

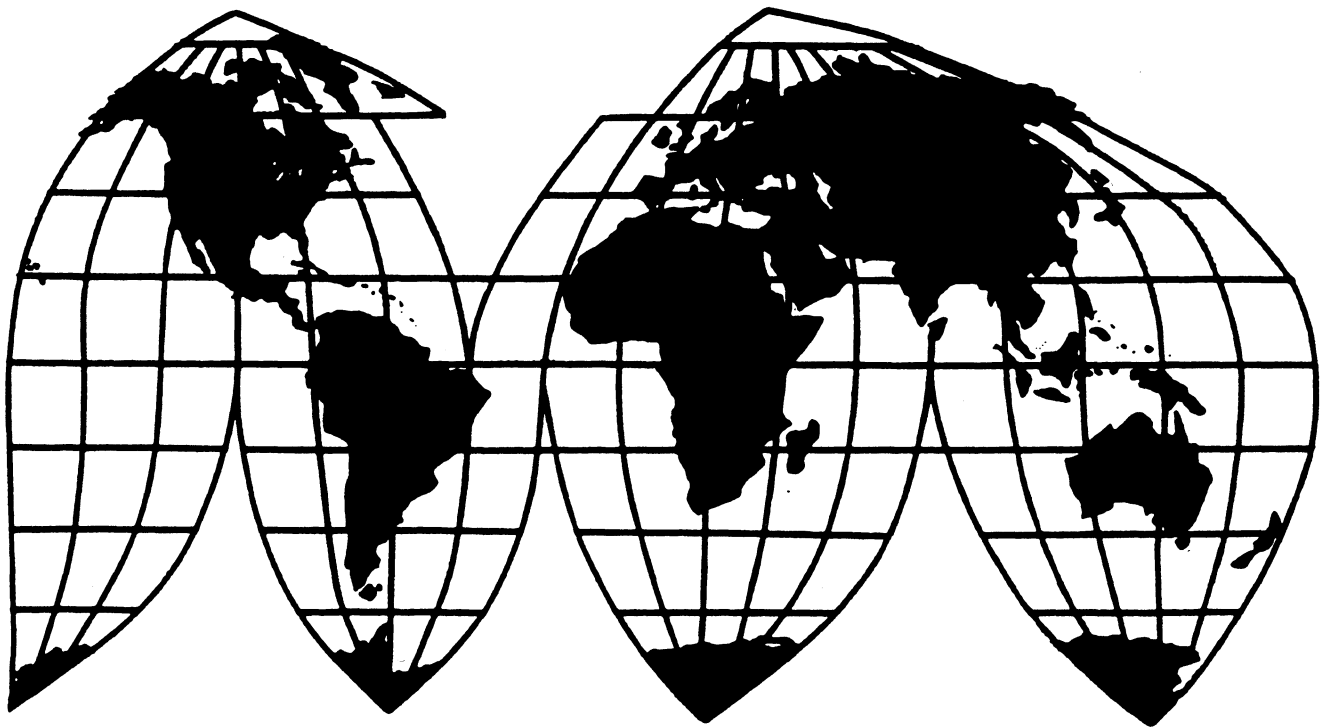
# **Certain Cased Pencils from Thailand**

Investigation No. 731-TA-670 (Final)

Publication 2816

October 1994

**U.S. International Trade Commission**



# **U.S. International Trade Commission**

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# **U.S. International Trade Commission**

Washington, DC 20436

## **Certain Cased Pencils from Thailand**



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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



**PART I**

**DETERMINATION AND VIEWS OF THE COMMISSION**





# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-670 (Final)

## CERTAIN CASED PENCILS FROM THAILAND

### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Thailand of certain cased pencils,<sup>2</sup> provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

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

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<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)).

<sup>2</sup> For purposes of its investigation, the Department of Commerce defined "certain cased pencils" as pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or manmade materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. Specifically excluded from the scope of the investigations are mechanical pencils, cosmetic pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks.



## VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of cased pencils from Thailand that the U.S. Department of Commerce ("Commerce") has determined are being sold in the United States at less than fair value ("LTFV").<sup>1</sup>

### I. LIKE PRODUCT

#### A. In General

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ." <sup>2</sup> In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ." <sup>3</sup>

Commerce has defined the scope of this investigation as:

certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.<sup>4</sup>

The scope of imported articles defined by Commerce includes a variety of cased pencils including commodity or standard yellow pencils, colored pencils ("cased crayons"), decorated and imprinted pencils, drafting and specialty<sup>5</sup> pencils, pencil blanks,<sup>6</sup> and raw pencils.<sup>7</sup> All of

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<sup>1</sup> 19 U.S.C. § 1673d(b). Whether the establishment of an industry in the United States is materially retarded is not an issue in this investigation.

<sup>2</sup> 19 U.S.C. § 1677(4)(A).

<sup>3</sup> 19 U.S.C. § 1677(10). In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. E.g., S. Rep. No. 249, 96th Cong. 1st Sess. 90-91 (1979); Torrington v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988) ("Asocoflores") ("It is up to [the Commission] to determine objectively what is a minor difference.").

<sup>4</sup> 59 Fed. Reg. 44965 (Aug. 31, 1994) (Notice of Final Determination of Sales at Less Than Fair Value -- Thailand); see also 59 Fed. Reg. 30911 (June 16, 1994) (Notice of Preliminary Determination of Sales at Less Than Fair Value -- People's Republic of China) (same language).

<sup>5</sup> Specialty pencils are those that are decorated with characters, designs, and shapes. Confidential Report ("CR") at I-78 n.89, Public Report ("PR") at II-47 n.89.

these imported items were held by Commerce to be encompassed in a single class or kind of merchandise.<sup>8</sup> Pencil imports from Thailand have consisted of colored and Bentsia pencils.<sup>9 10</sup>

## B. Like Product Analysis for this Final Investigation

In the preliminary determination, the Commission defined a single like product, consisting of all cased pencils. The Commission applied its "semifinished/finished products" analysis and determined that a "raw pencil" is an unfinished cased pencil in that it is "a cased pencil that is unsharpened, unpainted, and untipped."<sup>11</sup> No party to this final investigation argues that the Commission should change this finding and no new evidence on the record of this final investigation provides a basis to reach a different conclusion.<sup>12</sup>

We find that all domestically produced cased pencils are like the imports under investigation from Thailand. All cased pencils (including Bentsia pencils imported from Thailand) have similar physical characteristics and uses; they consist of a writing core encased in a sheath of wood or some other substance, such as plastic, and are used as hand-held writing

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<sup>6</sup> (...continued)

<sup>6</sup> Pencil blanks are the next stage of production beyond raw pencils. Blanks have been lacquered and sometimes have had a ferrule and eraser added. CR at I-6, PR at II-4. They are sold to advertising firms that embellish them with special logos or advertisements.

