties is not one which would be incurred, and it should not be added to the already inflated values represented in surrogate values derived from Indian import statistics.

DOC Position: We disagree with petitioner. The purpose of the factors methodology is to construct the FMV of NME-produced goods using values in the surrogate country. Theoretically two costs could be calculated—the cost for a domestically sold pencil and the cost of an exported pencil—if the country permits duty free importation of inputs for exports. We are constructing the value of the exported merchandise, therefore, it is appropriate to use the costs the surrogate producer would face in producing exported merchandise. Consistent with our standard practice in this regard, we are not adding the Indian import duties to the values reported in the published Indian import statistics as those duties would have been rebated upon export of the finished products. *See, Final Determination of Sales at Less than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833, 48841–42 (September 20, 1993).

Comment 9: Petitioner claims that respondents belatedly submitted Pakistani import data covering certain of the raw materials used in pencil production on September 13, 1994. Petitioner argues that this information should be rejected by the Department because (1) the time for submitting surrogate value information had long since passed, and (2) under the Department's regulation, factual information submitted after the commencement of verification is untimely and should be rejected. *See* 19 CFR §§ 353.31(a)(1)(i),(b)(3). Petitioner contends that the information was not submitted in response to a current request by the Department, and respondents did not request or receive an extension of the long-expired previous requests for surrogate information. Thus, this information does not fall into one of the narrow exceptions for late submissions included in 19 CFR §§ 353.31(b)(2), (b)(3), of the Department's regulation.

DOC Position: Contrary to petitioner's contention, respondents requested and received an extension by telephone (*See,* Memorandum to File from Team dated September 28, 1994), for the submission of PAPI. Petitioner, in fact, was also granted an extension for the submission of PAPI once an extension was requested.

Comment 10: At verification, it was discovered that a U.S. producer provided one manufacturer with a material input free of charge. Petitioner argues that the Department should assign a value to this input, regardless of whether it was provided free of charge. The Department is required by the statute to include all inputs in the construction of FMV for comparison to U.S. sales.

Respondents contend that the situation in the instant investigation is analogous to a situation where a U.S. customer has a tolling arrangement with a foreign producer. Respondents argue that in such situations the Department has consistently compared the price charged to the U.S. customer—exclusive of materials supplied by the customer to the price charged for similar arrangements in the home market. *See, Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France* 52 FR 812 (January 9, 1987). Respondents point out that in *Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip from Korea* 51 FR 40834 (November 10, 1986), the Department stated that "[i]f we were to compare the prices of tolled to non-tolled sales, extensive adjustments would have to be made. For example, if the U.S. transaction is a non tolled sale, we would have to adjust home market prices for non-tolled sales so that they would reflect in addition the cost of the customer supplied inputs. In the opposite situation, home market prices for non-tolled sales would somehow have to be adjusted downward." Respondents conclude that in this case the Department is constructing a value and not adjusting a price; therefore, any materials supplied by a U.S. customer should not be included in the constructed FMV.

DOC Position: We agree with respondents. The factors of production methodology constructs the value of the subject merchandise as exported. We verified that a certain input in one of the pencils sold to a certain customer was provided free of charge to the producer/exporter. If we were comparing a constructed FMV inclusive of this free input to a U.S. sale to a different customer who had not provided the input, it is possible that an adjustment to FMV would have been warranted. However, this is not the case. We compared the constructed factor value for this pencil type with U.S. sales of this type of pencil to only the customer that provided the input. Therefore, contrary to petitioner's argument, we have correctly valued the NME producers factors of production for this merchandise.

Comment 11: Petitioner argues that the verification report shows numerous substantive material errors in SFTC's questionnaire response. These serious deficiencies warrant the application of comprehensive BIA for SFTC.

Respondents argue that the Department should not resort to total BIA for SFTC as it did in the preliminary determination in this investigation. Respondents argue that SFTC has cooperated fully throughout this investigation and, therefore, the Department should calculate a margin based on the data supplied by the company and verified by the Department.

Respondents argue that where information is either missing or unavailable, the Department should not seek unnecessarily to punish SFTC given the company's cooperative approach in this investigation. The following paragraphs outline the specific data problems and respondents' suggested treatment of these problems.

Prior to verification, the company discovered that it had misreported the pencil producers for a number of transactions. Respondents point out that, upon the commencement of verification, the verifier was informed of this issue. Since, as a result of this misreported information, SFTC was unable to provide factors data for the actual producers for certain transactions, respondents contend that BIA, if applied, should be the highest calculated margin for any of SFTC's pencil sales of similar merchandise, if available. Respondents contend that in the case where similar merchandise is not available, BIA, if applied, should be the highest calculated margin for any SFTC sale.

