

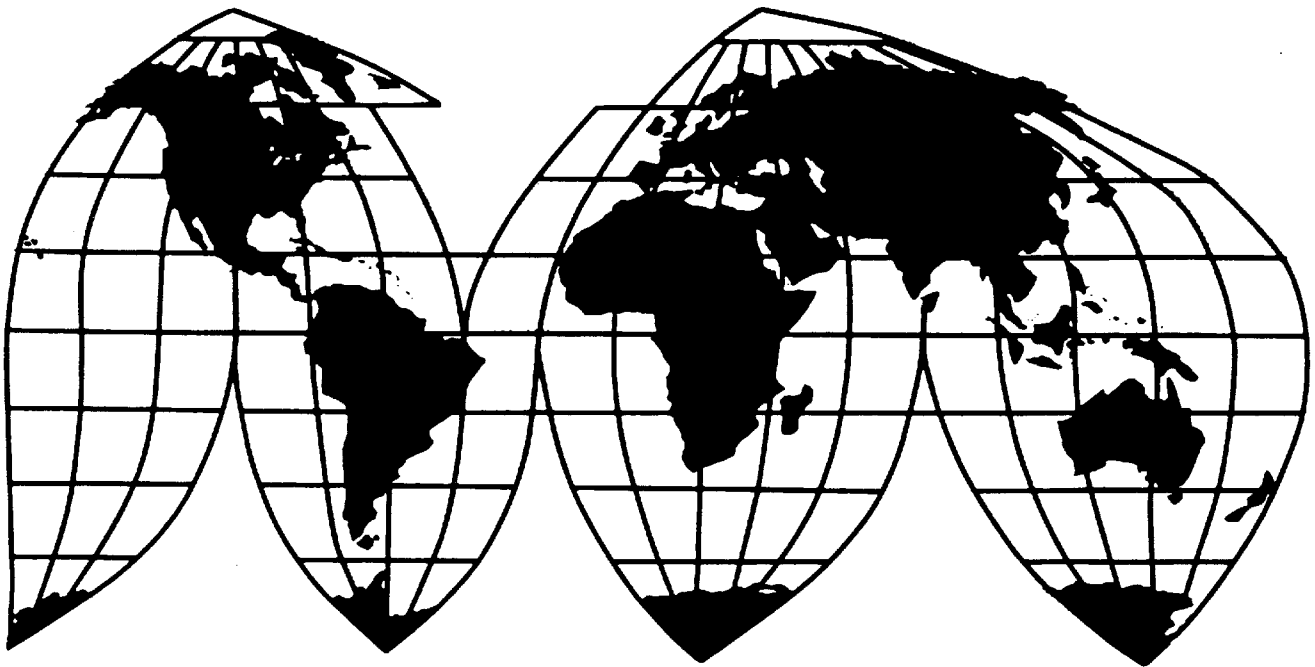
# Cased Pencils From China

Investigation No. 731-TA-669 (Second Review)

Publication 3820

November 2005

**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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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.



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-669 (Second Review)

CASED PENCILS FROM CHINA

## **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

## **BACKGROUND**

The Commission instituted this review on July 1, 2005 (70 F.R. 38192) and determined on October 4, 2005 that it would conduct an expedited review (70 F.R. 60557, October 18, 2005).

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





## VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty order on cased pencils from China is likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

In December 1994, the Commission determined that an industry in the United States was threatened with material injury by reason of less than fair value (“LTFV”) imports of cased pencils from China,<sup>1</sup> and on December 28, 1994, the Department of Commerce issued an antidumping duty order on imports of cased pencils from China.<sup>2</sup>

On December 1, 1999, the Commission instituted its first five-year review pursuant to section 751(c) of the Act to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury.<sup>3</sup> The Commission determined that the individual and group domestic interested party responses to its notice of institution were adequate. The Commission also found that the individual response of an importer of subject merchandise was adequate. However, because no respondent interested party other than that importer responded to the notice of institution, and the importer accounted for only a small portion of subject import volume, the Commission determined that the respondent interested party group response was inadequate. In the absence of any other circumstances warranting a full review, the Commission decided to conduct an expedited review pursuant to section 751(c)(3) of the Act.<sup>4</sup> In that review, the Commission determined that revocation of the antidumping duty order covering cased pencils from China would

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<sup>1</sup> Cased Pencils from China, Inv. No. 731-TA- 669 (Final), USITC Pub. 2816 (Dec. 1994) (“Original Determination”). Five commissioners made affirmative determinations, three on the basis of a threat of material injury and two on the basis of current material injury. One commissioner made a negative determination. The petition in the original investigation concerned Thailand as well as China. The Commission made a final negative determination with respect to Thailand. See Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 (Oct. 1994). The imports from Thailand were negligible and therefore not cumulated with the subject imports from China. Id. at I-11-16.

<sup>2</sup> 59 Fed. Reg. 66909 (Dec. 28, 1994). Excluded from the antidumping duty order as originally issued were cased pencils exported by China First and those exported by Guangdong that were manufactured by Three Star. China First was subsequently included under the order in an amended determination by Commerce in a voluntary remand. See Writing Instrument Mfrs. v. U.S. Department of Commerce, 21 CIT 1185, 984 F. Supp. 629 (1997), aff’d 178 F. 3d 1311 (Fed. Cir. 1998); Notice of Court Decision: Certain Cased Pencils from the People’s Republic of China, 62 Fed. Reg. 65243 (Dec. 11., 1997); 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 Fed. Reg. 25275 (May 11, 1999). Thereafter, Commerce found that Three Star and China First were in fact the same entity and Commerce, therefore, no longer excluded the Three Star/Guangdong sales chain from the order. Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 Fed. Reg. 48612, 48613 (July 25, 2002).

<sup>3</sup> 64 Fed. Reg. 67304 (December 1, 1999).

<sup>4</sup> Cased Pencils from China, Inv. No. 731-TA-669 (Final), USITC Pub. 3328 (June 2000) (“First Five-Year Review Determination”) at Attachment A (Explanation of Commission Determination on Adequacy).

likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>5</sup>

The Commission instituted this second five-year review on July 1, 2005.<sup>6</sup> The Commission found the domestic interested party group response to the notice of institution to be adequate and the respondent interested party group response to be inadequate, and found no other circumstances that would warrant conducting a full review. It therefore decided on October 4, 2005, to conduct an expedited review.<sup>7</sup>

No respondent interested party has made an appearance in this review, or otherwise provided any information or argument to the Commission. Because this is an expedited review, no questionnaires were issued by the Commission. The record in this review thus consists of information provided to the Commission by the domestic parties in their responses to the notice of institution and adequacy comments, data from the original investigation and first review, public data compiled by Commission staff, and the domestic parties' final comments.

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>8</sup> The Act defines the “domestic 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 under this subtitle.”<sup>9</sup> The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.<sup>10</sup>

In this five-year review, Commerce has defined the subject merchandise 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 or tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. Pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States.<sup>11</sup> The scope for this review is the same as that of the original investigation.

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<sup>5</sup> First Five-Year Review Determination.

<sup>6</sup> 70 Fed. Reg. 38192 (July 1, 2005).

<sup>7</sup> Confidential Staff Report (“CR”) and Public Staff Report (“PR”) at Appendix B.

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>10</sup> See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom, Inv. No. 701-TA-380-382 and 731-TA-797-804 (Review), USITC Pub. 3788 (July 2005) at 6; Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 (July 2003) at 4; Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 (Feb. 2003) at 4.

<sup>11</sup> 65 Fed. Reg. 41431 (July 5, 2000). Commerce provides the HTSUS subheading for convenience and customs purposes; its written description of the scope of the order is dispositive. Id. Specifically excluded from the scope are mechanical pencils, cosmetic pencils, pens, non-cased crayons, pastels, charcoals, chalks, pencils of 13.5 or more inches, pencils with a sheath diameter not less than one-and-one quarter inches at any point, core length not more  
(continued...)

In the original determination the Commission noted that, “[a]lthough the physical characteristics of raw and unfinished cased pencils differ slightly in that the latter are lacquered and may contain a ferrule and an eraser, both items can act as hand held writing instruments and can perform the same function -- writing.”<sup>12</sup> Moreover, the Commission found that all cased pencils shared the same end uses, channels of distribution, manufacturing facilities and production employees.<sup>13</sup> Therefore, the Commission found a single domestic like product consisting of all domestically produced cased pencils, including raw pencils, which are essentially unfinished cased pencils.<sup>14</sup> The Commission adhered to that domestic like product definition in the first five-year review.<sup>15</sup>

The domestic interested parties do not argue for a definition of the domestic like product that differs from the Commission’s definition in the original investigation and first five-year review. The record here contains no information that would warrant reconsideration of the domestic like product definition. We therefore define the domestic like product in this review as all cased pencils, coextensive with the like product definition in the original determination and the first five-year review, as well as with Commerce’s scope.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>16</sup>

The domestic interested parties identify the following nine firms as current U.S. manufacturers of cased pencils: Sanford, L.P. , General Pencil Co., Inc., Musgrave Pencil Co., Tennessee Pencil Co., Rose Moon, Dixon Ticonderoga, Aakron Rule Co., Panda Pencil Co., and Harcourt Pencil Co.<sup>17</sup>

The only issue that arises in this second five-year review with respect to our definition of the domestic industry is whether any producer should be excluded under the related parties provision, 19 U.S.C. § 1677(4)(B). Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.<sup>18</sup>

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<sup>11</sup> (...continued)

than 15 percent of the pencil length, and pencils produced under U.S. patent number 6,217,242 from paper infused with scents. Id.

<sup>12</sup> Original Determination at I-7.

<sup>13</sup> Original Determination at I-6.

<sup>14</sup> Original Determination at I-7.

<sup>15</sup> First Five-year Review Determination at 5.

<sup>16</sup> 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>17</sup> CR at I-14, PR at I-9. See also id., Table I-3 (other potential producers listed).

<sup>18</sup> The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to

(continued...)

In the original investigation the Commission found that one domestic producer, Pentech, was a related party and that appropriate circumstances existed to exclude Pentech from the domestic industry.<sup>19</sup> In the first five-year review, the Commission did not find appropriate circumstances to exclude any domestic producer from the domestic industry.<sup>20</sup>

During this second review period, \*\*\* imported cased pencils from China and is related to \*\*\*, which imports decorator pencils from China.<sup>21</sup> Therefore, \*\*\* is a related party. The limited information in this five-year review does not indicate the extent of \*\*\* importation activities, but \*\*\* has appeared in this review as a domestic producer in support of continuation of the order, rather than as an importer.<sup>22</sup> Moreover, \*\*\* states that its primary interest is in domestic production rather than importation, and no party has requested \*\*\*. We therefore find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry.

The domestic producers report that another domestic producer, Dixon Ticonderoga, has a related pencil production facility in China. However, the record contains no information on the extent of Dixon Ticonderoga's ownership of the facility in China or whether Dixon Ticonderoga imports subject merchandise. Moreover, Dixon Ticonderoga is estimated to account for \*\*\* percent of domestic production, a share greater than that of any of the responding domestic producers except Sanford, L.P.<sup>23</sup> Accordingly, whatever its other interests, Dixon Ticonderoga has a significant commitment to domestic production. In the absence of further information on Dixon Ticonderoga's ownership and importation interests or any argument that it should be excluded as a related party, we find that appropriate circumstances do not exist to exclude Dixon Ticonderoga from the domestic industry. We further determine that the domestic industry for this review consists of all domestic producers of the domestic like product.

