

**FINAL RESULTS  
OF REDETERMINATION  
PURSUANT TO COURT REMAND  
KAIYUAN GROUP CORP., et al V. UNITED STATES AND PENCIL SECTION WRITING  
INSTRUMENT MANUFACTURERS ASS'N, et al.,  
COURT NO. 02-00573**

**Summary**

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in Kaiyuan Group Corp., et al v. United States and Pencil Section Writing Instrument Manufacturers Ass'n, et al., USCIT Slip Op. 04-51 (May 14, 2004), Court No. 02-00573 (Kaiyuan). The respondents in Kaiyuan filed a motion of judgement upon the agency record contesting the final results of the antidumping duty administrative review in certain cased pencils (pencils) from the People's Republic of China (PRC). See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 Fed. Reg. 48,612 (July 25, 2002) (Final Results), as amended in Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China, 67 Fed. Reg. 59,049 (September 19, 2002) (Amended Final Results). In Kaiyuan, the Court remanded the case to Commerce instructing it to: (A) articulate specifically the portions of the existing collapsing statutes and regulations which are applicable or inapplicable in the non-market economy (NME) context, and provide the Court with a clearly articulated methodology for collapsing companies in NME countries, and (B) reevaluate the PRC-wide rate applied to Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) in light of the Court's decision that 1) the collapsing methodology used by Commerce in this case was not in accordance with the law and 2) Commerce effectively applied adverse facts available to a participating and cooperative respondent. In these final results, Commerce, pursuant to the USCIT's remand order, has re-examined its determinations with respect to the above-referenced issues, as indicated below.

On August 31, 2004, we released a draft of the remand results for comment. After requesting and receiving a two-day extension, respondents (and petitioners) submitted comments on September 10, 2004. The parties submitted rebuttal comments on September 13, 2004. We have addressed the parties' comments below, and there are no substantive changes to the draft.

**Background**

On December 28, 1994, Commerce published the antidumping duty order on pencils from the PRC. See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China, 59 Fed. Reg. 66,909 (December 28, 1994) (Antidumping Duty Order). Significantly, Commerce excluded from this order Guangdong's U.S. sales of pencils produced by Three Star Stationery Industry Corp. (Three Star). However, in the final determination that gave rise to the antidumping duty order, Commerce stated that if Guangdong sold subject merchandise to the United

States that was produced by manufacturers other than Three Star, such sales would be subject to a dumping margin equal to the rate applied to the PRC entity. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China, 59 Fed. Reg. 55625, 55627 (November 8, 1994), see also Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision, 64 FR 25275 (May 11, 1999).

During the course of the 1998-1999 administrative review of the antidumping duty order on pencils from the PRC, petitioners<sup>1</sup> placed on the record documents that they argued demonstrated an apparent amalgamation of Three Star with another respondent in this proceeding, China First Pencil Co. Ltd. (China First). Given this evidence, petitioners argued that Three Star no longer qualified as the producer identified in the excluded Guangdong/Three Star transaction chain. See Certain Cased Pencils From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 37638 (July 19, 2001) (1998-1999 Final Results) and accompanying Issue and Decision Memorandum at Comment 2. In the 1998-1999 Final Results, Commerce determined that the record evidence did not sufficiently support petitioners' allegations. However, Commerce stated that it would "... revisit this issue if additional evidence regarding CFP's and Three Star's relationship is presented in a future review." See Issues and Decision Memorandum at Comment 2.

Late in the subsequent administrative review (the 1999-2000 administrative review), after verification, petitioners placed additional information on the record regarding the relationship between China First and Three Star. Specifically, they placed on the record a document entitled the "Order of Shanghai Light Industry Holding (Group),<sup>2</sup> Order # (1997) 005" (order 005) directing China First to merge with Three Star, absorb all the capital of Three Star, and form a group company that would include Three Star. In addition, SLI ordered China First, during this capital reorganization, to manage Three Star and coordinate its sales and purchases. SLI also specified that all sales and purchases would be taken over by China First in the future. The petitioners also placed on the record evidence indicating that China First's and Three Star's products were jointly marketed. After examining the record evidence, which included evidence from the prior administrative review, in light of order 005, Commerce determined that China First and Three Star were sufficiently intertwined to warrant assigning the combined entity a single dumping margin. In addition, because Commerce found the combined

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<sup>1</sup> The petitioners are the Writing Instrument Manufacturers Association, Inc., Pencil Section ("WIMA"); Sanford Corp.; Dixon-Ticonderoga Corp.; Aakron Rule, Inc.; General Pencil Co.; Moon Products Inc.; Tennessee Pencil Co.; and Musgrave Pencil Co.

<sup>2</sup> The Shanghai Light Industry Holding Group (SLI) is an arm of the Shanghai municipal government and is charged with maintaining and increasing the value of state-owned assets in the process of privatization. SLI, as trustee for all the people, owns 100 percent of Three Star and 33 percent of China First.

entity China First/Three Star to be distinct from the Three Star entity in the Guangdong/Three Star sales chain that was excluded from the antidumping duty order on pencils from the PRC, we found that the excluded Guangdong/Three Star sales chain no longer exists. See Commerce's Final Results and the accompanying Issues and Decision Memorandum ("1999-2000 Decision Memorandum") at Comment 12, as well as the Amended Final Results. Because Guangdong's U.S. sales of pencils manufactured by China First/Three Star were not excluded from the order on pencils from the PRC, Commerce did not rescind its review of Guangdong. Also, given the fact that the evidence regarding China First's and Three Star's relationship was not placed on the record until late in the review, there was no information on the record from which to calculate a dumping margin for Guangdong. Thus, consistent with the investigation in this proceeding, Commerce assigned Guangdong's sales a cash deposit rate equal to the PRC-wide rate, the rate that applied to Guangdong when it sold pencils produced by any entities other than Three Star.

The respondents contested Commerce's finding that Three Star is effectively part of China First as well as Commerce's decision to subject Guangdong to the PRC-wide cash deposit rate.

## **DISCUSSION:**

### **(A) Commerce's NME Collapsing Methodology**

In Kaiyuan, the Court found that

Absent a definite and articulated set of inquiries, the court is unable to determine whether Commerce's conclusion that the companies did in fact act in a manner that created the potential for manipulation was reasonable. Commerce decided that Three Star was effectively part of China First, and consequently, the potential for manipulation between these two entities was significant. This conclusion has no legal basis. On Remand, Commerce must articulate a set of inquiries or methodology through which the court may independently ascertain whether the evidence supports Commerce's findings.