In addition, at verification the Department found that SFTC incorrectly reported two different suppliers for one transaction. Respondents argue that this discrepancy is minor because SFTC reported and the Department verified data from both suppliers. Therefore, the Department should simply use the verified factors data for the correct supplier, rather than resorting to BIA.

Respondents argue that the discovery at verification that two of SFTC's shipments to the U.S. were shipped C&F, and not FOB, is an oversight of little significance. The data were collected at verification and can now be used to calculate the correct freight for these sales. Similarly, it was discovered that two invoice numbers were incorrect, as reported. Respondents submit that these were typographical errors of no significance.

Finally, at verification it was discovered that SFTC inadvertently excluded a sale of yellow pencils it thought was produced and supplied by a producer whose pencils it was previously permitted to exclude from the sales listing (*See* Memorandum from Elizabeth Graham to Barbara Stafford, dated April 7, 1994). Respondents argue that the Department should use the actual producer's factors data to calculate the margin for this sale. Respondents submit that the Department has paint usage for this supplier, that whether the paint is white or yellow is of no consequence, and that the Department has the appropriate usage rates for ferrules and erasers.

In its supplemental questionnaire response dated May 17, 1994, SFTC notified the Department that portions of reported raw pencil sales had been supplied by a factory previously thought to have supplied only yellow pencils. Respondents submit that, as BIA, the Department should use the highest margin calculated for other sales of raw pencils.

A small number of sample shipments not reported in SFTC's sales response were noted in the sales verification report (*See* SFTC Verification Report, at 5 and Exhibit 11). These shipments were never sold. Therefore, in respondents' view, these invoices should be considered properly excluded from SFTC's sales listing.

DOC Position: Although we found at verification that SFTC had a number of misreported pieces of information, SFTC has made every effort to cooperate in this investigation. In addition, as noted above, we do not find that these deficiencies are sufficient to call into question the overall reliability of SFTC's data. Therefore, contrary to petitioner's assertion, we determine that SFTC's response does not warrant the application of total BIA and we applied partial BIA as described in the BIA section of this notice. However, the partial BIA methodology suggested by respondents would result in assigning a zero margin for sales for which we are missing the necessary factors data. Because such BIA would not be adverse, we find it inappropriate. We are, therefore, applying as partial BIA the petition rate.

With respect to our finding at verification that two U.S. sales were made on C&F terms rather than FOB as reported, we simply adjusted SFTC's freight expenses accordingly.

At both the SFTC verification and the verification of its U.S. sales office, we noted sample shipments of raw pencils. It is the Department's practice to exclude sample sales from its calculations, if evidence exists that the sample sales were not made in substantial quantities. *See, e.g., Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan*, 58 FR 30144 (May 26, 1993), and *Final Determination of Sales at Less Than Fair Value: Sulphur Dyes, Including Sulphur Vat Dyes from the United Kingdom* 58 FR 3253, (January 8, 1993). In this case, we found no evidence that SFTC routinely offers samples to its U.S. customer. Rather, at verification, we established that only a small quantity of raw pencils were provided to the U.S. customer for quality testing. Therefore, we have not treated these sample shipments as U.S. sales.

Comment 12: Respondents argue that the Department was incorrect in its preliminary determination of critical circumstances with respect to imports of pencils into the U.S. from China First, SFTC, and Lansheng. Respondents argue that critical circumstances are not present.

Respondents assert that, on their face, the Mexican dumping findings relied on by the Department are incredible (451 percent) and should be disregarded with respect to the requirement that a history of dumping be found. Furthermore, the Mexican finding was based on BIA, and the only Chinese producer identified was Guangdong. According to the ITC record, none of the other PRC respondents in the instant investigation was named or participated in the Mexican case or exported significant quantities of pencils to Mexico. Accordingly, China First, SFTC or Lansheng have no history of dumping.

Absent history of dumping, importer knowledge of dumping is required in order for the Department to find critical circumstances. Respondents assert that the final determination in this investigation will reflect dumping margins much lower than those established in the preliminary determination, thus eliminating any suggestion that importers had the required knowledge of dumping.

Finally, respondents contend that the statutory phrase "relatively short period of time" was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison. By comparing equivalent periods of time prior to and after the filing of the petition, the Department has exceeded its statutory authority. Therefore, the Department should modify its methodology for the final determination.