<sup>7</sup> Respondents from Thailand argue that Bentsia pencils imported from Thailand are not subject to this investigation because they are not within the scope of the investigation as defined by Commerce. See Thailand Respondents' Prehearing Brief at 13-14, 18-20; Hearing Transcript at 111-114, 164-165.

A Bentsia pencil is a hand-held instrument used for writing, drawing or marking. It generally consists of a core of several individually contained lead/graphite cartridges or points roughly 3/8 to 1/2 inch in length, which are encased in a plastic sheath or "holder." The pencils may be colored pencils and may be decorated and have additional or novelty features, such as caps to cover the tip of the pencils or to hold an eraser. See Final Report at I-22 n.37; U.S. Customs Service Ruling 951918 (Apr. 13, 1993) (submitted as Exhibit 4 to Thailand Respondents' Prehearing Brief); Thailand Respondents' Prehearing Brief Exhibit 3 (providing copies of Bentsia brochures).

The scope of an investigation is defined by Commerce, not by the Commission. Bentsia pencils are "writing and/or drawing instruments . . . that feature cores of graphite or other materials encased in . . . man-made materials . . . and . . . sharpened." See 59 Fed. Reg. 44965 (Aug. 31, 1994) (Notice of Final Determination of Sales at Less Than Fair Value -- Thailand); accord CR at I-66 n.82, PR at II-39 n.82 (citing staff notes of telephone conversations with Customs Officials); U.S. Customs Ruling 951918 (Apr. 13, 1993). Therefore, we see no basis for deeming Bentsia pencils not within the scope of Commerce's investigation.

<sup>8</sup> 59 Fed. Reg. 44965 (Aug. 31, 1994) (Notice of Final Determination of Sales at Less Than Fair Value -- Thailand).

<sup>9</sup> We note that there is one reference in the record to an alleged lost sale with respect to imported pencil blanks from Thailand. CR at I-101, PR at II-56. This is the only instance in the record in which reported imports from Thailand did not consist of colored pencils or Bentsia pencils. All of the Commission's other evidence with respect to imports from Thailand suggests that Thai imports consisted of only colored pencils or Bentsia pencils. We note that in this one alleged instance, the level of imports was very small and the allegation of a lost sale was unconfirmed. Even assuming that pencil blanks were imported from Thailand, they would be at such de minimis levels that they were undetected in the Commission's data gathering efforts and at these low levels would not affect our determination.

<sup>10</sup> Commissioner Newquist does not join the preceding footnote.

<sup>11</sup> This was consistent with past practice, in which the "semifinished/ finished products" analysis has been used to determine whether domestically-produced semifinished and finished products are the same like product produced by the same domestic industry. We see no reason to deviate from this finding in this final investigation; however, because raw pencils are imported from China, we will address the issue of what product is like the imported raw pencils in any final investigation involving imports from China.

<sup>12</sup> See Petitioner's Prehearing Brief at 2-10; Petitioner's Responses to Commission Questions at 1-2; Hearing Transcript at 121, 124-125.

or marking instruments.<sup>13</sup> Domestically produced cased pencils appear to be generally interchangeable with the subject imports from Thailand, in light of their similarity of function.<sup>14</sup> Domestically produced cased pencils and the subject imports from Thailand move in the same channels of distribution, and all domestically produced cased pencils are manufactured in common manufacturing facilities, using the same production employees in the United States.<sup>15</sup> Although the prices of Bensia pencils and imported and domestic colored pencils may be higher than the prices of commodity pencils, they are within the range of the prices for decorated or novelty pencils.<sup>16</sup>

## II. DOMESTIC INDUSTRY

### A. In General

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."<sup>17</sup> 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.<sup>18 19</sup>

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

As in the preliminary investigation, petitioners argue in this final investigation that Pentech's processing operations for decorated pencils do not constitute pencil production.<sup>20</sup> Petitioners argue that the technical expertise involved in decorating and finishing pencils is "minor relative to the processes necessary to produce a raw pencil," and that Pentech applies relatively fewer production employees in comparison to domestic producers. They also contend that Pentech's value added figures are inflated because it uses allegedly LTFV raw pencils to produce its decorated pencils.

In the preliminary determination, the Commission considered Pentech's decorated pencils operations to be domestic production. We based this decision on questionnaire data indicating

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<sup>13</sup> CR at I-5 - I-7, I-18, I-22 n.37, I-66 n.82, PR at II-4, II-11, II-13 n.37, II-39 n.82; Final Economic Memorandum EC-R-100 at 4, 23 n.31 (Sept. 30, 1994); Prehearing Economic Memorandum EC-R-088 at 5 (July 18, 1994); see also U.S. Customs Ruling 951918 (Apr. 13, 1993).

<sup>14</sup> Hearing Transcript at 32, 39-43, 44; Final Economic Memorandum EC-R-100 at 4, 23 n.31 (Sept. 30, 1994). Although decorated and novelty pencils are also used for collecting or advertising, these uses and functions do not detract from the basic use and function of a pencil. Moreover, commodity pencils (e.g., non-decorated, non-designer, and non-novelty pencils) account for the bulk of pencils sold in the U.S. market. *Id.* at 4.

<sup>15</sup> CR at I-6 - I-10, I-16 - I-21, I-23 - I-24, I-78 - I-79, PR at II-4 - II-15; Final Economic Memorandum EC-R-100 at 5-7, 23 & n.31 & Figure 1 (Sept. 30, 1994); Petitioners' Prehearing Brief at 5; Questionnaire Response of Nadel.

<sup>16</sup> See CR at I-87 - I-93, PR at II-51 - II-52, Tables 19-20, Figures 12-13; Final Economic Memorandum EC-R-100 at 23 n.31 (Sept. 30, 1994) (showing that unit values for Bensia pencils are higher than commodity pencils but fall within the range for colored and specialty/decorator pencils).