See Kaiyuan at pages 25 -26 (footnote 17 included in original).

The Court ordered Commerce to

articulate specifically the portions of the existing collapsing statutes and regulations which are applicable

or inapplicable in the NME context. It must then provide the court with a clearly articulated methodology for collapsing companies in NME countries.

See Kaiyuan at page 43.

As explained below, Commerce finds it reasonable to apply the criteria of the existing collapsing regulation to NME companies as long as this approach does not conflict with the NME provisions in 19 U.S.C. § 1677 (b). Commerce's collapsing regulation (19 C.F.R. § 351.401 (f)) provides that it will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, Commerce may consider: i) the level of common ownership, ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and iii) whether the firm's operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

In the Final Results, as amended, Commerce noted that the regulatory framework for collapsing affiliated market-economy parties is difficult to apply in an NME country where all companies are presumed to be subject to governmental control. Hence, in finding China First and Three Star to be one entity, Commerce noted that it did not conduct, *per se*, a collapsing analysis,<sup>3</sup> but drew heavily from the factors considered in a collapsing analysis. In accordance with the court's remand, and in view of Commerce's evolving NME methodology with respect to the collapsing of NME entities in recent cases, Commerce has reexamined the analysis it conducted in the contested Final Results.

Commerce has also found more recently the collapsing analysis set forth in 19 C.F.R. 351.401(f) to be instructive in determining whether entities, in general, in an NME country should be combined as a single entity. See e.g., Final Results of Determination Pursuant to Court Remand - Hontex Enterprises Inc. D/b/a Louisiana Packing Company v. United States, Slip Op. 03-17, Ct. No. 00-00023 (CIT 2003) (Hontex), and Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review, 69 FR 10410, 10413-10414 (March 5, 2004) (Mushrooms from the PRC).

Specifically, in Mushrooms from the PRC, Commerce stated that

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<sup>3</sup> See Commerce's Final Results and the 1999-2000 Decision Memorandum, Comment 12.

{t}o the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.

See Mushrooms from the PRC at 10414.

In Mushrooms from the PRC, the Department also noted that

the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.

See Mushrooms from the PRC at pages 10410 and 10414; see also, Hontex, noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation.

Thus, as an initial matter, in deciding whether to collapse companies<sup>4</sup> in an NME country, Commerce will first determine whether the companies are affiliated. 19 U.S.C. § 1677 (33) identifies affiliated parties as certain members of a family, an organization and its officers and directors, partners, an employer and its employees, an organization and the shareholders that own 5 percent or more of its shares, and certain individuals or enterprises involved in control relationships.

Our focus in this redetermination is on the control relationships identified in 19 U.S.C. § 1677(33). Specifically, 19 U.S. C. § 1677 (b)(33)(F) defines affiliated persons as two or more persons directly or indirectly controlling, controlled by, or under common control with, any person. Further, 19 U.S.C. § 1677 (b)(33)(G) states that a person who controls another person is affiliated with that person. This section of the Tariff Act of 1930, as amended (the Act), goes on to state that a

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<sup>4</sup> Although the collapsing provision at 19 C.F.R. § 351.401 (f) indicates that Commerce will collapse producers, this Court has found it permissible for Commerce also to apply this regulation to NME exporters. See Hontex Enterprises, Inc. v. United States, 248 F.Supp.2d 1323, 1343 (CIT 2003).

person shall be considered to control another person if that person is legally or operationally in a position to exercise restraint or direction over the other person. Evidence of actual control is not required; it is the ability to control that is at issue. See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27297-27298 (May 19, 1997).

According to 19 C.F.R. § 351.102 (b), in determining whether control over another person exists, within the meaning of 19 U.S.C. § 1677 (33), Commerce will consider the following factors, among others: (1) corporate or family groupings; (2) franchise or joint venture agreements; (3) debt financing; and (4) close supplier relationships. This section of the regulations provides that Commerce will not find that control exists on the basis of the above-referenced factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. In addition, this regulation provides that Commerce will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control. The record evidence upon which Commerce relied in delineating the intertwined relationship between China First and Three Star continues to support treating these companies as one entity, as defined by 19 C.F.R. § 351.102(b).

SLI's order 005 indicates, with respect to Three Star, that China First will have the "leadership position to enact the program of capital reorganization of the two factories" and specifies that China First will manage Three Star during the capital reorganization. Consistent with this order, China First made a series of loans to Three Star, was responsible for reviewing Three Star's financial statements,<sup>5</sup> and began monitoring, evaluating, and advising Three Star with respect to certain aspects of its operations. Moreover, consistent with the directive in order 005 that China First merge with Three Star and establish a group company, China First changed its name from China First Pencil Co., Ltd. to China First Pencil Group Co., Ltd. Additionally, record evidence from the 1999-2000 administrative review indicates that China First's president was appointed Three Star's legal representative/president, and China First's and Three Star's products have been marketed together. The record evidence noted above indicates that China First and Three Star, companies which China First portrayed as fierce competitors, were not functioning as entirely separate entities. Rather, Three Star was effectively becoming part of China First, with China First operationally in a position to provide direction to Three Star. Thus, by virtue of the above-referenced control relationship, we consider China First and Three Star to be affiliated with one another within the meaning of 19 U.S.C. § 1677(33)(F).

Furthermore, both China First and Three Star are producers of pencils. Thus, the requirement that collapsed producers must have production facilities for similar or identical products is met. See 19 C.F.R. § 351.401(f)(1).

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<sup>5</sup> Following SLI's instructions, China First took on the responsibility of reviewing Three Star's financial statements and, in fact, stamped those statements with its company seal.

In deciding whether to collapse companies we also consider whether there is a significant potential for the manipulation of price or production. When affiliation is based upon control, as it is here, there may be substantial overlap between the evidence relied upon to determine affiliation and that relied upon to determine whether there is a significant potential for the manipulation of price or production. For the most part, our discussion regarding whether there is a significant potential for manipulation is based upon the same evidence that we relied on in determining that China First and Three Star are affiliated. The evidence in this proceeding regarding China First's involvement in Three Star's operations (e.g., providing capital to Three Star through loans, and monitoring, evaluating, and advising Three Star with respect to certain aspects of its operations), the movement of managers between the two companies, and the joint marketing of China First's and Three Star's products, particularly in light of order 005,<sup>6</sup> indicate that the companies' operations were intertwined such that Three Star was effectively part of China First. Given this fact pattern, and in light of record evidence demonstrating that Three Star and China First were both producers of the subject merchandise that is exported to the United States and Three Star was part of a sales chain that was excluded from the order on pencils from the PRC, there is significant potential for the manipulation of price or production.<sup>7</sup> Therefore, we continue to consider China First and Three Star to be a single entity pursuant to 19 C.F.R. §351.401(f).