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<sup>18</sup> (...continued)

continue production and compete in the U.S. market; and

(3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

The Commission has also concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (September 2001) at 8-9.

<sup>19</sup> Original Determination at I-8 to I-9. The Commission excluded Pentech from the industry because it had benefitted from LTFV imports and was shielded from negative effects of those imports.

<sup>20</sup> The Commission found that one domestic producer, \*\*\*, had imported subject cased pencils, but found that appropriate circumstances did not exist to exclude \*\*\* from the domestic industry because the limited information in that record did not indicate the extent of \*\*\* importation activities, and because \*\*\* appearance in the review as a domestic producer supporting continuation of the order suggested that it did not import significant volumes or was not likely to do so if the order were revoked. First Five-Year Review Determination at 6. Also in the first five-year review, an importer alleged that another producer, Sanford, had imported the subject merchandise, but domestic producers refuted the claim, and the Commission concluded that Sanford had not imported subject merchandise.

<sup>21</sup> Domestic Interested Parties' Response to Notice of Institution (Aug. 22, 2005) at 11.

<sup>22</sup> \*\*\* accounts for about \*\*\* of domestic production of the domestic like product. Id.

<sup>23</sup> CR/PR at Table I-2.

### III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED

#### A. Legal Standard in a Five-Year Review

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>24</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>25</sup> Thus, the likelihood standard is prospective in nature.<sup>26</sup> The U.S. Court of International Trade has found that “likely,” as used in the sunset review provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>27 28 29</sup>

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<sup>24</sup> 19 U.S.C. § 1675a(a).

<sup>25</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>26</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>27</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d without opinion, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>28</sup> Vice Chairman Okun notes that consistent with her dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” to mean “probable.” See Usinor Industeel, S.A. et al v. United States, No. 01-00006, Slip Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). However, she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue. Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 731-TA-707-709 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

<sup>29</sup> Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit

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The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>30</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>31 32</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>33</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>34</sup>

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>35</sup> The following conditions of competition are relevant to our determination.

In the original investigation and the first five-year review the Commission observed that demand for cased pencils was seasonal and influenced by population levels, especially changes in the number of

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<sup>29</sup> (...continued)  
addresses the issue.

<sup>30</sup> 19 U.S.C. § 1675a(a)(5).

<sup>31</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>32</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>33</sup> 19 U.S.C. § 1675a(a)(1).

<sup>34</sup> 19 U.S.C. § 1675a(a)(1). There have been no duty absorption findings by Commerce with respect to the order under review. CR at I-7, PR at I-4. The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>35</sup> 19 U.S.C. § 1675a(a)(4).

school-age students; that a large portion of pencil sales occurred during mid-summer for the back to school season; and that the economy pencil (the standard yellow No. 2) was the largest selling pencil product. While the Commission characterized the market for cased pencils as mature, the Commission observed that U.S. consumption increased in both the original investigation and the first review. In the first five-year review, the Commission observed that no technological developments had occurred since the original investigation, and none were likely in the reasonably foreseeable future.<sup>36</sup> In the first review period, the domestic industry continued the consolidation that began during the original investigation period, shrinking from eleven producers in the original period of investigation to between seven and nine in the first review period.<sup>37</sup>

In the original determination, the Commission found price to be an important factor in purchasing decisions. Two Commissioners characterized the market for cased pencils as price sensitive and two others emphasized that the consolidation of purchasers, resulting from the growth of nationwide catalog wholesalers and superstores, had led to an increase in purchasing decisions made on the basis of price rather than non-price factors.<sup>38</sup>

In the first review, the Commission noted the continuation of the consolidation and concentration of purchasers observed in the original investigation. In the first review the Commission also observed that nonsubject imports had increased their presence in the U.S. market.<sup>39</sup>

The domestic interested parties have indicated in this review that, as in the original investigation and first five-year review, demand for cased pencils remains seasonal and the market for cased pencils is mature.<sup>40</sup> The domestic interested parties identify nine current domestic producers of cased pencils and report that there has been no further industry restructuring since the first five-year review.<sup>41</sup> Apparent domestic consumption in 2004 was \*\*\* gross, a decline from the 1998 quantity of \*\*\* gross, although higher than the 1993 quantity of \*\*\* gross.<sup>42</sup>

U.S. production decreased in the first review period compared with the original investigation, from \*\*\* gross in 1993 to \*\*\* gross in 1998, then decreased more steeply in the second review period, to \*\*\* gross in 2004.<sup>43</sup> Domestic producers' shipments decreased from \*\*\* gross in 1993 to \*\*\* gross in 1998, and then decreased to \*\*\* gross in 2004.<sup>44</sup> As a result, the domestic producers' market share declined from \*\*\* percent in 1993 to \*\*\* percent in 1998, and then to \*\*\* percent in 2004.<sup>45</sup>

The quantity and market share of cased pencils from China have increased since the original investigation notwithstanding the order. Imports of cased pencils from China were 4.7 million gross in 1993,<sup>46</sup> accounting for \*\*\* percent of apparent consumption, then increased in absolute terms to 6.0

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<sup>36</sup> First Five-Year Review Determination at 8.

<sup>37</sup> First Five-Year Review Determination at 9.

<sup>38</sup> Original Determination at I-17, I-22.

<sup>39</sup> First Five-Year Review Determination at 9.

<sup>40</sup> Domestic Interested Parties' Comments (Oct. 31, 2005) at 2-3; Domestic Interested Parties Response to Notice of Institution at 8.

<sup>41</sup> CR at I-14, PR at I-9. There may be other domestic producers as well. See CR/PR at Table I-3.

<sup>42</sup> CR/PR at Table I-7.

<sup>43</sup> CR/PR at Table I-2.

<sup>44</sup> CR/PR at Table I-7. The 1998 quantity includes finished cased pencils produced from imported raw pencils, and overstates U.S. shipments to that extent.

<sup>45</sup> CR/PR at Table I-7.

<sup>46</sup> We recognize that this 1993 volume includes both subject imports, \*\*\* gross, and what at the time were nonsubject imports from China and Hong Kong, \*\*\* gross. CR/PR at Table I-7. However, imports from all sources

(continued...)

million gross in 1998, accounting for \*\*\* percent of apparent consumption. Subject imports then increased to \*\*\* gross in 2004, accounting for \*\*\* percent of apparent U.S. consumption in 2004.<sup>47</sup>

The quantity and market share of nonsubject imports have also increased since the original investigation. In 1993, there were 2.0 million gross units of imports from nonsubject countries, accounting for \*\*\* percent of apparent consumption. In 1998, 8.9 million gross units were imported from nonsubject countries, accounting for \*\*\* percent of U.S. apparent consumption. In 2004, there were 9.0 million gross units of imports from nonsubject countries, accounting for \*\*\* percent of apparent consumption.<sup>48</sup> In the current review period price remains a principal determinant in making a sale.<sup>49</sup>

We find that these conditions of competition in the cased pencils market provide us with a reasonable basis on which to assess the likely effects of revocation of the order.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if an antidumping duty order is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>50</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>51</sup>

In the original investigation the Commission noted that the volume of subject imports increased rapidly over the period of investigation, and that increases in imports of noncommodity, decorated

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<sup>46</sup> (...continued)

in China are now subject to the order and, therefore, we refer to the aggregate number for 1993 to permit its consideration on a comparable basis with the subsequent time frames. Moreover, as discussed above, in a voluntary remand from the CIT Commerce amended its original final determination to include among subject merchandise the initially-excluded exports from China First. See 64 Fed. Reg. 25275 (May 11, 1999), 67 Fed. Reg. 48612, 48613 (July 25, 2002), supra. That is, the volume of subject imports in the Commission’s original investigation period was understated owing to exclusion of merchandise from China First. Also, although certain imports from China remained nonsubject imports at the time of the first five-year review determination, only the aggregate volume of subject and nonsubject merchandise was available in the first five-year review. CR/PR at Table I-7.

<sup>47</sup> CR/PR at Table I-5. Six manufacturers and/or exporters of the subject merchandise provided information to the Commission on the Chinese pencil industry in the original investigation. During the first review, the domestic interested parties identified 16 Chinese producers of cased pencils. In the current review, the domestic interested parties have identified 19 Chinese producers and 19 Chinese exporters of pencils. According to a private market intelligence report, there were approximately 400 producers of cased pencils in China during 2003. CR at I-26 - I-27, PR at I-17. What appear to be the 28 leading Chinese companies that produce pencils for export markets are identified in the staff report. CR/PR at Table I-8.

<sup>48</sup> First Five-Year Review Determination at 9, CR/PR at Table I-7. Principal sources of nonsubject imports include Indonesia, Brazil, and Costa Rica. CR/PR at Table I-6.

<sup>49</sup> CR at I-13, PR at I-8.

<sup>50</sup> 19 U.S.C. § 1675a(a)(2).

<sup>51</sup> 19 U.S.C. § 1675a(a)(2)(A-D).



pencils, which the domestic industry traditionally had been able to sell at a higher price, were particularly rapid.<sup>52</sup> The Commission found that exports to the United States as a share of Chinese producers' total shipments had increased over the period of investigation while Chinese domestic shipments had decreased as a share of total shipments. It found that these trends indicated that imports from China would be increasingly directed to the U.S. market and that the rapid increase of imports from China posed a threat of material injury to the domestic industry.<sup>53</sup>

Following the imposition of the order in December 1994, subject imports of cased pencils from China fell sharply in 1995 before rising again, such that the volume of subject imports in 1998 exceeded the highest level during the original period of investigation. Thus, notwithstanding the order, the volume of cased pencils from China increased in absolute terms in the first review period to 6.0 million gross in 1998,<sup>54</sup> a \*\*\* percent share of the U.S. market, compared with a volume of 4.7 million gross in 1993, a \*\*\* percent share of the market. In the current review period, subject imports from China increased further, to 9.2 million gross units in 2004, accounting for \*\*\* percent of the U.S. market.<sup>55</sup>

Therefore, despite the antidumping duty order, subject imports currently have a greater absolute and relative presence in the U.S. market than in the original investigation and the first review period.

Between 1991 and 1993, Chinese capacity to produce cased pencils, actual production, and total shipments increased by \*\*\* percent, \*\*\* percent, and \*\*\* percent, respectively. In the first five-year review, there was limited information on the record concerning the current status of the cased pencils industry in China because there were no responses by foreign producers or exporters to the Commission's notice of institution. The Commission observed however that, at the time of the first five-year review determination, the United States was the largest single export destination for cased pencils produced in China.<sup>56</sup>

The record in the first five-year review further indicated that the number of producers of cased pencils in China had increased since the time of the original investigation. Because the number of Chinese cased pencil producers had increased since the original investigation and there was no record information indicating any reduction in the capacity of Chinese producers that existed at the time of the original investigation, the Commission concluded that the capacity to produce cased pencils in China had likely risen since the time of the original investigation. The Commission found this conclusion to be corroborated by information in the record showing that Chinese exports of cased pencils to all countries had risen considerably since 1993, suggesting that capacity had indeed increased.<sup>57</sup>

Furthermore, the Commission found that the restraining effect of the order, indicated by the sharp drop in the volume of subject imports immediately after issuance of the antidumping duty order, would be eliminated if the order were revoked. In light of the Chinese cased pencil industry's capacity increases, the significant increase in their exportation levels since the order and historic ability to rapidly increase exports to the United States, the Commission found in the first five-year review that, upon revocation of the order, producers of subject merchandise in China would increase exports to the United

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<sup>52</sup> Original Determination at I-16, I-26.