<sup>17</sup> 19 U.S.C. § 1677(4)(A).

<sup>18</sup> As the Commission has previously recognized, the statutory definition of domestic industry provides no basis for excluding toll or captive production. 19 U.S.C. § 1677(4)(A). See, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Inv. Nos. 731-TA-711-717 (Preliminary), USITC Pub. 2803 at I-11 (Aug. 1994) (hereinafter "OCTG, USITC Pub. 2803 ").

<sup>19</sup> Vice Chairman Nuzum notes that toll production and captive consumption are not issues in this investigation. She does not join the preceding footnote.

<sup>20</sup> Petitioners arguments appear in their Posthearing Response to Commission Questions at 10-14, 16-18, their Preliminary Investigation Postconference Brief at 14-16, and in their hearing testimony, Transcript at 16, 123-24, 173-74, 175-76.

that Pentech's capital investments are reasonably substantial and comparable to those of some Pencil Manufacturers Association (PMA) members that operate integrated production facilities in the United States, the variety of processing steps performed by Pentech, and the degree of technical expertise and labor intensity required to process decorated pencils.<sup>21</sup> The Commission found Pentech's domestic processing activities to be more extensive than the type of "finishing" or packaging activities that the Commission has determined in recent investigations do not constitute domestic production.<sup>22</sup>

In deciding whether a firm qualifies as a domestic producer, the Commission generally considers six factors relating to the overall nature of a firm's production-related activities in the United States.<sup>23</sup> Pentech has invested \$5 million in its U.S. plant and equipment since 1992<sup>24</sup> and the value of Pentech's fixed assets (on the basis of original cost), book value, total assets, and capital expenditures devoted to cased pencil production, are all significant, whether viewed in absolute terms or in comparison to other domestic producers.<sup>25</sup>

Pentech's processing of decorated pencils requires a degree of technical expertise and involves a variety of processing steps. Because of the elaborate nature of some of the designs used, these processes are more labor intensive and require more skill than the lacquering process used to make commodity yellow pencils.<sup>26</sup> Moreover, a significant percentage of the equipment used in Pentech's facility was designed to the firm's specifications and purchased from a U.S. supplier.<sup>27</sup>

Pentech employs a significant number of people in cased pencil production at its New Jersey facility.<sup>28</sup> Although the cost of the imported raw pencil in 1993 represents a significant

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<sup>21</sup> USITC Pub. 2713 at I-8 - I-9.

<sup>22</sup> *Id.* at I-9.

<sup>23</sup> The six factors the Commission examines are: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See OCTG, USITC Pub. 2803 at I-11 - I-12 & n.45; Seamless Carbon and Alloy Pipes, USITC Pub. 2801 at I-13 & n.55; Stainless Steel Wire Rod from India, Inv. No. 731-TA-638 (Final), USITC Pub. 2704 at I-9-10 n.33 (Nov. 1993); Certain Cased Pencils from the People's Republic of China and Thailand, Inv. Nos. 731-TA-669 & 670 (Preliminary), USITC Pub. 2713 at I-8 n.27 (Dec. 1993). No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. Silicon Carbide from The People's Republic of China, USITC Pub. 2779 at I-11 n.49.

<sup>24</sup> CR at I-20 - I-21, PR at II-12 - II-13; Pentech's Posthearing Statement at 4; Hearing Transcript at 120-21. Because Pentech is a publicly-traded U.S. corporation, it has no more or less control over its sources of investment than any of the other publicly traded U.S. pencil manufacturing corporations and, absent evidence to the contrary in this investigation, does not appear to derive unique investment benefits from foreign sources due solely to its status as a publicly-traded corporation. See Chinese Respondents' Posthearing Brief at 2; see also Pentech Preliminary Investigation Postconference Brief at 9.

<sup>25</sup> See CR at I-53 - I-54, PR at II-31 - II-32, Table 11; compare Table C-1, at C-3 (providing domestic capital expenditures including Pentech) with *id.* Table C-2, at C-6 (providing domestic capital expenditures excluding Pentech). The figures on total assets correspond to those reported in the preliminary investigations, and in those investigations, the value of Pentech's fixed assets on the basis of original cost exceeded that of one domestic producer that is a member of PMA. See Staff accountant's chart in preliminary investigation. Moreover, the book value of Pentech's fixed assets exceeded that of certain PMA members that reported data. *Id.*

<sup>26</sup> See CR at I-6 - I-10 & Figure 1, PR at II-4 - II-7 & Figure 1.

<sup>27</sup> CR at I-21 n.31, PR at II-12 n.31.

<sup>28</sup> Compare Table C-1 with *id.* Table C-2. But see Hearing Transcript at 123 (stating that the workforce has increased by 150 persons at Pentech). Pentech's employment comprises a not insignificant percentage of all domestic production employment. Moreover, the number of employees dedicated to milling sandwiches into raw pencils is low not only for Pentech but for all domestic producers compared to the number of employees dedicated to subsequent steps in the production process. See Chinese (continued...)

percentage of the cost of Pentech's finished specialty pencil,<sup>29</sup> the processing it undertakes accounts for a much larger percentage.<sup>30</sup>

Because Pentech's activities employ a relatively substantial amount of capital, labor, and technical sophistication, and add substantial value to the product, we treat its operations as domestic production.<sup>31</sup> Pentech's activities are clearly more extensive than the type of "finishing" or packaging activities that the Commission has determined in recent investigations do not constitute domestic production.<sup>32</sup>

### III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured by reason of LTFV imports, the Commission considers all relevant economic factors which have a bearing on the state of the industry in the United States.<sup>33</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>34</sup>

In examining the condition of the domestic pencils industry, we are mindful that this industry is mature and recently has gone through restructuring.<sup>35</sup> We also note that the industry, for the most part, produces a commodity product, the demand for which is determined primarily by population changes (primarily in the school-age population category).<sup>36</sup> No new uses are likely to be discovered in the future for this product that will greatly increase demand.<sup>37</sup>

Apparent U.S. consumption of cased pencils by quantity increased 10.5 percent from 1991 to 1993, rising from 19.3 million gross<sup>38</sup> in 1991 to 21.3 million gross in 1992 and 21.4

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<sup>28</sup> (...continued)

Respondents' Posthearing Brief at 2 n.5; Hearing Transcript at 156. In addition, the decorations and designs for Pentech's pencils are created by its employees or other designers in the United States. See Preliminary Investigation Conference Transcript at 126-27; Pentech Preliminary Investigation Postconference Brief at 10-11.