#### **B. Commerce's Reevaluation of the PRC-wide Rate Applied to Guangdong**

The Court also directed the Department to re-examine its application of the China-wide rate to Guangdong.

In the investigation, Commerce calculated a "Zero" antidumping duty rate for Guangdong's exports to the United States of subject merchandise produced by Three Star. As a consequence, the Guangdong/Three Star export/production chain was excluded from the order. If Guangdong sold pencils produced by other firms, it was subject to the PRC-wide rate. As noted above, petitioners requested a review of Guangdong covering the 1998-1999 time period. In the 1998-1999 review, Guangdong responded that it made no shipments of subject merchandise, explaining that it had exported only pencils produced by Three Star and thus was excluded from the order. On this basis, Commerce found that Guangdong had made no shipments of subject merchandise and decided to rescind the review.

Petitioners first alleged a relationship between Three Star and China First in the 1998-1999 administrative review. While Commerce did not treat these two companies as related in this review segment, we agreed to revisit the issue if additional evidence regarding this relationship was presented in

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<sup>6</sup> See Commerce's Final Results, and accompanying 1999-2000 Decision Memorandum at Comment 12.

<sup>7</sup> Note: China First produced subject merchandise through its subsidiaries.

a subsequent review. In this manner, parties received notice that the relationship between these two companies was a potential issue in this proceeding.

Petitioners requested a review of Guangdong covering the 1999-2000 time period. In the 1999-2000 review, Guangdong also reported no shipments of subject merchandise, alleging that it had exported only pencils produced by Three Star. Based on this information, Commerce determined preliminarily to rescind the review. Following the issuance of the preliminary review results, late in the review, petitioners placed additional information on the record regarding the relationship between China First and Three Star. Commerce decided based on this information that Three Star and China First should be treated as a single entity for purposes of the dumping margin. Commerce also decided that this single entity was distinct and different from the Three Star company Commerce examined during the investigative phase of the proceeding. This meant that, despite the name, the Three Star pencils sold by Guangdong were not excluded from the order. Guangdong had shipped subject merchandise to the United States.

In the previous review, Commerce had advised the parties of the possibility that the relationship between Three Star and China First could be subject to further examination, thereby signaling the fact that it could possibly affect the course of a review. Accordingly, Commerce applied the PRC-wide rate to Guangdong, not as adverse facts available, but as the rate applicable to Guangdong when it sold pencils produced by a firm other than Three Star, pursuant to the initial determination. The PRC-wide rate is the rate that, during the investigation, Commerce said Guangdong would receive under such circumstances, and is the same treatment that would be applied to new shippers of subject merchandise.

In Kaiyuan, the Court stated that

Guangdong participated in the review and the verification, therefore, Commerce's application of the China-wide rate is not in accordance with the law and effectively applies a punitive result to a cooperative respondent. Additionally, Commerce's NME collapsing methodology regarding Three Star and China First was not in accordance with the law. Therefore, on remand, Commerce's decision regarding Guangdong as well as its application of the China-wide rate to Guangdong must be re-examined.

Id. at page 34 (footnote excluded).

The Court, citing Coalition for the Pres. Of Am. Brake Drum and Rotor Aftermarket, Mfrs. v. United States, 23 CIT 88, 107 (1999) (Coalition), also stated that



{i}n Coalition, which was an NME antidumping investigation, Commerce did assign an “all others” rate, which this court found to be reasonable.

See Kaiyuan at page 30 (footnote omitted).

In the investigative stage of an NME proceeding, as is the case in Coalition, Commerce may calculate an ‘all others’ rate based on the rates of the cooperative respondents in the investigation, if, due to administrative constraints, Commerce is prevented from fully investigating all NME respondents who complied fully with questionnaire requests and demonstrated an absence of government control. The ‘all others’ rate applies to companies that qualify for a separate rate, and is used as a company-specific rate in lieu of a company’s own separate rate. However, its application is limited to those companies that established entitlement to a separate rate and expressed willingness to participate at the investigative stage of the proceeding. This contrasts with market economy cases where Commerce applies the ‘all others’ rate to all companies for which a company-specific rate is not applicable.

In the pencils investigation, Commerce did not calculate an ‘all others’ rate for any company; the exporters received either their own separate rates or the PRC-wide rate. There is no precedent for calculating an ‘all others’ rate during an administrative review in an NME proceeding. Although Guangdong argued that it was unfairly penalized, its sales of pencils manufactured by producers other than Three Star have been subject to the latest PRC-wide rate since the investigative phase of the proceeding. The PRC-wide rate was not applicable based upon an adverse facts available determination, as no such determination was made, but, rather, based upon the initial determination.

Thus, Commerce continues to believe that it is appropriate to subject Guangdong’s sales of pencils produced by China First/ Three Star to the PRC-wide cash deposit rate, as this position is consistent with the initial determination in the investigative phase of this proceeding. However, given the Court’s finding that Commerce effectively applied adverse facts to a participating and cooperative respondent, in this redetermination Commerce has assigned Guangdong a non-adverse dumping margin pursuant to the facts available provisions in section 776(a) of the Act.

As facts available, Commerce has calculated a separate rate of 13.91 percent for Guangdong based on the weighted-average of the margins calculated for the respondents (i.e., China First Pencil Co., Ltd.,<sup>8</sup> Oriental International Holding Shanghai Foreign Trade Co., Ltd., and Kaiyuan Group Corporation) in the instant administrative review.<sup>9</sup> Calculating a rate for Guangdong that is based on

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<sup>8</sup> In the Amended Final Results, Commerce stated that “Shanghai Three Star Stationery Company Ltd. is now considered to be part of China First Pencil Co., Ltd.”

<sup>9</sup> Using a weighted average is also consistent with the Court’s discussion of “all-others” rates. Although “all-other” rates are calculated during investigations, not administrative reviews, the use of a

facts available derived from the same review period reflects contemporaneous and relevant data, representing general current dumping margins with respect to pencil exports to the United States from the PRC during that period of review. Further, because Commerce based the rate for Guangdong on calculated dumping margins, it is not necessary to question the reliability of those margins.