<sup>53</sup> Original Determination at I-16 - I-17.

<sup>54</sup> As noted above, although this 1998 volume would include any imports from China/Hong Kong that remained nonsubject merchandise at that time, the record in the first five-year review did not allow segregation of the nonsubject volume.

<sup>55</sup> CR/PR at Table I-7.

<sup>56</sup> First Five-Year Review Determination at 10.

<sup>57</sup> First Five-Year Review Determination at 10.

States above the then-high levels. The Commission consequently concluded that the likely volume of subject imports would be significant if the antidumping duty order was revoked.<sup>58</sup>

In the current five-year review, the domestic interested parties have identified 19 Chinese producers and 19 Chinese exporters of pencils. According to a private market intelligence report, there were approximately 400 producers of cased pencils in China during 2003.<sup>59</sup> There appear to be 28 leading Chinese companies that produce pencils for export markets.<sup>60</sup>

In addition, given that the current level of subject imports, at 9.2 million gross, exceeds domestic producers' current shipments, at \*\*\* gross, subject imports' share of the U.S. market already exceeds the market share of the domestic industry and would be likely to increase even further if the order were revoked.<sup>61</sup>

The domestic interested parties contend that the increased volume of imports from China since the original investigation suggests that cased pencil capacity and production in China have increased since the original investigation and the first review and that the United States is a target of that expansion.<sup>62</sup>

Based on the foregoing, we find that, if the order is revoked, the likely volume of subject imports would be significant, both in absolute and relative terms.

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>63</sup>

In the original determination, the Commission found that there was a significant likelihood that the subject imports would have a depressing or suppressing effect on prices for the domestic like product. Subject import prices were declining for those products where competition with the domestic like product was most intense.<sup>64</sup> Additionally, the subject imports undersold domestically produced cased pencils in the vast majority of pricing comparisons.<sup>65</sup>

In the first five-year review, current pricing information was limited to data on average unit values ("AUVs") between 1997 and 1999. Therefore, while recognizing the limitations of AUV data, the

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<sup>58</sup> First Five-Year Review Determination at 10-11.

<sup>59</sup> CR at I-26 - I-27, PR at I-17.

<sup>60</sup> CR/PR at Table I-8.

<sup>61</sup> CR/PR at Table I-4.

<sup>62</sup> Domestic Interested Parties' Response to Notice of Institution at 5-7.

<sup>63</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>64</sup> Original Determination at I-17, I-27.

<sup>65</sup> See Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816 at II-53 (Oct. 1994); Original Determination at II-3 (incorporating material from report in Thailand investigation).

Commission noted that those data indicated current underselling by the subject imports.<sup>66</sup> The Commission concluded in that first five-year review that, if the antidumping duty order was revoked, prices for the subject imports would decline significantly. The Commission observed that the record suggested that the cased pencil market was price-sensitive and that there was a high degree of substitutability between the subject and domestic merchandise. Moreover, the pricing patterns of the subject imports in the review period and during the original investigation indicated that there was likely to be significant underselling by the subject imports. The Commission observed, in light of the growing concentration and consolidation of purchasers as nationwide catalog wholesalers and superstores that make purchasing decisions on the basis of price, that increased volumes of low-priced subject imports would likely depress prices for domestically produced cased pencils. Consequently, the Commission found that, if the antidumping duty order was revoked, the subject imports would likely have significant price depressing or suppressing effects.<sup>67</sup>

As noted above, price remains a principal determinant in making a sale in the current review period.<sup>68</sup> While we are mindful of possible product mix issues, the record of this review indicates that the AUVs of the subject imports continue to be considerably lower than the AUVs of the U.S. producers' U.S. shipments.<sup>69</sup>

The domestic interested parties contend that the prior determinations establish that the U.S. cased pencil market is price-sensitive, cite current AUVs as indicating underselling, and argue that, in light of the likely additional import volumes if the order were revoked, revocation would cause significant price-depressing or -suppressing effects on the domestic industry.<sup>70</sup>

We thus find that, if the order is revoked, the subject imports would likely undersell the U.S. product in order to gain even more U.S. market share, forcing U.S. producers to lower their prices to avoid further declines in their production and shipment levels.

We therefore conclude that, if the order is revoked, the likely significant increase in subject import volume at prices that would likely undersell the U.S. product would likely have significant adverse price effects on U.S. producers.

## **E. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like

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<sup>66</sup> The Commission, acknowledging that AUVs can be affected by variations in product mix, observed that AUVs of all cased pencils imported from China increased from \$3.82 per gross in 1994 to \$5.59 per gross in 1995, the first full year after issuance of the antidumping duty order. Since then, AUVs for imports from China fluctuated at lower levels. In 1998, the AUV for cased pencil imports from China was \$4.81 per gross, which was considerably above pre-order levels, but well below the AUV for the domestic like product, which was \*\*\* per gross. First Five-Year Review Determination at 11.

<sup>67</sup> First Five-Year Review Determination at 11-12.

<sup>68</sup> CR at I-13, PR at I-8.

<sup>69</sup> CR/PR at Tables I-4, I-5 (subject import AUV of \$4.48 in 2004; domestic like product AUV of \$8.30).

<sup>70</sup> Domestic Interested Parties' Response to Notice of Institution at 7-8.

product.<sup>71</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>72</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>73</sup>

In the original determination the Commission found that the U.S. cased pencil industry was threatened with materially injury by reason of the subject imports, based on the domestic industry's declining market share, capacity utilization, and employment and the domestic industry's operating losses experienced throughout the period of investigation.<sup>74</sup> The Commission concluded that increased volumes of subject imports would lead to price declines for the domestic like product and would prevent domestic producers from recovering cost increases. As a result, the domestic industry's financial performance would likely deteriorate.<sup>75</sup>

In the first five-year review, the Commission noted that the order had had a positive effect on the industry's performance. The Commission found that the industry was not vulnerable in light of its current profitability and the increase in AUVs for domestically produced pencils since the original investigation. The Commission then referred to its findings that revocation of the order likely would result in a significant increase in the volume of subject imports at prices significantly lower than those of the domestic like product, and that such increased volumes of subject imports would likely depress or suppress the domestic industry's prices significantly. The Commission observed that, because a reduction in cased pencil prices would not stimulate significant additional demand for the product, revocation would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's employment, profitability, and ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in that review, the Commission concluded that, if the antidumping duty order were revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.<sup>76</sup>

The domestic interested parties in this second five-year review contend that demand for cased pencils is not likely to grow, that competition remains based principally on price, and that large

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<sup>71</sup> 19 U.S.C. § 1675a(a)(4).

<sup>72</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its expedited sunset review of the antidumping order, Commerce published likely dumping margins of 8.60 percent for China First Pencil Co., Ltd./Three Star Stationery Industry Co.; 19.36 percent for Shanghai Lansheng Corp; 11.15 percent for Shanghai Foreign Trade Corp; and 53.65 percent for Guangdong Provincial Stationery & Sporting Goods Import & Export Corp., and 53.65 percent for China-wide rate. 70 Fed. Reg. 67427 (Nov. 7, 2005).

<sup>73</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>74</sup> Original Determination at I-9 - I-12.

<sup>75</sup> Original Determination at I-17 through 18, I-27 through 28.

<sup>76</sup> First Five-Year Review Determination at 12-13.

stationary and mass market merchandisers have consolidated their dominance in this mature market, increasingly importing directly from China. They argue that the introduction of substantially increased volumes of low-priced subject imports upon revocation of the order would cause declines in the domestic industry's production, capacity utilization, sales, market share, employment, and return on investment. They assert that the industry's profitability would also fall, either because prices could not be increased to cover raw material cost increases or because production would fall to levels at which fixed costs could not be efficiently allocated over units of production.<sup>77</sup>

The record does not include current financial information on the U.S. industry or otherwise permit us to assess whether the industry is currently vulnerable. The record does show, however, that the U.S. industry's production and U.S. shipments have declined substantially since the first review. The U.S. industry production decreased from \*\*\* gross in 1998 to \*\*\* gross in 2004, and its U.S. shipments decreased from \*\*\* gross in 1998 to \*\*\* gross in 2004.<sup>78</sup>

We have found that subject import volume is likely to be significant if the order is revoked, resulting in likely significant price effects. We therefore conclude that revocation of the antidumping duty order would be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and negative effects on the domestic industry's development and production efforts within a reasonably foreseeable time.

## CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>77</sup> Domestic Interested Parties' Response to Notice of Institution at 8-10.

<sup>78</sup> CR/PR at Table I-4.



## INTRODUCTION

### Background

On July 1, 2005, in accordance with section 751(c) of the Tariff Act of 1930, as amended,<sup>1</sup> the U.S. International Trade Commission (“Commission”) gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2</sup> On October 4, 2005, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>3</sup> the Commission also determined that the respondent interested party response was inadequate.<sup>4</sup> The Commission found no other circumstances that would warrant conducting a full review.<sup>5</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930.<sup>6</sup> The Commission voted on this review on November 15, 2005, and notified the U.S. Department of Commerce (“Commerce”) of its determination on November 30, 2005. Information relating to the background of the review is presented below:

Effective date	Action	Federal Register citation <sup>1</sup>
December 28, 1994	Commerce's antidumping duty order issued	59 FR 66909
August 10, 2000	Commerce's continuation of antidumping duty order after first five-year review	65 FR 48960
July 1, 2005	Commission's institution of second five-year review	70 FR 38192
October 4, 2005	Commission's determination to conduct expedited second five-year review	70 FR 60557, October 18, 2005
October 31, 2005	Commerce's notice of final results of expedited second five-year review	70 FR 67427, November 7, 2005
November 15, 2005	Commission's vote	Not applicable
November 30, 2005	Commission's determination transmitted to Commerce	Not applicable

<sup>1</sup> Cited *Federal Register* notices beginning with the Commission's institution of a second five-year sunset review are presented in app. A.

<sup>1</sup> 19 U.S.C. 1675(c).

<sup>2</sup> 70 FR 38192, July 1, 2005. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission's notice of institution is presented in app. A.

<sup>3</sup> The Commission received one submission in response to its notice of institution for the subject review (hereinafter “*Response*”). It was filed on behalf of the General Pencil Co., Inc. (“General Pencil”); Musgrave Pencil Co. (“Musgrave”); Rose Moon, Inc. (“Rose Moon”); Sanford, L.P. (“Sanford”); and Tennessee Pencil Co. (“Tennessee Pencil”)(collectively referred to herein as “domestic interested parties”). The domestic interested parties are represented by the law firm of Neville Peterson LLP. The five participating member companies are believed to represent approximately \*\*\* percent of total U.S. production of cased pencils in 2004. The estimate was calculated by the domestic interested parties from information regarding distributions under the Continuing Dumping and Subsidy Offset Act of 2000. *Response* of the domestic interested parties, pp. 10-11 and att. 2. See also the Commission's memorandum of September 22, 2005, INV-CC-158–*Recommendation on Adequacy of Responses to Notice of Institution*.