<sup>29</sup> CR at I-80 - I-81, PR at II-48; see also Pentech Preliminary Investigation Postconference Brief at 4-5, 16.

<sup>30</sup> CR at I-23 n.39, PR at II-14 n.39; Pentech's Posthearing Statement at 4-5; Hearing Transcript at 122-23; see also Pentech Preliminary Investigation Postconference Brief at 5-6, 16.

<sup>31</sup> As discussed further below, we do not cumulate imports from Thailand with imports from China. Therefore, because Pentech imported raw pencils only from China, the issue whether Pentech is a related producer does not arise in this investigation involving only imports from Thailand.

<sup>32</sup> Compare OCTG, USITC Pub. 2803 at I-12 (finishers not part of domestic industry because of small capital investment and low employment levels) and Ferrosilicon from Egypt, Inv. No. 731-TA-642 (Final), USITC Pub. 2688 at I-10-11 (Oct. 1993) (ferrosilicon processors not part of domestic industry because of small capital investment and low value added attributable to processing) and Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China, Inv. No. 731-TA-621 (Final), USITC Pub. 2671 at 22-23 (Aug. 1993) (packaging of purchased components insufficient to constitute domestic production) with Seamless Carbon and Alloy Pipes, USITC Pub. 2801 at I-13 (including redrawers in domestic industry because of "not insubstantial" value added); Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan, Inv. No. 731-TA-658 (Preliminary), USITC Pub. 2678 at 13-14 (Sept. 1993) ("finishing" of pipe fittings considered domestic production in light of finishers' significant capital investments and the value they add to the finished product).

<sup>33</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>34</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>35</sup> CR at I-13, I-16 - I-21, PR at II-8 - II-13; Hearing Transcript at 45, 54.

<sup>36</sup> CR at I-13 & n.20, I-78; PR at II-8 & n.20, II-47; Final Economic Memorandum EC-R-100 at 12-13 (Sept. 30, 1994); Hearing Transcript at 30, 36, 81.

<sup>37</sup> Hearing Transcript at 30 (statement of Mr. Spies, Senior Vice President of Berol Corporation).

<sup>38</sup> A gross of pencils comprises 12 dozen (144) pencils.

million gross in 1993.<sup>39</sup> Consumption of cased pencils was 3.6 percent higher in interim period (January-June) 1994 (11.3 million gross) than in interim period (January-June) 1993 (10.9 million gross). Consumption by value increased 24.3 percent over the period, increasing from \$161.8 million in 1991 to \$190.7 million in 1992 and \$201.2 million in 1994. Apparent consumption by value was 3.7 percent higher in interim 1994 (\$103.6 million) than in interim 1993 (\$99.9 million).

Domestic production of cased pencils grew 11.6 percent from 1991 to 1993, increasing from 16.9 million gross in 1991 to 18.5 million gross in 1992 and to 18.9 million gross in 1993.<sup>40</sup> However, production declined 14.2 percent when comparing interim 1994 (8.7 million gross) with interim 1993 (10.1 million gross). Domestic capacity to produce cased pencils increased 14.2 percent from 1991 to 1993, increasing from 21.1 million gross in 1991 to 23.0 million gross in 1992 and to 24.1 million gross in 1993. Capacity was virtually unchanged in interim 1994 when compared to interim 1993. Capacity utilization decreased slightly from 1991 to 1993, and was lower in interim 1994 than in interim 1993. The industry's capacity utilization rate for cased pencils remained virtually the same in 1991 (80 percent) as compared to 1992 (80.4 percent), but declined to 78.2 percent in 1993. Capacity utilization fell from 78.3 percent in interim 1993 to 67.3 percent in interim 1994.

The domestic industry's U.S. shipments of cased pencils by quantity decreased 1.0 percent from 1991 to 1993, and fell 5.3 percent when comparing interim 1994 with interim 1993.<sup>41</sup> Domestic shipments increased from 16.5 million gross in 1991 to 16.9 million gross in 1992, then declined to 16.3 million gross in 1993. Domestic shipments declined to 7.9 million gross in interim 1994 as compared to 8.3 million gross in interim 1993. U.S. shipments of cased pencils by value followed a different pattern, increasing in each period. Domestic shipments by value increased from \$129.9 million in 1991 to \$145.4 million in 1992 and \$157.5 million in 1993, and were higher in interim 1994 (\$78.0 million) than in interim 1993 (\$77.4 million). Exports of cased pencils by the domestic industry as a share of total shipments increased 3.3 percentage points from 1991 to 1993 to reach 9.1 percent, but were lower in interim period 1994 (8.6 percent) than in interim 1993 (10.6 percent).<sup>42</sup> The domestic industry reported an increase in end-of-period inventories of cased pencils of 41.1 percent for the 1991-1993 period, and an increase of 4.3 percent when comparing interim 1994 to interim 1993.<sup>43</sup> Inventories as a share of U.S. shipments increased each calendar year and from one interim period to the next, increasing from 15.4 percent in 1991 to 21.1 percent in 1993, and were 19.6 percent in interim period 1993 compared with 22.1 percent in interim period 1994.<sup>44</sup>

Employment of production and related workers (PRWs) in the domestic cased pencils industry increased overall by 2.4 percent from 1991 to 1993, but was 11.9 percent lower in interim period 1994 than in interim period 1993.<sup>45</sup> Hours worked increased by 20.2 percent from 1991 to 1993, but were 13.5 percent lower in interim 1994 than in interim 1993. From 1991 to 1993, total compensation increased 27.9 percent, but was 11.7 percent lower in interim 1994 compared to interim 1993. Hourly total compensation increased 6.4 percent from 1991 to 1993 and was 2.0 percent higher in interim 1994 compared to interim 1993.

Net sales values increased in each calendar year, rising from \$138.9 million in 1991 to \$158.8 million in 1992, and to \$171.6 million in 1993.<sup>46</sup> Net sales value was virtually

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<sup>39</sup> Data referred to in this paragraph are summarized in CR at I-13 - I-15, PR at II-8 - II-9, Table 1.