As described above, consistent with the Court's order of remand, Commerce has revisited its collapsing analysis and applied the methodology adopted in Mushrooms from the PRC, which is based upon 19 C.F.R. § 351.401(f)(2). Additionally, Commerce has calculated a separate rate for Guangdong based on facts available in the instant review to conform with the Court's remand.

## **INTERESTED PARTIES' COMMENTS:**

### **Comment 1: Whether Commerce's Collapsing Methodology is Supported by Record Evidence**

Respondents<sup>10</sup> do not disagree with Commerce's decision to apply the existing collapsing regulations in the instant case. Nevertheless, they continue to argue that Commerce's factual findings, and its decision to collapse China First and Three Star, are not supported by the record. Many of the facts in this case revolve around SLI order 005. That order specifies that China First will merge with Three Star, enact a program of capital reorganization, absorb all of Three Star's capital, manage Three Star, and coordinate all sales and purchases. Respondents claim that none of these things happened because both China First's Board of Directors and Three Star's Employee Representative Committee (ERC) objected to order 005; and, as a result, never implemented the order.<sup>11</sup>

With respect to the merger, China First points out that its audited consolidated financial statements for the periods under consideration do not list Three Star as either a subsidiary (which the statements define as a company whose financial and operating policies can be controlled by China First) or an associate (which the statements define as a company in which China First has an equity

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weighted-average margin as facts available is a reasonable application of the law.

<sup>10</sup> The comments on the Final Results of Redetermination to Court Remand in Kaiyuan are submitted on behalf of China First, Guangdong, Oriental International Holding Shanghai Foreign Trade Corp., and Three Star (collectively, respondents).

<sup>11</sup> Specifically, according to respondents, Three Star's ERC "unanimously agree{d} that it is not proper for SLI{ } to decide to merge{ } CFP with Three Star. The merger in question will not only severely harm Three Star's overall interests, but also put the 1,200 workers' employment into danger. . . We ask SLI to cautiously consider the above-mentioned difficulties ... and move its decision into a reconsideration. See Supplemental Response of China First and Three Star, June 6, 2002, at Exhibit 1.

interest of not less than 20 percent and actively participates in management policy decisions through representation on the Board of Directors). Thus, respondents argue that in the opinion of China First's independent outside auditors, it did not own Three Star's capital nor did it have the authority to govern the financial and operating policies or actively participate in the management of Three Star. Moreover, respondents maintain that while verifying China First in the underlying administrative review, Commerce examined the company's balance sheets and investments ledgers (tracing various investments to source documents), and noted no investment that might indicate unreported affiliates, associates or subsidiaries.<sup>12</sup>

Respondents also dispute Commerce's finding that the series of loans that China First extended to Three Star are consistent with the directive in order 005 that China First enact a program of capital reorganization. Respondents maintain that order 005 contemplated much more than the extension of commercial loans to Three Star at commercial interest rates; namely, it contemplated a full merger or take-over of Three Star's capital stock by China First, an event that never occurred. Additionally, respondents state that China First's loans to Three Star were made in accordance with an October 4, 1996, Board of Director's resolution permitting loans to other companies. This resolution, which was passed before SLI issued order 005, made clear that such loans would be made at interest rates not lower than bank lending rates, and that security must be considered when lending the money. Consistent with this directive, respondents point out that the loans to Three Star were at commercial interest rates and were secured by a mortgage on fixed assets.<sup>13</sup> For these reasons, respondents argue that these loans are not evidence that order 005 was being effectuated, nor did they give China First the power to control or operate Three Star, as Commerce seems to suggest.

Respondents also claim that the record evidence does not suggest that China First engaged in any substantive oversight of Three Star's operations or interfered with Three Star's management. Rather, respondents note that China First was paid,<sup>14</sup> pursuant to an agreement, to take on a narrow range of responsibilities with respect to Three Star; responsibilities that were limited to safety and sanitation issues (including inspections of Three Star's facilities, which took very little time,<sup>15</sup>) and

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<sup>12</sup> *Memorandum from Paul Stolz, Michele Mire and Crystal Crittenden to the File Re Verification of Questionnaire Responses of China First Pencil Co., Ltd. in the 1999-2000 Administrative Review of Certain Cased Pencils from the People's Republic of China*, (undated but received May 17, 2002)(China First Verification Report) at 3.

<sup>13</sup> April 11, 2001, Supplemental Response at 2-3 and Exhibit C; China First Letter, June 4, 2002, at Exhibit B (pp. 2-3).

<sup>14</sup> China First Verification Report at 20.

<sup>15</sup> See China First Letter, June 4, 2002, at Exhibit B, and *e.g.*, the April 11, 2001, Supplemental Response at Exhibit G; China First Verification Report App. 1 at 20; *id.* at 21-22.

preparation of Three Star's yearbook (a task that was delegated to an outside business consultant).<sup>16</sup> Further, respondents note that the guidance given to Three Star with respect to its yearbook did not provide China First with the potential to impact decisions concerning the production, pricing, or cost of subject merchandise or foreign like product, as would be required for a finding of affiliation under 19 U.S.C. § 1677(33)(F).<sup>17</sup> Thus, respondents contend that this agreement, which was for a three-year period, is not sufficient to establish affiliation between the two companies.

Furthermore, respondents disagree with Commerce's finding that China First's and Three Star's products have been marketed together. According to respondents, the only evidence that supports this finding are petitioners' photographs of a trade fair showing China First's unaffiliated domestic distributor at a booth adjacent to the booth that was occupied by Three Star. Respondents claim that the distorted angle at which the photographs were taken make it appear that the distributor and Three Star were sharing a booth; however, documentary evidence shows that the booths were contiguous with each other, but not the same booth.<sup>18</sup> Moreover, respondents point out that China First itself was not even at the trade fair.<sup>19</sup> Thus, other than the fact that by happenstance, China First's distributor and Three Star had adjacent booths at the trade fair, there is no other evidence or even suggestion on the record indicating joint marketing of China First's and Three Star's products.<sup>20</sup>

Moreover, respondents contend that the change in name from China First Pencil Co., Ltd. to China First Pencil Group Co., Ltd. does not indicate that China First included Three Star among its subsidiaries, consistent with order 005. Rather, respondents assert that the name change reflects the fact that China First, together with its subsidiaries and affiliated companies, is, indeed, a group of companies. The name change was an effort to publicize this fact and gain greater prestige.<sup>21</sup>

Lastly, respondents maintain that there is no basis for finding that China First is affiliated with Three Star, or that their relationship provides the potential for the manipulation of price or production.