<sup>4</sup> The Commission did not receive any responses to its notice of institution from respondent interested parties.

<sup>5</sup> The Commission's statement on adequacy is presented in app. B.

<sup>6</sup> 19 U.S.C. § 1675(c)(3).

## The Original Investigation and First Five-Year Review

On November 10, 1993, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of less-than-fair-value imports of cased pencils from China.<sup>7</sup> On November 8, 1994, Commerce made a final affirmative dumping determination, with margins (in percent) as follows: exported by China First Pencil Co. (“China First”)/produced by China First (0.00); exported by China First/produced by any other manufacturer (44.66); exported by Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (“Guangdong”)/produced by Shanghai Three Star Stationery Industry Corp. (“Three Star”) (0.00); exported by Guangdong/produced by any other manufacturer (44.66); Shanghai Foreign Trade Corp. (“SFTC”) (8.31); Shanghai Lansheng Corp. (“Lansheng”) (17.45); All others (44.66).<sup>8</sup> The Commission made its final affirmative injury finding that an industry in the United States was materially injured by reason of imports from China of cased pencils on December 15, 1994,<sup>9</sup> and Commerce issued an antidumping duty order on December 28, 1994.<sup>10</sup> Effective May 11, 1999, Commerce amended its antidumping duty order (and final LTFV determination) following the Federal Circuit’s affirmation of the CIT’s affirmation of Commerce’s voluntary remand determination.<sup>11</sup> The amended final dumping margins were as follows:

Firm	Margin (percent)
China First	8.60
Lansheng	19.36
SFTC	11.15
Guangdong/Three Star	0.00
Guangdong/all other producers	53.65
PRC-wide	53.65

Source: 62 FR 54243, December 11, 1997, and 64 FR 25275, May 11, 1999.

On December 1, 1999, the Commission instituted the first five-year sunset review (64 FR 67304). On March 3, 2000, the Commission determined that it would proceed to an expedited review (65 FR 15007). On July 5, 2000, Commerce found that revocation of the antidumping duty order on cased pencils from China would likely lead to continuation or recurrence of dumping at the same margins as

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<sup>7</sup> The petition was filed on behalf of the Pencil Makers Association, Inc. (“PMA”), and the individual companies comprising its membership (eight producers of cased pencils and one producer of cosmetic pencils). On January 1, 1994, the PMA merged with the Writing Instrument Manufacturers Association (“WIMA”), and the former PMA members formed the Pencil Section of the WIMA. The domestic interested parties in this current review indicated that, except for Tennessee Pencil, each respondent producer participated as a petitioner in the original antidumping investigation. (Sanders’ corporate predecessors in interest, Faber Castell Corp. and Empire Corp., were petitioners, as was Rose Moon’s predecessor in interest, J.R. Moon Pencil Co.). *Response* of domestic interested parties, August 22, 2005, p. 2.

<sup>8</sup> 59 FR 55625.

<sup>9</sup> 59 FR 65788, December 21, 1994.

<sup>10</sup> 59 FR 66909.

<sup>11</sup> Effective November 23, 1997, Customs began suspending liquidation of subject merchandise produced and exported by China First, pending final and conclusive court decision in the action and Commerce’s amendment for the final LTFV determination and the antidumping duty order. 62 FR 54243, December 11, 1997, and 64 FR 25275, May 11, 1999.



found during the original investigation (see tabulation above).<sup>12</sup> On July 24, 2000, the Commission completed an expedited five-year review of the antidumping duty order (herein “first review”) in which it determined that revocation of the order on cased pencils from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>13</sup> Subsequently, Commerce issued a continuation of the antidumping duty order.<sup>14</sup>

### Commerce’s Administrative Reviews

Commerce has conducted eight administrative reviews of the antidumping duty order on cased pencils from China, as shown in table I-1.

**Table I-1**  
**Cased pencils: Commerce’s administrative reviews**

Period of review	Date review issued	Margin (percent)
12/21/94-11/30/95	May 6, 1997 (62 FR 24636)	PRC-wide (44.66) <sup>1</sup>
	July 8, 1997 (62 FR 36492)	As amended, PRC-wide (53.65) <sup>1</sup>
12/1/95-11/30/96	January 7, 1998 (63 FR 779)	PRC-wide (53.65) <sup>1</sup>
12/1/96-11/30/97	January 13, 1999 (64 FR 2171)	PRC-wide (53.65) <sup>1</sup>
12/1/98-11/30/99	July 19, 2001 (66 FR 37639)	PRC-wide (53.65) <sup>2</sup>
12/1/99-11/30/00	July 25, 2002 (67 FR 48612)	China First (11.39); SFTC (14.53); Kaiyuan Group Corp. (123.11); PRC-wide (123.11) <sup>3</sup>
	September 9, 2002 (67 FR 48612)	As amended: China First (6.32); SFTC (12.98); Kaiyuan Group Corp. (114.90); Guangdong (114.90); PRC-wide (114.90)
12/1/00-11/30/01	July 21, 2003 (68 FR 43082)	CalCedar-Tianjin (0.00); Rongxin (15.76); PRC-wide (114.90)
12/1/01-11/30/02	May 21, 2004 (69 FR 29267)	China First/Three Star(15.20); SFTC (10.96); Rongxon (27.87); and PRC-wide (114.90)
12/1/02-11/30/03	July 22, 2005 (70 FR 42301)	China First/Three Star/First/Great Wall/Fang Zheng (0.61); SFTC (13.25); Rongxin (22.63); and PRC-wide (114.90)
	August 30, 2005 (70 FR 51337)	As amended: China First/Three Star (0.15); SFTC (12.69)
<p><sup>1</sup> Applied to all exports of cased pencils from China other than those produced and exported by China First, those produced by Three Star and exported by Guangdong, and those exported by SFTC.</p> <p><sup>2</sup> Includes China First in PRC-wide rate.</p> <p><sup>3</sup> Commerce determined China First and Three Star to be a single entity for antidumping purposes, therefore Three Star was assigned the margin calculated for China First.</p> <p>Source: Cited <i>Federal Register</i> notices.</p>		

<sup>12</sup> 65 FR 41431.

<sup>13</sup> 65 FR 46495, July 28, 2000.

<sup>14</sup> 65 FR 48960, August 10, 2000.

**Commerce’s Final Results of Second Expedited Sunset Review**

As a result of its expedited sunset review, Commerce determined that revocation of the antidumping duty order for cased pencils from China would be likely to lead to continuation or recurrence of dumping as follows:

Producer/exporter	Weighted-Average Margin (percent ad valorem)
China First Pencil Co., Ltd./Three Star Stationery Industry Co. <sup>1</sup>	8.60
Shanghai Lansheng Corp.	19.36
Shanghai Foreign Trade Corp.	11.15
Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. <sup>2</sup>	53.65
PRC-Wide Rate	53.65
<p><sup>1</sup> Commerce determined that China First and Three Star should be treated as a single entity in the December 1, 1999 through November 30, 2000 administrative review (67 FR 48612 (July 25, 2002)).</p> <p><sup>2</sup> Commerce originally excluded from the order exports made by Guangdong and produced by Three Star. However, Commerce determined in the 1999-2000 administrative review that the Guangdong/Three Star sales chain was no longer excluded from the order, and that all merchandise exported by Guangdong was subject to the PRC-wide rate (67 FR 48612 (July 25, 2002)).</p> <p>Source: 70 FR 67428, November 7, 2005.</p>	

**Distribution of Continued Dumping and Subsidy Offset Act Funds  
to Affected Domestic Producers**

Since September 21, 2001, the Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”) (also known as the Byrd Amendment) provides that assessed duties received pursuant to antidumping or countervailing duty orders must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such orders.<sup>15</sup> During the period of review, qualified U.S. producers of cased pencils were eligible to receive disbursements from the U.S. Customs and Border Protection (“Customs”) under CDSOA relating to the antidumping duty order on the subject product.<sup>16</sup> Table I-2 presents CDSOA disbursements and claims for federal fiscal years (October 1-September 30) 2001-04.

**THE PRODUCT**

**Scope**

As defined by Commerce, the imported products subject to the antidumping duty order under review are:

*certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with*

<sup>15</sup> Section 754 of the Tariff Act of 1930, as amended (19 U.S.C. §1675(c)).

<sup>16</sup> 19 CFR 159.64(g).

**Table I-2**  
**Cased pencils from China: CDSOA claims and disbursements, federal fiscal years 2001-04**

Claimant	2001	2002	2003	2004
<i>Dollars</i>				
<b>Amount of claim filed:</b>				
Dixon-Ticonderoga	81,581,515	102,917,411	( <sup>1</sup> )	127,282,798
Faber-Castell (Newell Rubbermaid)	22,932,254	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
General Pencil	( <sup>1</sup> )	17,208,158	19,503,104	22,156,879
J.R. Moon Pencil	( <sup>1</sup> )	75,105,173	79,605,964	( <sup>1</sup> )
Musgrave Pen & Pencil	( <sup>1</sup> )	38,000,930	41,826,411	46,556,570
Panda Pencil	( <sup>1</sup> )	8,518,285	( <sup>1</sup> )	11,234,461
Rose Moon	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	83,204,025
Sanford (successor to Empire)	( <sup>1</sup> )	397,517,819	442,474,230	478,764,506
Total	104,513,769	639,267,776	583,409,709	769,199,238
<b>Amount disbursed:</b>				
Dixon-Ticonderoga	252,676	440,820	( <sup>1</sup> )	1,113,853
Faber-Castell (Newell Rubbermaid)	71,026	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
General Pencil	( <sup>1</sup> )	73,707	125,348	193,895
J.R. Moon Pencil	( <sup>1</sup> )	321,693	511,633	( <sup>1</sup> )
Musgrave Pen & Pencil	( <sup>1</sup> )	162,767	268,821	407,417
Panda Pencil	( <sup>1</sup> )	36,486	( <sup>1</sup> )	98,313
Rose Moon	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	728,119
Sanford (successor to Empire)	( <sup>1</sup> )	1,702,663	2,843,811	4,189,674
Total	323,702	2,738,136	3,749,612	6,731,272
<i>Percent</i>				
<b>Share of allocation:</b>				
Dixon-Ticonderoga	78.1	16.1	( <sup>1</sup> )	16.5
Faber-Castell (Newell Rubbermaid)	21.9	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
General Pencil	( <sup>1</sup> )	2.7	3.3	2.9
J.R. Moon Pencil	( <sup>1</sup> )	11.7	13.7	( <sup>1</sup> )
Musgrave Pen & Pencil	( <sup>1</sup> )	5.9	7.2	6.1
Panda Pencil	( <sup>1</sup> )	1.3	( <sup>1</sup> )	1.5
Rose Moon	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	10.8
Sanford successor to Empire)	( <sup>1</sup> )	62.2	75.8	62.2
Total	100.0	100.0	100.0	100.0
<sup>1</sup> Not applicable.				
Source: Customs' CDSOA Annual Reports at <a href="http://www.customs.treas.gov/linkhandler/cgov/import/add_cvd/cont_dump">http://www.customs.treas.gov/linkhandler/cgov/import/add_cvd/cont_dump</a> , retrieved August 24, 2004.				

*erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>17</sup> Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks,<sup>18</sup> and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.<sup>19</sup>*

### **Domestic Like Product and Domestic Industry**

In its original determination and in its first expedited five-year review determination, the Commission defined the like product as all cased pencils, coextensive with Commerce's scope, and it defined the domestic industry as all domestic producers of cased pencils.<sup>20</sup> For purposes of this second five-year review, the domestic interested parties did not comment on the Commission's definitions in their response to the notice of institution.

### **Description and Uses<sup>21</sup>**

As indicated in the scope definition, cased pencils are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials. The wood in most instances, is covered with several coats of quick drying lacquer (painted) and it tipped with an eraser and a ferrule (the small circular band of aluminum which affixes the eraser to the top of the pencil) to make a finished pencil.

The most commonly sold pencil is the so-called commodity or economy pencil, the standard yellow No. 2 pencil.<sup>22</sup> In addition to ordinary writing pencils, many different types of pencils are produced in the United States, including colored, golf, decorated, designer, novelty, promotional, advertising, carpenter, and drawing pencils. In contrast, the bulk of reported imports from China during

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<sup>17</sup> The HTS subheading is a somewhat broader category than the scope of the order. Also, some pencils contained in sets are classified elsewhere in the nomenclature, depending on the items in each such set.

<sup>18</sup> 65 FR 48960, August 10, 2000. Commerce also determined that a plastic, quasi-mechanical pencil known as the Bentsia pencil and Naturally Pretty, a young girl's 10-piece dress-up vanity set, including two 3-inch pencils, are outside the scope of the order. 62 FR 62288, November 21, 1997 and 63 FR 29700, June 1, 1998.

<sup>19</sup> Notice of Amended Final Results of Antidumping Administrative Review: Certain Cased Pencils from the People's Republic of China, 70 FR 51337, August 30, 2005.

<sup>20</sup> The Commission excluded one domestic producer, Pentech, from the domestic industry under the related parties provision. The domestic interested parties indicated during the first review of the order that Pentech had ceased domestic manufacturing operations and was purchasing only imports, primarily from China. In late 1999, Pentech formed a strategic partnership with a manufacturer in Shanghai, China, both to manufacture existing products and to develop new product lines.

<sup>21</sup> The discussion in this section is from the original investigation, unless otherwise noted. Certain Cased Pencils from Thailand, Inv. No. 731-TA-670 (Final), USITC Pub. 2816, (October 1994) (hereinafter "*Report of October 1994*"), p. II-4.

<sup>22</sup> The number designation on a pencil refers to the hardness of the core, 1 being the softest and 4 the hardest.

the original investigation comprised raw pencils<sup>23</sup> and commodity pencils. Cased pencils of all types are used almost exclusively for writing and drawing on paper or making marks on other objects. Decorated, designer, and novelty pencils are used not only for writing but also for collecting, especially by children.<sup>24</sup>

### **Manufacturing Process<sup>25</sup>**

The production process for both domestic and imported pencils is essentially the same. The standard core is made of graphite, clay, wax, and proprietary chemical mixtures, the specific combination of which determines its hardness. The pencil sheath is usually made of wood, typically California incense cedar wood. Grooves are cut in the sheath for the cores. Glue is placed on the surface, cores are placed in the grooves, then another sheath with grooves cut into it is glued on top of the first slat, making what is called a “sandwich.” The sandwich is clamped under pressure to insure bonding and reduce warping. The sandwiches are trimmed and then milled into separate pencils, typically 9. Three to seven coats of lacquer are added followed by a clear coat. The eraser is attached with a crimped ferrule.

### **Marketing<sup>26</sup>**

The report for the original investigation indicated that the differences in appearance between U.S.-produced and imported cased pencils were not sufficiently great for the average retail customer to detect them. The imported pencils subject to the investigation, however, were made from lower quality, less expensive wood, eraser, ferrules, and cores than comparable U.S.-made articles. In response to questionnaires issued during the original investigation, U.S. importers generally conceded that the Chinese-produced pencils they imported were of lower quality than domestically produced pencils.

Cased pencils produced in the United States are mainly sold to retailers, such as Kmart, Wal-Mart, Staples, Target, and National Office Supply, and to distributors, which in turn sell to end users, including schools, businesses, and individual consumers. Pencils imported from China during the original investigation reached the market through the same channels of distribution. Many distributors sold both domestic and imported pencils. The largest market segment was the retail mass market (\*\*\*) percent of U.S.-produced cased pencils and (\*\*\*) percent of U.S. shipments of cased pencils imported from China), which consists of cased pencils sold directly to the public, usually in boxes or blister-packed cards containing a dozen pencils or fewer. The office supply market was another large market segment. Pencils in this market segment tended to be higher priced than in the mass market and this segment was the most profitable for domestic producers during the original investigation.<sup>27</sup> Decorated and novelty cased pencils formed another significant market segment, as did cased pencils sold to schools.

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<sup>23</sup> A “raw” pencil had neither been lacquered nor had the eraser and ferrule added.

<sup>24</sup> Decorated pencils have multicolored designs (i.e., cartoon characters) or design-covered foil on the case. Novelty pencils are tipped with an item such as a “troll head.”

<sup>25</sup> *Report of October 1994*, pp. II-4-6.

<sup>26</sup> *Report of October 1994*, pp. II-4, II-13-15, and II-47-49.

<sup>27</sup> The report for the original investigation indicated that the office supply market was undergoing significant changes as smaller regional distributors were increasingly supplanted by nationwide catalogue wholesalers or by office supply superstore chains such as Staples. This shift was placing downward pressure on pencil prices as larger buyers demanded lower prices for the increased volume of pencils purchased. The domestic interested parties in their response to the current review reported that the large stationery and mass market merchandisers have consolidated their dominance in the market, so that there are fewer, larger purchasers with greater negotiating power, placing downward pressure on price. Moreover, it appears that the large purchasers are directly importing cased pencils from China, rather than purchasing from an importer. *Response of domestic interested parties*, August 22, 2005, p. 9.

Cased pencils are priced differently according to the pencil type (i.e., commodity, carpenter, colored, specialty, etc.), the quality of the specific pencil, the size of the order, and the required packing (i.e., blister-wrapped packages for retail sales or boxed in bulk). They are generally sold on a delivered basis and typically priced by the gross by both U.S. producers and importers. U.S. domestic producers reported selling a full range of pencil products during the original investigation; U.S. importers of the Chinese product sold primarily low-priced commodity pencils, specialty pencils, and pencil blanks.

U.S. producers alleged during the original investigation that the subject imports from China competed, 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. Commodity pencils as a category vary according to the quality of the pencil and its price. Higher priced commodity pencils have a better quality wood casing, ferrule, and eraser, and have a smoother lead. In the current review, the domestic interested parties reported that Chinese imports have made inroads beyond the low-priced commodity pencil and large-volume run decorator pencil market segments where they previously have dominated. Chinese producers have developed the ability to produce smaller volume runs of decorator pencils (below 100,000 gross), which was a market niche primarily served by domestic producers.<sup>28</sup> Chinese pencils have also expanded their participation in the pencil “blank” (unpainted and undecorated) market segment. Pencil blanks are used for printing customized messages. The companies that finish blanks have moved away from domestic suppliers in favor of Chinese imports.

In the current five-year review, the domestic interested parties reported that the product and industry are technologically mature.<sup>29</sup> In addition, the U.S. market for cased pencils is mature, and experiencing slow growth. Demand for these products is derived from population growth, principally among school-age children. They further reported that the conditions of competition have not changed in a substantial manner since the first review, although trends have accelerated in the intervening years.<sup>30</sup> Because the opportunities for significant growth in the market are limited, price remains the principal determinant in making a sale.

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers

During the original investigation, the Commission identified 11 U.S. manufacturers of pencils, six of which provided useful information in response to Commission questionnaires. The three largest producers of cased pencils in 1993, Empire (\*\*\*) percent of reported production), Faber (\*\*\*) percent), and Dixon (\*\*\*) percent), offered primarily the standard, black-lead commodity pencil.<sup>31</sup> Moon and Pentech concentrated in higher priced specialty pencils, while Musgrave reported that it mainly sold pencil blanks to advertising specialty companies. During the first review of the antidumping duty order, the domestic interested parties reported that there were “at most nine and possibly only seven” U.S. producers of cased pencils.<sup>32</sup> A submission to the Commission in response to its notice of institution in the first review was filed on behalf of the Pencil Section of the WIMA and six domestic producers.<sup>33</sup>

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<sup>28</sup> *Response* of domestic interested parties, August 22, 2005, p. 14.

<sup>29</sup> *Response* of domestic interested parties, August 22, 2005, p. 14.

<sup>30</sup> *Response* of domestic interested parties, August 22, 2005, p. 8.

<sup>31</sup> *Report of October 1994*, table 2.

<sup>32</sup> Cased Pencils from China, Inv. No. 731-TA-669 (Review), USITC Pub. 3328, (July 2000) (hereinafter “*Report of July 2000*”), p. I-9.

<sup>33</sup> These firms were: Aakron Rule Corp.; Dixon Ticonderoga Co.; General Pencil; Musgrave; Sanford; and Tennessee Pencil. At the time of the first review these companies were each full members of WIMA.

The domestic interested parties indicated that there was no further industry restructuring since the first review. However, in 2002, Dixon Ticonderoga shifted much of its pencil production to China, although it continues to manufacture Ticonderoga brand pencils in Missouri.<sup>34</sup> The domestic interested parties identified the following firms as domestic producers of cased pencils: Sanford, General Pencil, Musgrave, Tennessee Pencil, Rose Moon, Dixon Ticonderoga, Aakron Rule Co., Panda Pencil Co., and Harcourt Pencil Co. They also identified Rose Moon and Dixon as related parties.<sup>35</sup> In 2004, the three largest producers of cased pencils reportedly were Sanford (\*\*% percent of total Byrd Amendment receipts), Rose Moon (\*\*% percent), and Musgrave (\*\*% percent).<sup>36</sup> *The Pencil Pages*<sup>37</sup> lists additional companies as producing pencils in the United States as of June 2005. Table I-3 provides the location and status of companies that may produce cased pencils in the United States.

### U.S. Production, Capacity, and Shipments

Data reported by the U.S. cased pencil industry in the Commission's original investigation, first five-year review, and in response to the second review institution notice are presented in table I-4. During the original investigation, domestic cased pencil capacity rose from 1991 to 1993.<sup>38</sup> Production and capacity utilization rose from 1991 to 1992, and then fell in 1993. The quantity of U.S. shipments followed the same trend, while the value of U.S. shipments rose steadily. Production and the quantity and value of U.S. shipments fell continuously from 1993 to 2004. The unit value of domestic cased pencil shipments rose from \$\*\*\* per gross in 1991 to \$\*\*\* per gross in 1998, then dropped to \$\*\*\* per gross in 2004. The domestic interested parties reported that the substantial reduction of production and U.S. shipments in 2004 reflects the inroads Chinese imports have made in the market for blanks, and small volume runs of decorator pencils.<sup>39</sup> There are no current financial or pricing data available for the subject product.