<sup>40</sup> Data referred to in this paragraph are summarized in CR at I-26 - I-30, PR at II-15 - II-17, Table 3, Figures 2 & 3.

<sup>41</sup> Data referred to in this paragraph are summarized in CR at I-30 - I-34, PR at II-18, Table 4, Figure 5.

<sup>42</sup> CR at I-32, PR at II-18, Table C-1.

<sup>43</sup> CR at I-34, PR at II-20, Table 5.

<sup>44</sup> CR at I-34, PR at II-20, Table 5.

<sup>45</sup> Data referred to in this paragraph are summarized in CR at I-35 - I-37, PR at II-20 - II-22, Table 6.

<sup>46</sup> Data referred to in this paragraph are summarized in CR at I-38 - I-55, PR at II-22 - II-23, Table 7.



unchanged from interim 1993 (\$85.2 million) to interim 1994 (\$84.9 million). Gross profits increased from \$25.4 million in 1991 to \$30.4 million in 1992, and \$34.5 million in 1993, and remained at \$18.4 million in both interim periods. The industry experienced operating losses each calendar year during the period, but incurred operating profits during interim 1994. Operating income improved from a loss of \$1.1 million in 1991 to a loss of \$248,000 in 1992, but worsened to a loss of \$1.9 million in 1993. In interim 1993 the industry experienced an operating loss of \$600,000, but those losses turned to an operating profit of \$1.2 million in interim 1994. The operating income margin (ratio of operating income to net sales) followed similar trends, improving from a negative 0.8 percent in 1991 to a negative 0.2 percent in 1992, but worsening to a negative 1.1 percent in 1993. The margin was a positive 1.5 percent in interim 1994 as compared to a negative 0.7 percent in interim 1993.

Cost of goods sold increased from \$113.5 million in 1991 to \$128.4 million in 1992 and \$137.0 million in 1993, but was lower in interim 1994 (\$66.5 million) than in interim 1993 (\$66.9 million).<sup>47</sup> The cost of goods sold as a ratio to net sales decreased from 81.7 percent in 1991 to 80.9 percent in 1992, but decreased to 79.9 percent in 1993, and was virtually unchanged at 78.4 percent in interim 1993 and in interim 1994. The unit cost of goods sold increased steadily throughout the period of investigation, rising from \$6.45 in 1991 to \$6.93 in 1992 and \$7.78 in 1993, and was higher in interim 1994 (\$7.69) than in interim 1993 (\$7.18).<sup>48</sup> Selling, general and administrative expenses increased from \$26.5 million in 1991 to \$30.6 million in 1992 and to \$36.4 million in 1993. These expenses were lower in interim 1994 (\$17.2 million) than in interim 1993 (\$19.0 million). Capital expenditures decreased from \$5.4 million in 1991 to \$4.4 million in 1992, but increased to \$5.6 million in 1993. Capital expenditures were \$3.1 million in interim 1994 compared with \$3.8 million in interim 1993.<sup>49 50</sup>

#### IV. CUMULATION<sup>51</sup>

##### A. In General

In determining whether there is material injury by reason of LTFV imports, the Commission is required to assess cumulatively the volume and price effects of imports from two or more countries of like products subject to investigation if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market,<sup>52</sup> unless imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.<sup>53</sup>

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<sup>47</sup> Data referred to in this paragraph are summarized in CR at I-38 - I-55, PR at II-20 - II-33, Table 9.

<sup>48</sup> CR at C-3, PR at C-3, Table C-1.

<sup>49</sup> CR at I-54, PR at II-33, Table 12. Only two firms reported research and development expenses, and these expenses increased each calendar year and were higher in interim 1994 than in interim 1993. CR at I-55, PR at II-33, Table 13.

<sup>50</sup> Based on the foregoing, Commissioner Rohr and Commissioner Newquist determine that the domestic industry is experiencing material injury.

<sup>51</sup> Commissioner Newquist does not join the remainder of this opinion; see his additional views attached.

<sup>52</sup> 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

<sup>53</sup> 19 U.S.C. § 1677(7)(C)(v).

## B. Reasonable Overlap of Competition<sup>54</sup>

In assessing whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.<sup>55</sup>

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.<sup>56</sup> Further, only a "reasonable overlap" of competition is required.<sup>57</sup>

Petitioners argue that subject imports from Thailand and China are fungible with each other and with the domestic like product; are sold in overlapping geographical markets through similar channels of distribution; and were simultaneously present in the U.S. market with regard to each other and the like product.<sup>58</sup>

In the preliminary determination, the Commission cumulated Thai and Chinese imports. In finding that Thai and Chinese imports compete with each other and the domestic like product, the Commission found that the types of pencils imported from China and Thailand (including unfinished and colored pencils) are also produced by the domestic industry,<sup>59</sup> that these imports reach the market through the same nationwide channels of distribution as domestic pencils, and

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<sup>54</sup> Commissioner Rohr notes that his colleagues have chosen to analyze the issues of cumulation and negligibility by first considering cumulation and then negligibility. He believes that the better approach is to analyze the issue of negligibility first. By so doing, he avoids the possibility that cumulation might be based on competition with imports that might not be cumulable because of the negligibility exception. Additional views of Commissioner David B. Rohr, *Ferrosilicon from Egypt*, Inv. No. 731-TA-642 (Final), USITC Pub. 2688 (Oct. 1993). This investigation, however, does not present the factual situation in which such a problem would occur.

<sup>55</sup> See *Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) at 8 n.29, *aff'd*, *Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>56</sup> See *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int'l Trade 1989); *Granges Metallverken AB v. United States*, 716 F. Supp. 17 (Ct. Int'l Trade 1989); *Florex v. United States*, 705 F. Supp. 582 (Ct. Int'l Trade 1989).

<sup>57</sup> See *Wieland Werke, AG v. United States*, 718 F. Supp. at 52 (completely overlapping markets are not required); *Granges Metallverken AB v. United States*, 716 F. Supp. at 21-22 (Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and their domestic like products, but need only find evidence of reasonable overlap in competition); *Florex v. United States*, 705 F. Supp. at 592 (completely overlapping markets not required).