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<sup>16</sup> *Memorandum from Bernard T. Carreau to Faryar Shirzad Re Issues and Decision Memorandum for the Administrative Review of Certain Cased Pencils from the People's Republic of China; Final Results*, July 16, 2002 ("Issues and Decision Memorandum"), at 36 (Comment 12). *See also* Post-Preliminary Supplemental Response at 14-15.

<sup>17</sup> 19 C.F.R. § 351.102(b).

<sup>18</sup> China First Letter, June 13, 2002, at 3-4.

<sup>19</sup> Declaration of Li Shan Fen, Paragraph 4.

<sup>20</sup> *Id.*

<sup>21</sup> Declaration of Li Shan Fen.

Although Commerce found China First to be affiliated with Three Star because it was in a position to control Three Star, respondents contest this finding, claiming that interactions between the two companies did not give China First authority over Three Star. Specifically, respondents claim that 1) China First's loans to Three Star were purely commercial transactions, 2) the indirect guidance provided to Three Star by China First did not involve operational issues such as planning, production, or sales, and 3) SLI's appointment of China First's Chairman of the Board as Three Star's General Manager was resisted by both companies, and rescinded before the period of review in the underlying case began.<sup>22</sup> In finding joint control of Three Star and China First through the appointment of China First's Chairman, respondents contend that Commerce has ignored its own regulation to consider the temporal aspect of a relationship.

With respect to the decision to collapse Three Star and China First, respondents point out that 1) there is no common ownership, 2) during the POR, none of the managerial employees or board members of one firm sat on the board of directors of the other firm, 3) no officer, director or manager of China First served as an officer, director or manager of Three Star, or vice-versa, and 4) there were only a handful of small purchases between the two companies but no evidence that China First's operations were intertwined with Three Star, such as through the sharing of sales information, involvement in production or pricing decisions, sharing of facilities or employees, or through significant transactions. Respondents also note that there is no evidence that China First and Three Star coordinated their purchases or sales.

Further, respondents maintain that Commerce's decision to collapse Three Star and China First fails to recognize that Commerce has repeatedly stated that collapsing two affiliated parties is the exception, not the rule. See e.g., Final Determinations of Sales at Less than Fair Value: Antifriction Bearings Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992, 19089 (May 3, 1989)(in which Commerce stated that "it is the Department's general practice *not* to collapse related parties except in relatively unusual situations, where the type and degree of relationship is so significant that we find that there is strong possibility of price manipulation. The Department has refused to collapse firms in situations where the facts suggest that

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<sup>22</sup> Respondents note that, prior to the period of review (POR), a former manager of a subsidiary company in the China First group left his position to become Three Star's General Manager. However, as Commerce itself noted in the prior review period, respondents contend that "{w}hile the record indicates that managers of CFP and Three Star did move between the two companies prior to the POR, this does not indicate that the two companies are intertwined." See Memorandum from Bernard Carreau to Faryar Shirzad Re Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Cased Pencils - December 01, 1998 through November 30, 1999, July 19, 2001, at Comment 2.

such a possibility does not exist.”).<sup>23</sup>

For the above reasons, respondents contend that Commerce’s conclusion that Three Star was effectively becoming part of China First, with China First operationally in a position to provide direction to Three Star, is unsupported by record evidence. Moreover, respondents submit that there is no basis to conclude that the limited dealings between Three Star and China First gave rise to the potential for manipulation of price or production decisions. Therefore, respondents contend that Commerce should not have collapsed Three Star with China First.

Petitioners<sup>24</sup> argue that respondents’ comment is premised on denying and downplaying the facts demonstrating that China First has been granted and has exerted extensive control over Three Star’s operations, that it did so during the period of review, and that the underpinning of such control remains in place to this day. As indicated below, petitioners refute respondents’ claim that the movement of managers, exercise of managerial oversight, financial arrangements and joint marketing activities that commenced on January 21, 1997, had nothing to do with the issuance of SLI’s order 005, which was issued on that same date, and called for precisely these events to occur.

Petitioners argue that the only support for respondents’ claim that SLI’s order 005 did not become effective is respondents’ own, uncorroborated statements. Petitioners further argue that respondents provided no evidence demonstrating that SLI revoked its order, notwithstanding the purported objections of China First and Three Star. Moreover, petitioners point out that the fact that Three Star’s Employee Representative Committee asked SLI to reconsider its decision to merge the companies, indicates that SLI both had, and exercised its authority to order the merger; for without such authority, there would be nothing to reconsider. See item 1 in the accompanying memorandum (Proprietary Memorandum) for additional information relating to this point. Furthermore, petitioners note that there is nothing on the record to indicate that China First or Three Star could countermand

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<sup>23</sup> Also, see, e.g., Fresh Cut Flowers from Colombia, 61 Fed. Reg. 42,833, 42,853 (Aug. 19, 1996) (final admin. review); Certain Carbon Steel Butt-Weld Pipe Fittings from India, 60 Fed. Reg. 10545, 10547 (Feb. 27, 1995) (final determ.); Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 Fed. Reg. 37154, 37159 (July 9, 1993) (final determ.); Coated Groundwood Paper from Finland, 56 Fed. Reg. 56,363, 56,369 (Nov. 4, 1991) (final determ.); Residential Door Locks from Taiwan, 54 Fed. Reg. 53,153, 53,160-53,161 (Dec. 27, 1989) (final determ.); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 Fed. Reg. 18,992, 19,089 (May 3, 1989) (final determ.)(hereinafter “AFBs”); Certain Granite Products from Spain, 53 Fed. Reg. 24,335, 24,337 (June 28, 1988) (final determ.).

<sup>24</sup> The comments were filed on behalf of Sanford Corporation, Musgrave Pencil Company, Rose Moon, Inc. (successor to Moon Products, Inc.), and General Pencil Company (collectively, petitioners).

SLI's exercise of its authority (SLI owns 100 percent of Three Star and 33 percent of China First). See item 2 in the Proprietary Memorandum. On the contrary, petitioners add, that both China First and Three Star proceeded exactly in accordance with Order 005's directives.