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<sup>34</sup> *Response* of domestic interested parties, August 22, 2005, p. 3.

<sup>35</sup> *Response* of domestic interested parties, August 22, 2005, p. 11.

<sup>36</sup> The coverage figures presented were estimated by the domestic interested parties from information regarding distributions under the Continuing Dumping and Subsidy Offset Act of 2000. However, using the same source indicates that Dixon Ticonderoga's share of 2004 production is \*\*% percent. Since Dixon has reduced its domestic production, this probably overstates the company's current percentage. *Response* of domestic parties, August 22, 2005, pp. 11-12.

<sup>37</sup> *The Pencil Pages* is a website maintained by an individual pencil collector. See [www.pencilpages.com](http://www.pencilpages.com).

<sup>38</sup> There is no information available on the U.S. cased pencil industry's current capacity.

<sup>39</sup> *Response* of domestic interested parties, August 22, 2005, p. 14.

**Table I-3**

**Cased pencils: Companies that may produce cased pencils in the United States**

<b>Name of company</b>	<b>Location</b>	<b>Status/source</b>
Aakron Rule Corp.	Akron, NY Blakewell, TN	Listed as a U.S. producer in the first review; current website offers both U.S.-made and imported pencils. <sup>1</sup>
Acme Pencil Co.	Shelbyville, TN	<i>The Pencil Pages</i> : "List of Manufacturers"
California Pencil Co.	Burbank, CA	<i>The Pencil Pages</i> : "List of Manufacturers"
DesignWay, Inc.	Lewisburg, TN	WIMA Directory <i>The Pencil Pages</i> : "List of Manufacturers"
Dixon Ticonderoga Co.	Heathrow, FL (HQ) Versailles, MO (factory)	Listed as a U.S. producer in the first review. Shifted some production to Mexico in 1999 then to China in 2002. Still manufactures Ticonderoga brand pencils in Missouri. <sup>2</sup>
General Pencil Co.	Jersey City, NJ	Gave notice that it will participate as a U.S. producer in the second review. <sup>3</sup>
Goodkind Pen Co.	Maple Lake, MN	WIMA Directory
Harcourt Pencil Co.	Shelbyville, TN	<i>The Pencil Pages</i> : "List of Manufacturers"
Kraft Pencil Co.	Montgomery, AL	<i>The Pencil Pages</i> : "List of Manufacturers"
Musgrave Pencil Co.	Shelbyville, TN	Gave notice that it will participate as a U.S. producer in the second review. <sup>4</sup>
Panda, Inc.	Trenton, OH	<i>The Pencil Pages</i> : "List of Manufacturers"
Pencil Craft Co.	Mt. Pleasant, MI	<i>The Pencil Pages</i> : "List of Manufacturers"; manufactures oversized pencils. <sup>5</sup>
Pentech	Edison, NJ	Pentech produced pencils from imported pencil blanks at least through December 1999. <sup>6</sup>
Rose Moon, Inc.	Livingston, NJ (HQ) Lewisburg, TN (factory)	Gave notice that it will participate as a U.S. producer in the second review. <sup>7</sup>
Sanford, L.P.	Oak Brook, IL (HQ) Lewisburg, TN (factory) Shelbyville, TN (factory)	Gave notice that it will participate as a U.S. producer in the second review. <sup>8</sup>
Seaboard Pencil Co.	Brooksville, IL	<i>The Pencil Pages</i> : "List of Manufacturers" <sup>9</sup>
Shelbyville Pencil Co.	Shelbyville, TN	<i>The Pencil Pages</i> : "List of Manufacturers" <sup>10</sup>
Tennessee Pencil Co.	No listing.	Gave notice that it will participate as a U.S. producer in the second review.
Tree Smart, Inc.	Lake Oswego, OR	<i>The Pencil Pages</i> : "List of Manufacturers" <sup>11</sup>

Table continued on next page.



**Table I-3—continued**

**Cased pencils: Companies that may produce cased pencils in the United States**

<sup>1</sup> For information about Aakron Rule, see [http://www.logomall.com/30270/pencils\\_supplies.html](http://www.logomall.com/30270/pencils_supplies.html).  
<sup>2</sup> For information about Dixon Ticonderoga, see the “news” option at the company’s website, <http://www.prang.com>. Fila-Fabbrica Italiana Lapis ed Affini S.p.a. (Milan, Italy) purchased Dixon Ticonderoga Company in December 2004. The company continues to manufacture pencils in Missouri, but the production of all of the company’s other products have been moved offshore, mostly to Mexico and China.  
<sup>3</sup> For information about General Pencil Co., (as well as a description and photographs of the process for manufacturing pencils), see <http://www.generalpencil.com>.  
<sup>4</sup> For information about Musgrave Pencil Co., see <http://www.musgravepencil.com/history.cfm>.  
<sup>5</sup> For a description of the pencils manufactured by Pencil Craft Co., see <http://www.pencilcraft.com>.  
<sup>6</sup> See “Pentech Establishes Joint Venture in China,” at <http://biz.yahoo.com>.  
<sup>7</sup> Moon Products, the second largest U.S. producer of pencils, was purchased by Rose Art Industries, Inc. Of Livingston, NJ, in November 2003.  
<sup>8</sup> Sanford is a Division of Newell Rubbermaid. See [http://www.sanfordcorp.com/sanford/consumer/jhtml/aboutus/sanford\\_about\\_us\\_21.jhtml](http://www.sanfordcorp.com/sanford/consumer/jhtml/aboutus/sanford_about_us_21.jhtml).  
<sup>9</sup> Seaboard specializes in custom imprinted pencils. For information about Seaboard Pencil Co., see <http://www.seaboardpencil.com>.  
<sup>10</sup> Shelbyville Pencil Co. Also does business as “Shapenco.”  
<sup>11</sup> Tree Smart encases its graphite cores in hardened newsprint. See <http://www.treesmart.com>.

Sources: Writing Instruments Manufacturing Association (WIMA), found at <http://www.wima.org/directory/productmenu.cfm>, and “List of Manufacturers,” *The Pencil Pages*, found at <http://www.pencilpages.com/mfg/index.htm>, except as noted.

**Table I-4**

**Cased pencils: U.S. producers’ capacity, production, and U.S. shipments, 1991-93, 1998, and 2004**

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**U.S. IMPORTS AND CONSUMPTION**

**U.S. Importers**

During the original investigation, the Commission identified 27 U.S. importers of cased pencils from China (who imported either directly or through Hong Kong). The firms were located throughout the United States and reported selling the imported product nationwide. In the first review, the domestic interested parties identified five firms that imported pencils from China. In their response to the Commission’s notice of institution in this review, the domestic interested parties identified 12 possible U.S. importers of the subject merchandise from China.<sup>40</sup> The domestic interested parties indicated that Dixon Ticonderoga is a related party inasmuch as it imports pencils from its Chinese production facility to the United States. \*\*\*.<sup>41</sup>

<sup>40</sup> They are Pentech, Lisa Frank Corp., Raymond Geddes and Co., Target, California Cedar Products, RoseArt, Office Max, Gold Bond, Weiland, Impex, Simmons Reynolds Assoc., and CVS.

<sup>41</sup> *Response* of the domestic interested parties, August 22, 2005, p. 24.

## U.S. Imports

All cased pencils produced in China are subject to the antidumping duty order.<sup>42 43</sup> Following the imposition of the order in December 1994, imports of cased pencils from China fell sharply in 1995, then rose again until imports reached a point in 1998 that exceeded the level imported during the period reviewed in the original investigation. As shown in table I-5, the quantity of U.S. imports of cased pencils found to be sold at less than fair value increased by 226.2 percent from 1991 to 1993, and then increased by 127.0 percent from 1993 to 2004. The 2004 unit value of cased pencils from China is lower than at any time during the original investigation or first review. As mentioned previously, the domestic interested parties reported that Chinese imports have made inroads beyond the low-priced commodity pencil and large-volume run decorator pencil segments of the market. The Chinese have expanded into the market for blanks, and small volume runs of decorator pencils.<sup>44</sup>

Indonesia replaced Brazil as the second leading supplier of cased pencils to the United States in 2004. As the average unit value of imports from Indonesia declined by 24 percent during 1999-2004, to \$4.47 per gross, its share of total imports increased from 11 percent to 15 percent (table I-6). Cased pencils from Brazil and Taiwan have consistently had higher average unit values than pencils from other leading suppliers. During 1999-2004, their shares of total imports dropped from 20 percent to 9 percent and from 7 percent to 5 percent, respectively.

Brazil's share of total U.S. imports of cased pencils declined most sharply during 2002-04 as the value of its currency appreciated in terms of the U.S. dollar and the average unit value of cased pencils from Brazil increased by 33 percent to \$10.78 per gross. During the same period, Costa Rica emerged as a leading supplier. Whereas imports from Brazil dropped by 1.6 million gross during 2002-04, imports from Costa Rica escalated by 1.4 million gross. In contrast to the increase in the average unit value of imports from Brazil, the average unit value for imports from Costa Rica declined by 5 percent to \$7.58.

The share of total imports of cased pencils supplied by Thailand increased sharply during 2002-04, from 3 percent to 7 percent, as the volume of imports from Thailand nearly tripled in those two years. At an average unit value of \$5.63 per gross, cased pencils from Thailand are comparable with imports from China and Indonesia, whereas imports from Costa Rica, Brazil, and Taiwan are significantly more expensive.

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<sup>42</sup> Exports of pencils by Guangdong that are manufactured by Three Star were originally excluded from the order, as were pencils exported by China First. However, China First became subject to the order following court-ordered remand proceedings. In addition, China First and Three Star were subsequently determined by Commerce to be a single entity for antidumping purposes, meaning that pencils manufactured by Three Star and exported by Guangdong, which previously had been excluded from the order, were placed under its coverage.

<sup>43</sup> The petition for the original investigation alleged that cased pencils produced in China were often transhipped through Hong Kong. Information supplied in questionnaire responses submitted to the Commission supported this allegation. *Report of October 1994*, pp. II-13-14. Therefore, import data for China presented in the original investigation, first review, and this current review, include imports of cased pencils from Hong Kong.

<sup>44</sup> *Response of domestic interested parties*, August 22, 2005, pp. 14-15.