<sup>58</sup> Petitioners' Prehearing Brief at 26-39. Neither the Thai or Chinese respondents dispute the competition element of the cumulation standard. As discussed below, the Thai respondents argue that their imports are negligible and should not be cumulated on that basis. When discussing negligibility, they argue that (1) Thai imports are only of colored pencils, (2) Thai imports are declining while the volume of Chinese imports is rising, and (3) Thai pencils are priced higher than commodity pencils; thus, Thai imports are having no adverse impact on the domestic industry.

<sup>59</sup> USITC Pub. 2713 at I-12.

that the imports have been present in the domestic market throughout the period of investigation.<sup>60</sup> Evidence gathered in this final investigation confirms these conclusions.

The evidence shows that subject imports from Thailand are present in the same geographical markets as are U.S. and Chinese pencils.<sup>61</sup> Imports and the domestic product are sold through similar channels of distribution and are simultaneously present in the market.<sup>62</sup>

U.S. producers sell the full range of pencil products, including commodity, colored, carpenter, drafting, golf, and specialty pencils, and pencil blanks.<sup>63</sup> Chinese imports primarily consist of raw and commodity pencils<sup>64</sup> but also include some decorated pencils, specialty and colored pencils, and pencil blanks.<sup>65</sup> Colored pencils comprise the bulk of Thai imports; other Thai imports consist of Bunsia pencils.<sup>66</sup> Most purchasers reported that there are no significant differences in the types of pencils that are available from all sources.<sup>67</sup> Evidence shows that pencils of a similar type (e.g., whether colored pencils, decorated pencils, or commodity pencils), perform a similar function whether imported from subject sources or domestically

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<sup>60</sup> *Id.* at I-13. Although the Commission found cased pencils imported from China were of lower quality than those produced in the United States or imported from Thailand, these quality differentials did not impair the acceptance of the Chinese pencil in the marketplace. *Id.*

<sup>61</sup> Thai and Chinese pencils are imported by firms throughout the United States and are marketed nationwide, as are domestically produced pencils. Recently, imported and domestic pencils have been offered for sale in nationally circulated catalogues. CR at I-22 - I-25, PR at II-13 - II-25; Hearing Transcript at 34-35, 44.

<sup>62</sup> CR at I-23 - I-25, I-67 - I-78, PR at II-14 - II-15, II-39 - II-46, Table 17 & 18, Figures 9 - 11. Pencils imported from China and Thailand also are sold to customers in similar market segments, including the mass market, school supply, and office supply segments. CR at I-23 - I-25, PR at II-14 - II-15; Final Economic Memorandum EC-R-100 at 4-7, 23 (Sept. 30, 1994).

<sup>63</sup> CR at I-79 - I-80, PR at II-47 - II-49. Most domestically produced pencils were commodity pencils. See Final Economic Memorandum EC-R-100 at 4 (Sept. 30, 1994).

<sup>64</sup> CR at I-21 - I-23, I-65, PR at II-13 - II-14, II-38, Figure 8 (Chinese raw and commodity pencils account for a combined 80 percent of total reported imports).

<sup>65</sup> CR at I-61, I-66 - I-67, I-80 & Figure 8, PR at II-37 - II-39, II-49 & Figure 8; Final Economic Memorandum EC-R-088 at 22-23, 27 (Sept. 30, 1994); see also Preliminary Investigation Confidential Report at I-44 n.44.

<sup>66</sup> CR at I-21 - I-23 & n.37, I-79 - I-81, PR at II-13 - II-14 & n.37, II-48 - II-49; Final Economic Memorandum EC-R-100 at 22-23, 27 (Sept. 30, 1994). Bunsia did not export pencils to the United States in 1994 and its exports from 1991 to 1993 were small. CR at I-22 n.37, I-66 - I-67 & n.80, PR at II-14 & n.37, II-38 - II-39 & n.80. Indeed, one Thai producers' exports accounted for the bulk of total exports to the United States from Thailand in 1993. CR at I-67 n.83, PR at II-39 n.83.

<sup>67</sup> Final Economic Memorandum EC-R-100 at 22-23 (Sept. 30, 1994). Petitioners argued that customers do not perceive many quality differences between Thai, Chinese, or domestically-produced products. See Hearing Transcript at 50-51, 65-66, 69-78. They also argue that, except for the office supply segment, customers do not care about quality differences sufficiently to pay higher prices for better quality; nor do customers develop brand loyalty. See Hearing Transcript at 69. They argue that even in the office supply segment of the market, competition is increasingly focused on price rather than quality. See Hearing Transcript at 70-71, 73.

Although there was some evidence in the preliminary investigation that Thai quality was below U.S. quality but above Chinese quality, in this final investigation, most importers reported no significant difference in quality of Thai (and Chinese) pencils vis-a-vis domestic pencils. CR at I-84 & nn.101, 103, PR at II-49 & nn.101, 103. Although some purchasers recognized quality differences between the subject imports from Thailand and the domestic product, almost all purchasers recognized no quality differences between Thai and Chinese imports. CR at I-97, PR at II-54.

The Commission's price comparisons also indicate a certain degree of competition among imports from Thailand and China and the domestic product. See CR at I-87, I-89, I-91, I-94, PR at II-51 - II-52, Table 20, Figure 13. The products chosen for pricing comparisons accounted for 75.5 percent of U.S. producers' domestic shipments of pencils and approximately 52.5 and 48.8 percent of U.S. importers' imports of Chinese and Thai pencils, respectively, in 1993. Final Economic Memorandum EC-R-100 at 15 (Sept. 30, 1994).

produced.<sup>68</sup> All sources produce colored and novelty pencils. Therefore, products from all sources are fungible to at least a limited extent. Although most Chinese and domestically-produced pencils are commodity pencils,<sup>69</sup> because the standard for application of the cumulation provision requires only a "reasonable overlap" of competition, we find the provision applies.