Petitioner argues that respondents have not explained why Mexican antidumping proceedings are inherently suspect. The size of the margins found in the Mexican proceeding is not relevant; what is relevant is that Mexico, a signatory to the General Agreement on Tariffs and Trade (GATT) Antidumping Code, issued an affirmative finding of dumping. This meets the statutory standard for history of dumping. It is immaterial whether a particular foreign exporter is named in a third country antidumping finding, or does not export to that third country.

Petitioner takes issue with respondents' claim that the "relatively short period of time" phrase "was meant to denote a period of time in the post-filing period which was shorter than the pre-filing period used for comparison." Congress identified the statutory "relatively short period" as that between the commencement of an investigation and the preliminary determination. H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 63 (1979). The Department's regulation comports with the legislative purpose. *See*, 19 CFR 353.16(g). Respondents have failed to demonstrate that the regulation is neither reasonable nor a proper exercise of the Secretary of Commerce's discretion. *See Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983). Petitioner argues that in order to make its determination, Commerce must compare the post-filing period with a similar "normal" period before the case began.

Finally, petitioner submits that the statute directs the Department to determine whether "there have been massive imports of the merchandise which is the subject of investigation over a relatively short period." *See* section 735(a)(3) of the Act. Petitioner argues that the Department is directed to analyze the subject merchandise as a whole, and that there is no provision for the exception of individual exporters when the massive imports criterion is met. Thus an affirmative final critical circumstances determination is warranted for all exporters, including Guangdong in this investigation.

DOC Position: We disagree with respondents' assertion that the Mexican antidumping determination with respect to pencils from the PRC should be disregarded by the Department. On the contrary, the Mexican determination meets exactly the statutory requirement under section 733(e)(1) of the Act with respect to a history of dumping of the class or kind of merchandise under investigation in the United States or elsewhere. Moreover, with respect to respondents' assertion that the Mexican finding identified only one respondent, we note that the order exists as to pencils from the PRC and not as to one particular respondent. Therefore, we do not believe that we should single out only those producers specifically mentioned in the Mexican finding.

We disagree with respondents' contention that the Department exceeded its statutory authority in selecting an equal period of time before and after the filing of the petition in this investigation. The Department acted in accordance with the requirements of the statute and past practice by examining equal time periods to determine whether or not imports of pencils from the PRC have been massive over a relatively short period of time. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China*, 59 FR 39727 (August 4, 1994) and *Final Determination of Sales at Less Than Fair Value: Industrial Belts from Italy*, 54 FR 15483 (April 18, 1989).

Finally, we disagree with petitioner's assertion that the Department is statutorily required to determine the existence of critical circumstances on an aggregate basis. When company-specific information is available, we conduct our analysis on a company-specific basis. In the event that such information is not available, we use the most specific information available in making our critical circumstances determination. In this investigation, we have reached our critical circumstances determination on a company-specific basis because respondents provided the information which permitted us to do so.

Comment 13: Petitioner argues that the Department should explicitly provide in its final determination that Chinese pencils transshipped through Hong Kong are within the scope of this investigation.

DOC Position: The scope of the order, if one is issued, will cover certain cased pencils produced in the PRC. The fact that the PRC pencils are transshipped through a third country en route to the U.S. would not alter the fact that they are PRC-produced pencils subject to the order. Therefore, Chinese produced pencils that are transshipped through Hong Kong (or any other country) are within the scope of this investigation and are subject to any antidumping duties imposed as a result of this proceeding.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing U.S. Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-27667 Filed 11-7-94; 8:45 am]

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APPENDIX B
SUMMARY TABLES

Table B-1

Certain cased pencils: Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

(Quantity=*1,000 gross*; value=*1,000 dollars*; unit values and unit labor costs are per *gross*; period changes=*percent, except where noted*)