Petitioners note that on January 21, 1997, the same day it issued order 005, SLI also issued order No. 21 appointing Mr. Shu-Gang Hu, the President (*i.e.*, Legal Representative) of China First, as concurrent President of Three Star. Petitioners add that pursuant to this appointment by SLI, Mr. Hu shortly thereafter registered as Three Star's Legal Representative, *id.*, and was listed as same on Three Star's Corporation Business.

With respect to respondents' assertion that China First later requested SLI to terminate Mr. Hu's role with Three Star, petitioners note that half a year after China First's request, Mr. Hu gave up that position to Three Star's new president, Mr. Zhen-Min Huang, who had previously headed China First's subsidiary, Great Wall.<sup>25</sup> Petitioners maintain that the documentation for the latter personnel move indicates that China First made the appointment. Thus, petitioners assert that both companies were headed by the same person for an entire year, and thereafter China First appointed Three Star's new president from among its own management ranks. According to petitioners, this sequence of events indicates that China First exercised control over Three Star, exactly as envisioned by SLI's order 005's admonition in paragraph 3 that "all the management people of Shanghai Three Star Stationery Industry Co. Ltd. will be managed by China First Pencil Co. Ltd." Petitioners also maintain that the fact that Mr. Hu is no longer Three Star's president is immaterial, especially since China First hand-picked his successor, who remained as president during the period of review, and thus exercised continuing leadership over Three Star as directed by SLI.

Petitioners further argue that China First's oversight of Three Star involved important responsibilities. While respondents minimize China First's oversight role by characterizing it as consisting of "indirect advisory responsibility", petitioners note that China First reviewed Three Star's financial statements and stamped the statements with its company seal.<sup>26</sup> Also, petitioners point out as part of its oversight role, China First graded Three Star and reported the results in its newspaper which identified Three Star in a list of China First's "departments and subsidiaries." Lastly, petitioners claim that China First's supervision of Three Star went beyond merely evaluating the appearance of the

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<sup>25</sup> Petitioners note that although respondents claim that Mr. Hu's removal from Three Star was done by SLI in response to China First's request, there is nothing in the record demonstrating that this was the case. Petitioners also note that, considering that Mr. Hu remained as Three Star's president from the time of China First's supposed request in July 1997 through the end of that year, it seems improbable that SLI was acceding to China First's request.

<sup>26</sup> Petitioners note that China First's and Three Star's company seals are placed next to a statement in Three Star's 1999 income statement and balance sheet that characterizes Three Star as China First's subsidiary. Thus, petitioners contend that both companies endorsed that characterization.

company's facilities (i.e., environmental and sanitation issues). For further details, see the Proprietary Memorandum, item 3.

In addition, petitioners notes that China First had the understanding that Three Star was to be treated as its subordinate, as its internal and shareholder newspaper *Zhing Hua Qian Bi (China First Pencil)*(editions dated August 20, 1999, and Jan. 18, 2001) identified Three Star as one of China First's "departments and subsidiaries."<sup>27</sup>

With respect to the loans that China First extended to Three Star, petitioners note that certain aspects of these loans indicate the loans are not normal commercial transactions, especially between so called fierce competitors. Rather, petitioners contend that these loans are consistent with the capital reorganization called for in order 005. See the Proprietary Memorandum, item 4.

Moreover, petitioners assert that China First established itself as a group company, just as required by SLI's order 005, and question respondents' claim that the timing was coincidental. According to petitioners, Commerce properly discounted China First's claim that the name change was unrelated to SLI's order 005, given record evidence of subterfuge relating to the name change. See the Proprietary Memorandum, item 5.

Finally, petitioners refute respondents argument that the photographs of the 89<sup>th</sup> China Stationery Commodity Fair demonstrate that Chung Hwa Pencil United Sales Co. (Chung Hwa) show something other than joint marketing of China First's and Three Star's products. According to petitioners, this argument overlooks the relationship between China First and Chung Hwa, which shared the same display booth (No. 2A421) with Three Star under an overhead sign for "China First Pencil Group". See the Proprietary Memorandum, item 6. Petitioners argue that while respondents cavil over such trivia as camera angles, Commerce has properly focused on the fact that the two companies market their products together under the "China First Pencil Group" name, just as order 005 envisioned and directed.

Petitioners argue that respondents seek to minimize the importance of these responsibilities; however, they cannot deny that China First's activities comported with SLI's order 005's directive. Moreover, petitioners assert that China First's supervision of production related operations and review of Three Star's financial reports, coupled with its appointment of Three Star's president, amply support Commerce's finding that the two "companies' operations were intertwined such that Three Star was effectively part of China First." Additionally, petitioners maintain that China First and Three Star both

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<sup>27</sup> According to petitioners, the fact that China First's financial statements do not identify Three Star as a subsidiary is beside the point. The relationship between the two companies indicates that China First effectively controls Three Star pursuant to SLI's directive, and both companies have acted as though Three Star is China First's subsidiary.



are producers of cased pencils, both have had product sold to the United States, and Three Star's partial exclusion from the antidumping duty order for its products exported by Guangdong creates the potential for manipulation.

For the above-referenced reasons, petitioners state that Commerce's determination to collapse China First and Three Star and treat them as a single entity for antidumping purposes is appropriate and should be adopted in final results to be presented to the Court.

In their comments on Commerce's draft remand determination in Kaiyuan, petitioners assert that Commerce has followed the Court's instructions concerning adoption and explanation of the methodology followed in evaluating the relationship between China First and Three Star. Petitioners also state that Commerce's conclusion that China First and Three Star should be treated as a single entity for antidumping purposes is appropriate. However, petitioners note that there are several additional factual points bearing on the China First-Three Star relationship that they believe Commerce should take into account in addressing such an issue.

While petitioners agree with Commerce's analysis of SLI's order 005 in the draft remand results, they suggest that Commerce also identify in the remand results the nature of SLI's ownership relationship with both China First and Three Star as another factor evidencing SLI's ability to exert control over both companies. Petitioners also note that, in addition to the numerous points indicated in the draft remand results, Commerce should also identify that China First had been designated as the "Management Department" for Three Star; was listed in Chinese government records as the owners of Three Star's equity; appointed Three Star's president after Mr. Shu-Gang Hu, the former president of both companies, vacated the Three Star post; and listed Three Star as a subsidiary in China First's company newspaper. Petitioners note that they provided Commerce documentation evidencing these points in the 1999-2000 review period. Furthermore, petitioners argue that Commerce should also indicate in the remand determination that the potential for manipulation is heightened in this case in light of China First's false denials that it had any involvement with Three Star and China First attempts to obfuscate its role in Three Star's operations.