**Table I-5**  
**Cased pencils: U.S. imports from all sources, 1991-93, 1997-99, and 2000-04**

Source	Original investigation			First review			Second review				
	1991	1992	1993	1997	1998	1999	2000	2001	2002	2003	2004
<b>Quantity (1,000 gross)</b>											
China/Hong Kong: Fair value <sup>1</sup> imports	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
LTFV imports	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	7,879	9,224
Subtotal	1,306	3,276	4,724	3,835	6,002	5,961	7,246	7,519	7,499	7,879	9,224
Other sources <sup>3</sup>	1,791	1,642	2,009	7,520	8,858	6,175	7,207	6,592	8,068	8,862	9,027
Total	3,098	4,918	6,734	11,355	14,860	12,136	14,453	14,411	15,567	16,741	18,251
<b>Landed duty-paid value (1,000 dollars)</b>											
China/Hong Kong: Fair value imports	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
LTFV imports	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	37,519	41,370
Subtotal	9,029	17,957	21,691	17,410	28,820	29,455	34,988	33,503	34,749	37,519	41,370
Other sources <sup>3</sup>	23,551	28,766	25,915	61,455	75,668	54,727	64,213	57,750	64,245	76,594	72,942
Total	32,580	46,724	47,605	78,865	104,488	84,182	99,201	91,253	98,994	114,113	114,312
<b>Unit value</b>											
China/Hong Kong: Fair value imports	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
LTFV imports	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	\$4.76	\$4.48
Subtotal	\$6.91	\$5.48	\$4.59	\$4.54	\$4.81	\$4.94	\$4.83	\$4.46	\$4.63	\$4.76	\$4.48
Other sources <sup>3</sup>	13.15	17.52	12.90	8.17	8.54	8.86	8.91	8.76	7.96	8.64	8.08
Total	10.52	9.50	7.07	6.95	7.03	6.94	6.86	6.47	6.36	6.82	6.26

<sup>1</sup> Exports of pencils by Guangdong that are manufactured by Three Star were originally excluded from the order, as were pencils exported by China First. However, China First became subject to the order following court-ordered remand proceedings in May 1999. In addition, China First and Three Star were subsequently determined by Commerce to be a single entity for antidumping purposes, meaning that pencils manufactured by Three Star and exported by Guangdong, which previously had been excluded from the order, were placed under its coverage in July 2002.

<sup>2</sup> Not available.

<sup>3</sup> Not applicable.

<sup>3</sup> Primary nonsubject sources during 1991-93 were Brazil, Indonesia, Taiwan, and Mexico. In 2004, the primary other sources were Indonesia, Brazil, Costa Rica, Thailand, and Taiwan.

Source: *Report of December 1994*, table B-2; *Report of July 2000*, table I-2; and official Commerce statistics.

**Table I-6**  
**Cased pencils: U.S. imports for consumption, by country, 1999-2004**

Source	2000	2001	2002	2003	2004
<b>Quantity (1,000 gross)</b>					
<i>Subject country:</i>					
China/Hong Kong	7,246	7,519	7,499	7,879	9,224
<i>Nonsubject countries:</i>					
Indonesia	2,083	1,854	2,540	2,151	2,733
Brazil	3,162	3,056	3,350	2,374	1,723
Costa Rica	0	0	214	1,285	1,642
Thailand	337	337	491	1,126	1,220
Taiwan	815	722	712	984	863
All other sources	809	623	760	942	846
Subtotal	7,207	6,592	8,068	8,862	9,027
Total	14,453	14,111	15,567	16,741	18,251
<b>Landed duty-paid value (1,000 dollars)</b>					
<i>Subject country:</i>					
China/Hong Kong	34,988	33,503	34,749	37,519	41,370
<i>Nonsubject countries:</i>					
Indonesia	10,170	11,268	11,267	10,490	12,228
Brazil	28,084	24,368	27,246	21,871	18,570
Costa Rica	0	5	1,707	9,806	12,442
Thailand	2,211	1,653	3,079	5,672	6,872
Taiwan	10,389	7,857	7,665	9,732	10,202
All other sources	13,358	12,598	13,282	19,022	12,628
Subtotal	64,213	57,750	64,245	76,594	72,942
Total	99,201	91,253	98,994	114,113	114,312
<b>Landed duty-paid unit value (per gross)</b>					
<i>Subject country:</i>					
China/Hong Kong	\$4.83	\$4.46	\$4.63	\$4.76	\$4.48
<i>Nonsubject countries:</i>					
Indonesia	4.88	6.08	4.44	4.88	4.47
Brazil	8.88	7.97	8.13	9.21	10.78
Costa Rica	n.a.	28.25	7.97	7.63	7.58
Thailand	6.57	4.91	6.27	5.04	5.63
Taiwan	12.74	10.88	10.76	9.89	11.82
All other sources	16.51	20.03	17.48	20.20	14.93
Subtotal	8.91	8.76	7.96	8.64	8.08
Total	6.86	6.47	6.36	6.82	6.26

Table continued on next page.

**Table I-6--Continued**  
**Cased pencils: U.S. imports for consumption, by country, 1999-2004**

Source	2000	2001	2002	2003	2004
<b>Share of quantity (percent)</b>					
<i>Subject country:</i>					
China/Hong Kong	50.1	53.3	48.2	47.1	50.5
<i>Nonsubject countries:</i>					
Indonesia	14.4	13.1	16.3	12.8	15.0
Brazil	21.9	21.7	21.5	14.2	9.4
Costa Rica	0.0	0.0	1.4	7.7	9.0
Thailand	2.3	2.4	3.2	6.7	6.7
Taiwan	5.6	5.1	4.6	5.9	4.7
All other sources	5.6	4.4	4.9	5.6	4.6
Subtotal	49.9	46.7	51.8	52.9	49.5
Total	100.0	100.0	100.0	100.0	100.0
<b>Share of value (percent)</b>					
<i>Subject country:</i>					
China/Hong Kong	35.3	36.7	35.1	32.9	36.2
<i>Nonsubject countries:</i>					
Indonesia	10.3	12.3	11.4	9.2	10.7
Brazil	28.3	26.7	27.5	19.2	16.2
Costa Rica	0.0	0.0	1.7	8.6	10.9
Thailand	2.2	1.8	3.1	5.0	6.0
Taiwan	10.5	8.6	7.7	8.5	8.9
All other sources	13.5	13.8	13.4	16.7	11.0
Subtotal	64.7	63.3	64.9	67.1	63.8
Total	100.0	100.0	100.0	100.0	100.0
Source: Compiled from official statistics of the U.S. Department of Commerce.					

### Apparent U.S. Consumption and Market Shares

Apparent U.S. consumption of cased pencils, presented in table I-7, rose irregularly from \*\*\* thousand gross in 1991 to \*\*\* thousand gross in 1998, and then fell to \*\*\* thousand gross in 2004. U.S. producers' share of the market fell from \*\*\* percent in 1991 to \*\*\* percent in 1998, and further fell to \*\*\* percent in 2004. The market share of imports of LTFV cased pencils from China rose from \*\*\* percent in 1991 to \*\*\* percent in 1993, and then rose to \*\*\* in 2004. The market share of imports of cased pencils from other sources fell from \*\*\* percent in 1991 to \*\*\* percent in 1992, then rose to \*\*\* percent in 1993 and \*\*\* percent in 2004.

Table I-7

Cased pencils: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1991-93, 1998, and 2004<sup>1</sup>

Item	Original investigation			First review	Second review
	1991	1992	1993	1998	2004
	<b>Quantity (1,000 gross)</b>				
U.S. shipments of U.S. finished product	***	***	***	*** <sup>1</sup>	***
U.S. imports: China/Hong Kong: Fair value imports	***	***	***	( <sup>2</sup> )	( <sup>3</sup> )
LTFV imports	***	***	***	( <sup>2</sup> )	9,224
Subtotal	1,306	3,276	4,724	6,002	9,224
Other sources	1,791	1,642	2,009	8,858	9,027
Total	3,098	4,918	6,734	14,860	18,251
Apparent U.S. consumption	***	***	***	***	***
	<b>Share of consumption (percent)</b>				
U.S. producers': Finished shipments : Pentech	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
All other firms	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Subtotal	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Less U.S. imports of raw pencils	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Finished shipments of U.S. origin	***	***	***	***	***
U.S. imports: China/Hong Kong: Fair value imports	***	( <sup>4</sup> )	***	( <sup>2</sup> )	( <sup>3</sup> )
LTFV imports	***	***	***	( <sup>2</sup> )	***
Subtotal	***	***	***	***	***
Other sources	***	***	***	***	***
Total	***	***	***	***	***

<sup>1</sup> Includes any U.S. finished cased pencils produced from imported raw pencils, therefore U.S. shipments may be overstated.

<sup>2</sup> Not available.

<sup>3</sup> Not applicable. All cased pencils produced in China are currently subject to the antidumping duty order.

<sup>4</sup> Less than 0.5 percent.

Source: *Report of December 1994*, table B-2; *Report of July 2000*, table I-3; official Commerce statistics; and *Response of domestic interested parties*, August 22, 2005, p. 13 and September 1, 2005, pp. 3-4.

## PRICING

The Commission’s original investigation established the price sensitive nature of the U.S. market for cased pencils and noted that the market trends would “increase the importance of price alone and increase the downward pressure on commodity pencils, forcing competition in a way the domestic industry cannot compete.”<sup>45</sup> There are no pricing data available for U.S. imports of subject merchandise since the antidumping duty order was imposed. The following tabulation lists the landed duty-paid unit values for cased pencils (\$/gross) from China/Hong Kong for 1991-2004:<sup>46</sup>

<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>
\$6.91	\$5.48	\$4.59	\$3.82	\$5.59	\$5.32	\$4.54
<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
\$4.81	\$4.94	\$4.83	\$4.46	\$4.63	\$4.76	\$4.48

## THE FOREIGN INDUSTRY

The original staff report did not contain data as to the total number of cased pencil manufacturers in China when the petition was filed; however, six manufacturers and/or exporters provided information to the Commission on the Chinese pencil industry during the original investigation.<sup>47</sup> The Commission did not receive any responses to its notice of institution from Chinese producers in the first review, or the second review. During the first review, the domestic interested parties identified 16 Chinese producers of cased pencils. In the current review, the domestic interested parties identified 19 Chinese producers of pencils<sup>48</sup> and 19 Chinese exporters of pencils.<sup>49</sup> According to a private market intelligence report by Global Sources on the writing instruments industry in China, there were approximately 400 producers of cased pencils in China during 2003.<sup>50</sup> The leading Chinese companies that produce pencils for export markets are listed in table I-8.<sup>51</sup>

<sup>45</sup> *Report of December 1994*, p. I-17.

<sup>46</sup> Official Commerce statistics (HTS statistical reporting number 9609.10.00).

<sup>47</sup> *Report of July 2000*, p. I-18.

<sup>48</sup> They are: Beijing Dixon, China First, China Second, Shanghai Three Star, Beijing Pencil Factory, Dalian Pencil Factory, Donghau Pencil Factory, Harbin Pencil Factory, Jiangsu Pencil Factory, Jinan Pencil Factory, Juihai Pencil Factory, Julong Pencil Factory, Laizhou City Guangming Pencil-Making Lead Co., Qingdao Pencil Factory, Shenyang Pencil Factory, Songnan Pencil Factory, Tianjin Custom Wood Processing, Tianjin Pencil Factory, and Winbang Joint Venture Pencil Factory. *Response of domestic interested parties*, August 22, 2005, p. 12.

<sup>49</sup> They are: Anhui Import/Export, Anhui Light Industrial Products, Anhui Provincial, Beijing Light Industrial Products, China First, China Second, Shanghai Lansheng, China National Light Industrial Products, Dalian Light Industrial Products, GP, Jiangsu Light Industrial Products, Jilin Provincial Machinery & Equipment, Kaiyuan Group, Liaoning Light Industrial Products, Ningbo Sheng’s, Qingdao Light Industrial, Shandong Light Industries, Shandong Rongxin, and Three Star. *Response of domestic interested parties*, August, 22, 2005, pp. 12-13.

<sup>50</sup> Global Sources, “Writing Instruments Manufacturing in China,” in *Writing Instruments: Global Sourcing Report*, October 2004, p. 3.