Item	Reported data: 1991	1992	1993	Jan.-June-- 1993	Jan.-June-- 1994	Period changes: 1991-93	1991-92	1992-93	Jan.-June 1993-94
U.S. consumption quantity:									
Amount	***	***	***	***	***	+10.1	+10.0	+0.1	+3.7
Producers' share:[1]									
Finished shipments	***	***	***	***	***	-8.9	-5.8	-3.1	-6.6
Less U.S. imports of raw pencils	***	***	***	***	***	+6.6	+1.2	+5.4	+4.7
Finished shipments of U.S. origin	84.1	77.1	68.7	72.8	61.6	-15.4	-7.0	-8.4	-11.2
Importers' share:[1]									
China/Hong Kong:									
Fair value imports	***	***	***	***	***	+2.8	+0.3	+3.1	+0.7
LTFV imports	***	***	***	***	***	+12.5	+8.8	+3.7	+13.8
Subtotal	6.7	15.2	22.0	16.0	30.5	+15.3	+8.5	+6.8	+14.5
Other sources	9.2	7.6	9.3	11.1	7.9	+0.1	-1.6	+1.7	-3.2
Total	15.9	22.9	31.3	27.2	38.4	+15.4	+7.0	+8.4	+11.2
U.S. consumption value:									
Amount	***	***	***	***	***	+23.8	+17.7	+5.1	+3.8
Producers' share:[1]									
Finished shipments	***	***	***	***	***	-2.1	-4.0	+2.0	-2.1
Less U.S. imports of raw pencils	***	***	***	***	***	+1.5	+0.3	+1.2	+1.4
Finished shipments of U.S. origin	80.1	75.7	76.5	76.7	73.2	-3.6	-4.3	+0.7	-3.5
Importers' share:[1]									
China/Hong Kong:									
Fair value imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
LTFV imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
Subtotal	5.5	9.3	10.7	9.2	11.3	+5.2	+3.8	+1.4	+2.1
Other sources	14.4	14.9	12.8	14.1	15.5	-1.6	+0.5	-2.1	+1.5
Total	19.9	24.3	23.5	23.3	26.8	+3.6	+4.3	-0.7	+3.5
U.S. importers' imports from--									
China/Hong Hong:									
Quantity:									
Fair value imports	***	***	***	***	***	+1,000.0	-98.3	+659.0	+65.3
LTFV imports	***	***	***	***	***	185.0	+96.3	+45.2	+99.8
Subtotal	1,306	3,276	4,724	1,752	3,458	+261.7	+150.8	+44.2	+97.4
Value:									
Fair value imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
LTFV imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
Subtotal	9,029	17,957	21,691	9,247	11,788	+140.2	+98.9	+20.8	+27.5
Unit value:									
Fair value imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
LTFV imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
Average	$6.91	$5.48	$4.59	$5.28	$3.41	-33.6	-20.7	-16.2	-35.4
Ending inventory quantity:									
Fair value imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
LTFV imports	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]
Subtotal	383	578	1,597	619	2,536	+317.0	+50.9	+176.3	+309.7
Other sources:									
Imports quantity	1,791	1,642	2,009	1,218	895	+12.2	+8.3	+22.4	-26.5
Imports value	23,551	28,766	25,915	14,174	16,137	+10.0	+22.1	-9.9	+13.8
Unit value	$13.15	$17.52	$12.90	$11.64	$18.03	-1.9	+33.2	-26.4	+54.9
Ending inventory qty	***	***	***	***	***	+4.7	+77.1	+96.5	+105.6
All sources:									
Imports quantity	3,098	4,918	6,734	2,970	4,353	+117.4	+58.7	+36.9	+46.6
Imports value	32,580	46,724	47,605	23,421	27,925	+46.1	+43.4	+1.9	+19.2
Unit value	$10.52	$9.50	$7.07	$7.89	$6.41	-32.8	-9.7	-25.6	-18.7
U.S. producers'--									
Average capacity quantity	***	***	***	***	***	+13.8	+8.7	+4.7	-0.3
Production quantity	***	***	***	***	***	+11.2	+9.4	+1.6	-14.1
Capacity utilization[1]	***	***	***	***	***	-1.9	+0.5	-2.4	-10.8

See footnotes at end of table.

Table B-1--Continued
Certain cased pencils: Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

(Quantity=*1,000 gross*; value=*1,000 dollars*; unit values and unit labor costs are per *gross*; period changes=*percent, except where noted*)