In their rebuttal to petitioners comments, respondents object to petitioners' argument that Commerce should identify "the nature of SLI's ownership relationship with both China First and Three Star as another factor evidencing SLI's ability to exert control over both companies." According to respondents, nowhere does Commerce purport to identify any factors evidencing SLI's control over any company in its conclusion that China First and Three Star are affiliated. Thus, respondents dismiss petitioners' argument as irrelevant. Respondents further argue that, to the extent petitioners are alleging that Commerce should find affiliation on the basis of SLI's control over China First and Three Star, this argument is unavailing since SLI is in the same position as the government, whose role is only relevant in assessing the companies' entitlements to separate rates; but has no bearing on the evaluation of China First's control over Three Star.

Further, respondents dispute petitioners' assertion that China First was designated as the managing department for Three Star, was the owner of Three Star, appointed Three Star's "president," and listed Three Star as a subsidiary in the company newspaper. With respect to the appointment of management, respondents argue that Three Star has no president; its general manager (Mr. Huang Zhenmin), did resign from China First's subsidiary to take the position at Three Star; he did so, however, only after and subject to the approval of Three Star's ERC.<sup>28</sup> Respondents argue that these events are of questionable relevance since they do not evidence a control relationship between China First and Three Star, and occurred in 1997, more than two to three years before the POR.

With respect to petitioners' remaining points noted above, respondents argue that these innocuous circumstances stem from the contract between China First and SLI by which China First afforded indirect supervision and consultancy on environmental, safety, sanitation administration and yearbook issues. According to respondents, China First was not Three Star's managing department, but did place its seal on Three Star's public financial statement to show that it had reviewed it in accordance with its contractual obligations to oversee Three Star's yearbook. Respondents further maintain that China First was never the "owner" of Three Star's equity, as established in China First's and Three Star's financial records. Finally, respondents argue that in accordance with its contractual obligations concerning Three Star's environmental, safety, and sanitation administration issues, China First reported on this aspect of its consultancy in its paper, reflecting a "score" for the related inspections conducted each month by China First staff personnel (none of whom were in management positions in China First). According to respondents, none of these circumstances, either alone or in conjunction with each other, give rise to any modicum of control by China First over Three Star.<sup>29</sup>

As for the potential for the manipulation of price or production, respondents argue that petitioners simply speculate that the "potential for manipulation is heightened in this case in light of China First's false denials that it had any involvement with Three Star." Respondents argue that petitioners' speculation is patently false because China First was *never* requested to provide the details of potential merger partners from a period of time two to three years past. Respondents contend that China First did not engage in any false denials, and petitioners' suggestion that it did is misguided and wrong. According to respondents, such a speculated scenario certainly cannot give China First the power to manipulate Three Star's prices or production decisions.

### **Commerce's Position:**

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<sup>28</sup> See First Supplemental Questionnaire Response of China First, April 11, 2001, at Exhibits I – L.

<sup>29</sup> Respondents dispute petitioners' assertion that they provided Commerce with documentation on these points during the 1999-2000 review; claiming that petitioners are confused and in fact refer to certain late-filed information they submitted in the 1998-1999 review.

While neither respondents nor petitioners oppose the collapsing methodology articulated above, respondents continue to challenge Commerce's interpretation of the facts. Respondents contend that China First had limited dealings with Three Star, a company it has characterized as a fierce competitor. Respondents also see no connection between the directive (order 005) giving China First authority over Three Star and the fact that China First subsequently provided Three Star with funding, guidance, and hand picked its President. In respondents' reading of the record, one is lead to believe that it was solely by coincidence that China First engaged in a series of actions giving effect to the intent of order 005. Respondents' reading of the record also minimizes the importance of China First's interactions with Three Star. As explained below, we do not agree with such a reading. Rather, the record, when viewed as a whole, supports Commerce's finding that Three Star was effectively becoming part of China First, with China First operationally in a position to provide direction to Three Star.

As an initial matter it is important to note that there is no evidence on the record that SLI's order directing China First to assume a leadership position with respect to Three Star was ever rescinded or that China First refused to implement the order. While respondents note that China First did not permit its Chairman of the Board, Mr. Hu Shu-Gang, to be President of Three Star (an appointment made by SLI on the same day as order 005), record evidence indicates that Mr. Hu did act as Three Star's President while retaining his position at China First. See Legal Representative Signature Record Certificate, dated February 27, 1997, provided in Exhibit C, document 5, of petitioners June 11, 2002, submission of factual information to rebut, clarify or correct factual information. Moreover, almost a year after Mr. Hu was appointed as Three Star's President, China First itself dismissed Mr. Hu from his position with Three Star and appointed, Mr. Huang Zhenmin, the President and Chairman of one of China First's subsidiaries, to the position of President of Three Star, a position he retains to date. See Appointment Memorandum, China First Pencil Co., Ltd., Document Number (97) 028, dated December 4, 1997, provided in Exhibit C, document 7, of petitioners June 11, 2002, submission of factual information to rebut, clarify or correct factual information. Whether or not Mr. Huang resigned from his position with China First's subsidiary before heading up Three Star, the fact that China First had the authority to appoint Mr. Huang to head Three Star, its supposedly fierce competitor, demonstrates the extensive involvement and control that it exerted over that company. Thus, China First's actions indicate that order 005, which directed China First to assume the responsibility of managing Three Star, was implemented. Moreover, the evidence cited above shows that China First, acting under the authority granted to it by order 005, continued, without interruption, to provide leadership to Three Star throughout the 1999-2000 period of review.

The record also shows that China First took on certain oversight responsibilities with respect to Three Star. While respondents characterize these as narrow responsibilities that were ministerial in nature, China First's assumption of these responsibilities is consistent with the actions of a company that has common interests with Three Star, rather than a company that is Three Star's fierce competitor. Moreover, proprietary record information provides evidence of the significance of China First's oversight role. See the Proprietary Memorandum, item 7.