### C. Negligible Imports<sup>70</sup>

Section 771 of the Act, as amended, provides that the Commission is not required to cumulate imports in any case in which it determines that imports of the merchandise subject to investigation from a particular country are negligible and have no discernible adverse impact on the domestic industry.<sup>71</sup> In determining whether imports are negligible, the Commission considers all relevant economic factors, including whether:

(I) the volume and market share of the imports are negligible,

(II) sales transactions involving the imports are isolated and sporadic, and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.<sup>72</sup>

The negligible imports exception is to be applied narrowly and is not to be used to subvert the purpose and general applicability of the mandatory cumulation provision of the statute.<sup>73</sup>

Petitioners argue that Thai imports are not negligible because the U.S. market penetration of Thai imports has not been insignificant over the entire period of investigation, because Thai imports were not isolated and sporadic, and because Thai imports have had a discernible adverse impact on the domestic industry.<sup>74</sup> Petitioners agree that the bulk of imports from Thailand are colored pencils and argue that these imports account for a significant share of the U.S. colored pencil market.<sup>75</sup> Petitioners argue that the price-sensitive nature of the

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<sup>68</sup> CR at I-5 - I-6, PR at II-4; Economics Memorandum EC-R-100 at 4, 13 (Sept. 30, 1994). The most basic customer requirement with respect to pencils is that they function as writing instruments. We note that there was conflicting testimony at the hearing concerning the amount of interchangeability among different types of pencils. See Transcript at 82-83, 81-85, 86-89, 93, 117-118, 176-77, 182. For example, children may purchase decorated, specialty, or Bencia pencils as collectibles rather than to use them as a writing instrument. See Final Economic Memorandum EC-R-100 at 4 (Sept. 30, 1994); Hearing Transcript at 84-87.

<sup>69</sup> CR at I-16 - I-21, I-30 - I-34, I-58 - I-67, PR at II-8 - II-13, II-18 - II-19, II-35 - II-39, Figure 8. We note that the extent to which imports from Thailand are fungible with Chinese products will be reduced somewhat because Thailand's imports are almost exclusively colored pencils or Bencia pencils, whereas China exports no Bencia pencils to the United States and only a limited number of specialty or decorated and colored pencils.

<sup>70</sup> See also Vice Chairman Nuzum's additional views, *infra*, on the issue of negligible imports from Thailand.

<sup>71</sup> 19 U.S.C. § 1677(7)(C)(v).

<sup>72</sup> *Id.*

<sup>73</sup> See H.R. Rep. No. 40, Part I, 100th Cong., 1st Sess. 131 (1987); H.R. Rep. No. 576, 100th Cong., 2d Sess. 621 (1988).

<sup>74</sup> Petitioners' Prehearing Brief at 30-38; Petitioner's Response to Commission Questions at 23-27. Petitioners discount interim period 1994 declines in Thai market share as responses to the petition being filed. Petitioners' Prehearing Brief at 31. They stress that any decline in Thai imports was only displaced by Chinese imports. *Id.* at 32. They argue that Thai imports should be considered in relation to U.S. producers' domestic shipments rather than overall U.S. consumption. *Id.*

<sup>75</sup> *Id.* at 24-25; Petitioners' Response to Commission Questions at 36 & n.61.

pencil market, including specifically the colored pencil market with its large national distributors, does not support application of the negligible import provision.<sup>76</sup>

Respondents from Thailand argue that the Commission should decline to cumulate Thai imports because they are negligible based on Government of Thailand export data as confirmed by Commission questionnaire responses.<sup>77</sup> Respondents from Thailand allege that Thai cased pencil prices have been rising. They also cite to the Commission's evidence concerning lost sales allegations to support their arguments that Thai imports have had no discernible adverse impact on the domestic industry.<sup>78</sup> Respondents from Thailand additionally argue that other considerations examined by the Commission support treating Thai imports as "negligible."<sup>79</sup>

Although subject imports from Thailand were not isolated or sporadic, overall, they decreased 81.5 percent, falling from 432,000 gross in 1991 to 204,000 gross in 1992, and to only 80,000 gross in 1993.<sup>80</sup> These imports continued their decline in the interim periods, totalling only 36,000 gross in interim 1994 compared to 43,000 gross in interim 1993.<sup>81</sup>

Based on official import statistics,<sup>82</sup> the market penetration of cased pencil imports from Thailand, measured by quantity, declined steadily in each calendar year during the period, falling from 2.2 percent in 1991 to 1.0 percent in 1992, and declining further to 0.4 percent in

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<sup>76</sup> Petitioners' Response to Commission Questions at 25-26; Petitioners' Response to Commission Questions at 37. Petitioners argue that a review of available questionnaire data shows that Census Bureau statistics do not overstate Thai pencil imports. Petitioners' Response to Commission Questions at 27-29; see also Petitioner's Prehearing Brief at 33-35. They argue that the Commission should draw inferences that questionnaire data under a more complete response rate would confirm the Census data and that the failure of importers to report their data on Thai imports should not be held against the petitioners. Petitioners' Response to Commission Questions at 29, 32. They also argue that substantial imports of pencils are not classified as pencils for Customs classification purposes due to being imported as part of pencil or other kits, thereby actually understating some Census data. Petitioners' Response to Commission Questions at 30; see also Petitioner's Prehearing Brief at 33-35.

<sup>77</sup> Thailand Respondents' Prehearing Brief at 1-5, 16, 21-28. As in the preliminary investigation, respondents from Thailand first argue that official import statistics from the Bureau of the Census are not reliable because they include considerable volumes of nonsubject merchandise. Id. at 5-15.

<sup>78</sup> Id. at 3.

<sup>79</sup> Id. at 3. Respondents from Thailand argue that the domestic industry is not vulnerable to these imports because they are mostly of colored pencils, a segment in which the domestic industry is profitable and a segment that does not affect the prices for commodity pencils of the domestic industry.

<sup>80</sup> Data referred to in this paragraph are summarized in CR at I-67 - I-77, PR at II-39 - II-46, Tables 17 & 18, Figure 9. The value of these imports followed a similar decreasing pattern, falling from \$993,000 in 1991 to \$620,000 in 1992 and only \$399,000 in 1993. The value of these imports was lower in interim 1994 (\$171,000) than in interim 1993 (\$243,000).

<sup>81</sup> Chairman Watson and Vice Chairman Nuzum note that the continuing decline in the volume of imports from Thailand during interim 1994 is unlikely to be attributable to Commerce's preliminary affirmative determination and its subsequent bonding requirements given that Commerce made its preliminary determination in June 1994, which is near the end of the interim period.