<sup>51</sup> The province of Shejiang accounts for about 70 percent of China’s production of all writing instruments and 59 percent of its exports. Other major producing areas include Shanghai, Guangdong, Jiangsu, and Shandong. Global Sources, “Writing Instruments Manufacturing in China,” in *Writing Instruments: Global Sourcing Report*, October 2004, pp. 3 and 6.

**Table I-8**  
**Cased pencils: Producers/exporters of cased pencils in China, 2004**

Company	Location	Annual exports: pencils only (million gross) <sup>1</sup>	Pencil share of company exports (percent)
BEC Stationery Co. Ltd.	Wenzhou, Zhejiang	0.41	38
Changshu Writing Tool Factory	Changshu, Jiangsu	0.05	25
Dongguan Szu Mao Stationary Gifts Co. Ltd.	Dongguan, Guangdong HQ: Taiwan	0.10	17
Genvana	Chaoyang, Guangdong	0.25	8
Good Hand Writing Pens	Shangyu, Zhejiang	0.01	5
Guangxi Wuzhou Pencil Factory	Wuzhou, Guangxi	1.41	100
Histar	Qingdao, Shandong	0.83	100
International Writing Instrument Corp.	Taipei, Taiwan Shanghai	0.03	9
Jinan Hangtung Writing Instruments	Jinan, Shandong	5.70	100
Jinyuanda Pencil Making Co. Ltd.	Mengcheng, Anhui	0.25	100
Longkou Yiyou Pencil Factory	Longkou, Shandong	0.02	100
Ningbo Beifa	Ningbo, Zhejiang	1.16	12
Ningbo Tianyuan Stationary & Sports	Ningbo, Zhejiang	0.01	5
Omnifocus Industries Co. Ltd.	Shenzhen	0.01	15
Shanghai Haolilai Stationery Co. Ltd.	Shanghai	0.02	30
Shanghai Platinum Pen Co. Ltd.	Shanghai	0.03	16
Shenzhen Heng Chang Sheng Industry Co. Ltd.	Shenzhen, Guangdong	0.14	30
Suzhou Xinhua Stationery Co. Ltd.	Suzhou, Jiangsu	0.23	90
Tianjin Foreign Trade Group	Tianjin	0.01	50
Weihai Green Import & Export Co.	Weihai, Shandong	0.40	80
Wenzhou Changrong Pen Trade Co.	Wenzhou, Zhejiang	0.17	10
Wenzhou Feida Pen Industry Co.	Wenzhou, Zhejiang	0.31	15
Wenzhou Huanle Pen Industry Co.	Wenzhou, Zhejiang	0.05	30
Wenzhou Sameway Import & Export	Wenzhou, Zhejiang	0.25	10
Wenzhou Xinya Stationery Co. Ltd.	Wenzhou, Zhejiang	0.33	80
Yuyao City Jiang Wen Pen Industry	Yuyao, Zhejiang	0.04	10
Zhejiang Songyang Jinxing Stationery Co. Ltd.	Ningbo, Zhejiang	0.02	56
Zhengzhou Youngchina Trade Co.	Zhengzhou, Henan;	0.01	26

<sup>1</sup> A gross consists of 144 pencils.

Source: Global Sources, "Supplier Profiles," in *Writing Instruments: China Sourcing Report*, October 2004, pp. 25-90. Export values for some companies may include mechanical pencils as well as cased pencils.



Global Sources estimates that pencils (including mechanical pencils) accounted for 31 percent of China's exports of writing instrument in 2003.<sup>52</sup> The research organization states that producers of writing instruments in China face rising costs for labor,<sup>53</sup> raw materials, and electricity<sup>54</sup> but intense competition from other producers in China keeps them from raising prices. Consequently, there is little margin for profits or research and development.<sup>55</sup>

China's production of all types of pencils (mechanical pencils, wood cased lead pencils, and wood cased colored pencils) amounted to 8.95 billion pieces in 2003, a 9-percent increase over 2002. Exports of all three types amounted to 6.68 billion pieces in 2003, or 12 percent more than in 2002.<sup>56</sup> China's exports of wooden pencils (lead and colored) amounted to 6.08 billion pieces in 2003. One of the largest exporters, Jinan Hangtung, produced about 1 billion pieces in 2003.<sup>57</sup>

Low-end pencils in China are made from poplar, use lower quality graphite, and use the original color of the wood with no lacquer or use low-end paint. The price typically ranges from \$0.50 to \$1.76 per gross. Midrange and high-end pencils are made from basswood, use better quality graphite and rare earth elements, have a lacquered finish, and often are painted with multiple colors. Prices range from \$0.93 to \$2.18 per gross. With rising prices for wood and concern about the environment, many companies have started to offer pencils made from recycled newspaper.<sup>58</sup> Producers of low-end colored pencils use locally sourced talcum, clay, and pigments that result in dull colors. Higher quality colored pencils tend to use materials imported from Germany.<sup>59</sup>

#### **COMMENTS REGARDING THE LIKELY EFFECTS OF REVOCATION OF THE ANTIDUMPING DUTY ORDER**

The domestic interested parties stated that any revocation "is likely to lead to continuation or recurrence of material injury to the U.S. cased pencil industry within a reasonably foreseeable time."<sup>60</sup> They further state that "the volume of imports from China is likely to be significant if the Order is revoked,"<sup>61</sup> and revocation "will result in further suppression—if not outright depression—of domestic producer prices."<sup>62</sup>

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<sup>52</sup> This estimate was based on interviews with manufacturers. See Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, October 2004, p. 3.

<sup>53</sup> Shortages of labor in Guangdong and Zhejiang Provinces have led to demands for higher wages. See Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, October 2004, p. 6.

<sup>54</sup> Shortages of electricity have caused power outages in Zhejiang Province, forcing some suppliers to miss contract deadlines. Most suppliers have had to install power generators to avoid losing contracts. This has increased their overhead costs. See Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, October 2004, p. 6.

<sup>55</sup> Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, October 2004, p. 3.

<sup>56</sup> Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, October 2004, p. 13.

<sup>57</sup> Ibid.

<sup>58</sup> Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, Oct. 2004, p. 13f. The only U.S. producer that advertises using recycled newspaper instead of wood is Tree Smart. See table 1.

<sup>59</sup> Global Sources, "Writing Instruments Manufacturing in China," in *Writing Instruments: Global Sourcing Report*, Oct. 2004, p. 14.

<sup>60</sup> *Response* of domestic interested parties, August 22, 2005, p. 3.

<sup>61</sup> *Response* of domestic interested parties, August 22, 2005, p. 5.

<sup>62</sup> *Response* of domestic interested parties, August 22, 2005, p. 7.



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



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**INTERNATIONAL TRADE  
COMMISSION****[Investigation No. 731-TA-669 (Second  
Review)]****Cased Pencils From China****AGENCY:** United States International  
Trade Commission.**ACTION:** Institution of a five-year review  
concerning the antidumping duty order  
on cased pencils from China.

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**SUMMARY:** The Commission hereby gives  
notice that it has instituted a review  
pursuant to section 751(c) of the Tariff  
Act of 1930 (19 U.S.C. 1675(c)) (the Act)  
to determine whether revocation of the  
antidumping duty order on cased  
pencils from China would be likely to  
lead to continuation or recurrence of  
material injury. Pursuant to section  
751(c)(2) of the Act, interested parties  
are requested to respond to this notice  
by submitting the information specified  
below to the Commission;<sup>1</sup> to be

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<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 05-5-131, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments

assured of consideration, the deadline for responses is August 22, 2005. Comments on the adequacy of responses may be filed with the Commission by September 13, 2005. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

**DATES:** Effective July 1, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202-205-3193), 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. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.**—On December 28, 1994, the Department of Commerce issued an antidumping duty order on imports of cased pencils from China (59 FR 66909). Following five-year reviews by Commerce and the Commission, effective August 10, 2000, Commerce issued a continuation of the antidumping duty order on imports of cased pencils from China (65 FR 48960). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the

scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as all cased pencils, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as all domestic producers of cased pencils. In its original determination, the Commission excluded one domestic producer, Pentech, from the Domestic Industry under the related parties provision.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

**Participation in the review and public service list.**—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal

employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 13, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's

regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information to be provided in response to this notice of institution:* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty

order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data in gross and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in gross and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject

Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in gross and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 22, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-13156 Filed 6-30-05; 8:45 am]

**BILLING CODE 7020-02-P**



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**INTERNATIONAL TRADE  
COMMISSION****[Investigation No. 731-TA-669 (Second  
Review)]****Cased Pencils From China****AGENCY:** United States International  
Trade Commission.**ACTION:** Scheduling of an expedited five-  
year review concerning the antidumping  
duty order on cased pencils from China.**SUMMARY:** The Commission hereby gives  
notice of the scheduling of an expedited  
review pursuant to section 751(c)(3) of  
the Tariff Act of 1930 (19 U.S.C.  
1675(c)(3)) (the Act) to determine  
whether revocation of the antidumping  
duty order on cased pencils from China  
would be likely to lead to continuation  
or recurrence of material injury within  
a reasonably foreseeable time. For  
further information concerning the  
conduct of this review 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, D, E, and F (19 CFR part  
207).**EFFECTIVE DATE:** October 4, 2005.**FOR FURTHER INFORMATION CONTACT:**  
Elizabeth Haines (202-205-3200), Office  
of Investigations, 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.  
General information concerning the  
Commission may also be obtained by  
accessing its Internet server ([http://  
www.usitc.gov](http://www.usitc.gov)). The public record for  
this review may be viewed on the  
Commission's electronic docket (EDIS)  
at <http://edis.usitc.gov>.**SUPPLEMENTARY INFORMATION:****Background**

On October 4, 2005, the Commission  
determined that the domestic interested  
party group response to its notice of  
institution (70 F.R. 38192, July 1, 2005)  
of the subject five-year review was

adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

*Staff report.* A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 26, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.* As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>2</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 31, 2005 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 31, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the

Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (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.

*Determination.* The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 13, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-20837 Filed 10-17-05; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

<sup>2</sup> The Commission has found the responses submitted by General Pencil Co., Inc., Musgrave Pencil Co., Rose Moon, Inc., Sanford, L.P., and Tennessee Pencil Co. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

**APPENDIX B**  
**STATEMENT ON ADEQUACY**



EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY  
in  
*Cased Pencils from China*, Inv. No. 731-TA-669 (Second Review)

On October 4, 2005, the Commission determined that it should proceed to an expedited review in the subject five-year reviews pursuant to section 751(c)(3) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3).

The Commission received an adequate joint response to the notice of institution on behalf of five domestic producers: General Pencil Co., Inc.; Musgrave Pencil Co.; Rose Moon, Inc.; Sanford, L.P.; and Tennessee Pencil Co. Because the Commission received an adequate response from domestic producers accounting for a substantial percentage of U.S. production, the Commission determined that the domestic interested party group response was adequate.

The Commission did not receive a response from any respondent interested party concerning subject imports from China and therefore determined that the respondent interested party group response was inadequate. In the absence of an adequate respondent interested party group response, or other circumstances warranting a full review, the Commission determined to conduct an expedited review. A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (<http://www.usitc.gov>).