Order 005, which specified that China First would “be in the leadership position to enact the program of capital reorganization” with respect to Three Star was issued in January 1997. Between June 1997 and January 2000, China First lent money to Three Star. When these loans are viewed in relation to Three Star’s financial position, they call into question respondents’ argument that these were simply commercial loans and that China First was not in a position to exercise any control over Three Star. For further information, see the Proprietary Memorandum, item 8. Rather, we consider China First’s actions to be consistent with its role as a guardian and partner of Three Star, with a vested interest in reorganizing that company’s capital, as provided for in order 005.

Other record evidence indicating that order 005 was essentially followed, and Three Star was effectively becoming part of China First, includes the fact that 1) Three Star’s address is the same as that of China First, except for the floor number (CFP App. 16, comment 12, at 37), 2) Order 005 directs China First to establish a group company. Approximately three months after the order was issued, China First’s Board of Directors approved a change in the company’s name from “China First Pencil Co., Ltd.” to “China First Pencil (Group) Co., Ltd.” (DA 9, at Item 3),<sup>30</sup> and 3) Photographs show Three Star’s and China First’s pencils were marketed together at a trade show (there is an entrance to the area where the products were marketed with a prominent sign, announcing products of “China First Pencil Group”). Id. When the record is viewed as a whole, it is not reasonable to conclude that all of these occurrences are mere coincidences that provide no support for the conclusion that China First was assuming a leadership role over Three Star. See Proprietary Memorandum, item 9.

Finally, we note that respondents place significance on the fact that Three Star’s name is missing from the list of subsidiaries and associates contained in China First’s consolidated financial statements. Respondents claim that this demonstrates that Three Star has not merged with, nor is it controlled by, China First. However, the notes to China First’s consolidated financial statements suggest that the subsidiaries and associates listed therein are “investee enterprises.” See page 69 of China First’s consolidated financial statements for the fiscal year 2000, included in Exhibit C of China First’s June 11, 2001, supplemental questionnaire response. Given that Commerce has not found that China First controls Three Star through direct equity investments in the company, the fact that Three Star’s name is missing from the list of China First’s subsidiaries and associates is irrelevant. Moreover, the issue is not whether Three Star is China First’s subsidiary or associate, but whether China First and Three Star are essentially functioning as a single entity. Further, we note that both Three Star’s 1999 accounting report and a trade publication for the industry published by China First treats Three Star as a subsidiary/department of China First. Lastly, given that SLI owns 33 percent of China First and 100

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<sup>30</sup> On December 1, 1998, China First’s Board of Directors issued a resolution to revert to using the name China First Pencil Co., Ltd. For additional information, see the Proprietary Memorandum, item 10.

percent of Three Star (as trustee for all the people) it is not unreasonable to conclude that SLI was able to confer its authority over Three Star to China First without an official merger of the two companies.

In summary, the evidence in this contested review regarding China First's involvement in Three Star's operations (e.g., providing capital to Three Star through loans, and monitoring, evaluating, and advising Three Star with respect to certain aspects of its operations), the movement of managers between the two companies, and the joint marketing of China First's and Three Star's products, particularly in light of order 005, indicate that the companies' operations were such that Three Star was effectively part of China First with China First operationally in a position to provide direction to Three Star. As Commerce stated in the final results, "the degree of interaction between these two companies is far greater than we previously believed and the form this interaction takes corresponds very closely to order 005, as it was issued by SLI, indicating that the order may have been effectively implemented." CFP App. 16, comment 12, at 36. Also, contrary to respondents' suggestion, the interactions between China First and Three Star are not isolated events outside the review period; rather, as outlined above, the record demonstrates control extending throughout the period of review. Given this fact pattern, and the fact that Three Star and China First were both producers of the subject merchandise being exported to the United States, and Three Star was part of a sales chain that was excluded from the order on pencils from the PRC, there is significant potential for the manipulation of price or production. Therefore, Commerce continues to consider China First and Three Star to be a single entity pursuant to 19 C.F.R. §351.401(f).

**Comment 2: Whether Guangdong's Sales of China First/Three Star Pencils Should be Subject to the Antidumping Duty Order**

In their September 10, 2004, comments on Commerce's draft remand determination in Kaiyuan, respondents do not contest the methodology set forth in the draft remand results for calculating a rate for Guangdong. Instead, respondents' assert that China First and Three Star are not affiliated and, therefore, should not be collapsed. For this reason, respondents request that Commerce revisit its determination on this issue prior to issuance of the final remand results, and apply an antidumping rate of zero to Guangdong's exports of Three Star pencils.

Petitioners agree with Commerce's observation in the draft remand results that the applicable rate to Guangdong for pencils manufactured by any company other than Three Star was established in the original investigation at the China-wide rate, and that because Three Star is considered part of China First, all of Guangdong's exports were subject to the China-wide rate.

Petitioners also argue that if Guangdong was dissatisfied with Commerce's determination in the investigative stage, the proper procedure for Guangdong was to file an action in the Court challenging the determination. Petitioners note that Guangdong chose not to do that. Accordingly, petitioners maintain that Guangdong's attempt to challenge Commerce's determination at the investigative stage in the guise of an appeal of the 1999-2000 review was untimely. Nevertheless, petitioners acknowledge

the fact that the Court has directed Commerce to disregard the China-wide rate and prepare an alternative method for determining Guangdong's rate.

In their September 13, 2004, rebuttal to petitioners comments, respondents argue that Commerce should ignore petitioners' comments in re-evaluating its conclusion that "Three Star was effectively becoming part of China First, with China First operationally in a position to provide direction to Three Star." Respondents argue that if this conclusion were true, China First would have required Three Star to permit it to channel all of its exports through the Three Star antidumping duty exemption. According to respondents, the fact that this did not happen, and that both China First and Three Star (through Guangdong) continued to fight over U.S. market share, support the contrary assertion made by China First and Three Star that the two companies are indeed fierce competitors.

**Commerce's Position:**

Respondents' argument that it is inappropriate to apply an antidumping rate other than zero to Guangdong is predicated on their argument that China First and Three Star are not affiliated and should not be collapsed. Given Commerce's aforementioned finding with respect to the relationship between China First and Three Star, we have not addressed respondents' argument.

**FINAL RESULTS OF REMAND REDETERMINATION**

As a result of this redetermination, Commerce will amend the Final Results and issue cash deposit instructions to U.S. Customs and Border Protection identifying a cash deposit rate for Guangdong of 13.91 percent, and will continue to include Guangdong's exports of merchandise produced by China First/Three Star within the antidumping duty order.

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James J. Jochum  
Assistant Secretary  
for Import Administration

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Date