Item	Reported data					Period changes			
				Jan.-June--					Jan.-June
	1991	1992	1993	1993	1994	1991-93	1991-92	1992-93	1993-94
U.S. shipments:									
Quantity	***	***	***	***	***	-1.3	+2.5	-3.7	-5.1
Value	***	***	***	***	***	+20.6	+11.8	+7.8	+1.0
Unit value	$***	$***	$***	$***	$***	+22.2	+9.1	+12.0	+6.4
U.S. shipments of U.S.-origin finished product:									
Quantity	***	***	***	***	***	-10.1	+0.8	-10.8	-12.2
Value	***	***	***	***	***	+18.2	+11.4	+6.2	-0.9
Unit value	$***	$***	$***	$***	$***	+31.5	+10.5	+19.0	+12.9
Export shipments:									
Quantity	***	***	***	***	***	+60.3	+0.5	+59.5	-24.8
Exports/shipments[1]	***	***	***	***	***	+3.3	-0.1	+3.4	-2.0
Value	***	***	***	***	***	+83.8	+4.6	+75.8	-9.4
Unit value	$***	$***	$***	$***	$***	+14.7	+4.1	+10.2	+20.4
Ending inventory quantity	***	***	***	***	***	+40.8	+7.6	+30.9	+3.8
Inventory/shipments[1]	***	***	***	***	***	+5.8	+0.8	+5.0	+2.3
Production workers	***	***	***	***	***	+2.1	+6.9	-4.4	-12.0
Hours worked (*1,000s*)	***	***	***	***	***	+19.5	+16.6	+2.5	-13.3
Total compenstion (*$1,000*)	***	***	***	***	***	+27.0	+19.2	+6.6	-11.5
Hourly total compensation	$***	$***	$***	$***	$***	+6.2	+2.2	+4.0	+2.0
Productivity (*gross/hour*)	***	***	***	***	***	-7.0	-6.2	-0.9	-0.2
Unit labor costs	$***	$***	$***	$***	$***	+14.3	+8.9	+4.9	+2.7
Net sales--									
Quantity	17,611	18,520	17,620	9,309	8,651	+0.1	+5.2	-4.9	-7.1
Value	138,926	158,776	171,562	85,233	84,949	+23.5	+14.3	+8.1	-0.3
Unit sales value	$7.89	$8.57	$9.74	$9.16	$9.82	+23.4	+8.7	+13.6	+7.2
Cost of goods sold (COGS)	113,542	128,387	137,038	66,858	66,513	+20.7	+13.1	+6.7	-0.5
Gross profit (loss)	25,384	30,389	34,524	18,375	18,436	+36.0	+19.7	+13.6	+0.3
SG&A expenses	26,529	30,637	36,449	18,975	17,193	+37.4	+15.5	+19.0	-9.4
Operating income (loss)	(1,145)	(248)	(1,925)	(600)	1,243	-68.1	+78.3	-676.2	+307.2
Capital expenditures	5,424	4,391	5,579	3,821	3,068	+2.9	-19.0	+27.1	-19.7
Unit COGS	$6.45	$6.93	$7.78	$7.18	$7.69	+20.6	+7.5	+12.2	+7.1
Unit SG&A expenses	$1.51	$1.65	$2.07	$2.04	$1.99	+37.3	+9.8	+25.0	-2.5
Unit op. income (loss)	($0.07)	($0.01)	($0.11)	($0.06)	$0.14	-68.0	+79.4	-715.9	+322.9
COGS/sales[1]	81.7	80.9	79.9	78.4	78.3	-1.9	-0.9	-1.0	-0.1
Op.income (loss)/sales[1]	(0.8)	(0.2)	(1.1)	(0.7)	1.5	-0.3	+0.7	-1.0	+2.2

[1] "Reported data" are in percent and "period changes" are in percentage points.
[2] Positive figure, but less than significant digits displayed.
[3] Data are not available.

Note.--Period changes are derived from the unrounded data. Period changes involving negative period data are positive if the amount of the negativity decreases and negative if the amount of the negativity increases. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table B-2
Certain cased pencils: Summary data concerning the U.S. market (with producer data for all firms excluding Pentech), 1991-93, Jan.-June 1993, and Jan.-June 1994

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

APPENDIX C

SALIENT DATA ON SELECTED CHINESE PRODUCERS AND/OR EXPORTERS OF CERTAIN CASED PENCILS AND MARKET SHARES OF U.S. IMPORTS FROM CHINA

Table C-1
Certain cased pencils: Capacity, production, capacity utilization, inventories, and shipments for Chinese producers and/or exporters of LTFV sales (group A) and for Chinese producers and/or exporters of fairly-traded sales (group B), 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table C-2
Certain cased pencils: Apparent U.S. consumption and shares of apparent U.S. consumption based on U.S. shipments of domestic product and U.S. imports, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	Jan.-June-- 1994
Apparent U.S. consumption (*1,000 gross*)	***	***	***	***	***
As a share (*percent*) of apparent U.S. consumption:					
Producers' U.S. shipments of finished product of U.S. origin	84.1	77.1	68.7	72.8	61.6
U.S. imports from--					
China/Hong Kong:					
Fair value imports	***	***	***	***	***
LTFV imports	***	***	***	***	***
Subtotal	6.7	15.2	22.0	16.0	30.5
Other sources	9.2	7.6	9.3	11.1	7.9
Total	15.9	22.9	31.3	27.2	38.4

Note.--Because of rounding, shares may not add to the totals shown.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.