<sup>82</sup> In calculating the market share of Thai imports we are mindful that Census statistics, which are used to calculate both aggregate consumption and Thai imports, may capture some merchandise that is not subject to investigation. We found in the preliminary investigations, and again conclude in this final investigation, that Thai export statistics do not constitute the best information available on Thai import volumes. To the extent the U.S. Customs Service classifies articles other than cased pencils within the HTS entry for such pencils, that classification affects all pencil imports. Accordingly, if the official import statistics are overstated for Thailand, they are overstated for China and nonsubject countries as well; thus, they do not overstate Thai market share. Compare USITC Pub. 2713 at I-13, n.67. The record of this final investigation provides some indication that pencils contained in school packets or office kits, etc., are often not classified as pencils, thereby allegedly understating pencil imports in some instances. See Petitioners' Posthearing Brief at 28-32; see also Petitioners' Prehearing Brief at 33-35 (arguing that Census data do not overstate actual imports).

While the Thai respondents offer alternative methodologies of calculating Thai import volumes, they are problematic for a variety of reasons and we decline to use them.

1993. The market share of Thai imports was slightly lower in interim 1994 (0.3 percent) than in interim 1993 (0.4 percent).<sup>83</sup> Measured by value, market penetration figures were lower and showed similar declines throughout the investigation on a calendar year basis (from 0.6 percent in 1991 to 0.3 percent in 1992 and to 0.2 percent in 1993) and was the same in interim 1994 and interim 1993.<sup>84</sup>

While the overall market for cased pencils is price sensitive to at least a degree,<sup>85</sup> the extent of substitutability between subject imports from Thailand and the bulk of domestically produced products is limited. Competition between the subject imports from Thailand and the domestic like product is limited by the fact that most of the imports are colored pencils, while the vast majority of the domestically produced products are commodity pencils.<sup>86</sup> While price may be an important factor in deciding which commodity or economy pencil to purchase, price has less influence in decisions of whether to purchase a non-commodity as compared with a commodity pencil.<sup>87 88</sup>

In light of the limited substitutability between commodity and non-commodity pencils, and considering that domestically produced pencils consist of mostly commodity pencils, which are not imported from Thailand, we find that the low levels of Thai imports do not support a finding of significant price suppression or depression.<sup>89</sup> The fact that prices for imports from Thailand are increasing relative to U.S. prices and other import prices further diminishes the possibility for significant price suppressive or depressive effects of the Thai imports.<sup>90</sup>

We therefore find that due to the low and declining volumes of Thai imports and the lack of significant price suppressing or depressing effects,<sup>91</sup> Thai imports are not having a discernible adverse impact on the domestic industry. We therefore find them to be negligible, and do not cumulate them with subject imports from China.

## V. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

In final antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports that Commerce has determined are sold at LTFV.<sup>92</sup> The Commission must consider the volume of imports, their effect on

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<sup>83</sup> CR at I-75 - I-77, PR at II-44 - II-47, Table 18.

<sup>84</sup> *Id.* Exclusion of Pentech as a related party would not affect Thai import penetration figures by volume or value.

<sup>85</sup> Chairman Watson and Commissioner Crawford note that the Economics Memorandum indicates that demand elasticity is high. This suggests that small changes in the overall quantity supplied to the market can significantly change the market price. Final Economic Memorandum EC-R-100 at 34 (Sept. 30, 1994).

<sup>86</sup> CR at I-80, PR at II-48; Hearing Transcript at 87-88 (Mr. Spies, Senior Vice President of Berol Corporation).

<sup>87</sup> CR at I-82, I-96 - I-98, PR at II-48, II-53 - II-54; Final Economic Memorandum EC-R-100 at 13, 22-23, 25 (Sept. 30, 1994).

<sup>88</sup> Chairman Watson and Commissioner Crawford note that the record further indicates that domestic producers could easily increase supply to the market, suggesting that the small level of Thai imports has not had any materially adverse price effects, since any reduction in Thai imports could easily be replaced by domestically produced supply, thereby minimizing any price effects of subject Thai imports on domestic market prices. Final Economic Memorandum EC-R-100 at 33, 34 (Sept. 30, 1994).

<sup>89</sup> Commissioner Rohr finds that the low levels of Thai imports do not support a finding of significant price suppression or depression. He does not find a link between this finding and the limited substitutability between commodity and non-commodity pencils.

<sup>90</sup> CR at I-89, I-91, PR at II-51 - II-52, Table 20, Figure 13.

<sup>91</sup> See, *supra*, note 88 regarding Chairman Watson's and Commissioner Crawford's additional discussion on price suppressing or depressing effects.

<sup>92</sup> 19 U.S.C. § 1673d(b).

prices for the like product, and their impact on domestic producers of the like product, but only in the context of U.S. production operations.<sup>93</sup>

Although the Commission may consider alternative causes of injury to the industry other than the LTFV imports, it is not to weigh causes.<sup>94 95 96 97</sup> For the reasons discussed below, we find that the domestic cased pencils industry is not materially injured by reason of LTFV imports from Thailand.

#### A. Volume of Imports

As discussed above with regard to the negligibility of the Thai imports, the volume and market share of subject imports from Thailand were small and declining throughout the period of investigation.<sup>98</sup> Subject imports from Thailand were almost exclusively of colored pencils and Bencia pencils over the period of investigation, and Bencia pencil imports ceased in 1993. Based on these declining and negligible levels of LTFV imports from Thailand, we conclude that the volume of these imports and their market share are not significant.

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<sup>93</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission also may consider "such other economic factors as are relevant to the determination." *Id.*

<sup>94</sup> See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). Alternative causes may include the following:

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

<sup>95</sup> For Chairman Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772, at I-14 n.68 (May 1994).

<sup>96</sup> Vice Chairman Nuzum and Commissioners Rohr and Newquist further note that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. 249, 96th Cong., 1st Sess. 57 and 74 (1979); see also, e.g., Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. at 1101.

<sup>97</sup> Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of allegedly subsidized and LTFV imports, not by reason of allegedly subsidized and LTFV imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, at 75. However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, at 46-47. The Commission is not to determine if the allegedly subsidized and LTFV imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 249, at 74. Rather, it is to determine whether any injury "by reason of" the allegedly subsidized and LTFV imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added).

<sup>98</sup> See supra nn.80-84 and accompanying text. Data referred to in this paragraph are summarized in CR at I-67 - I-77, PR at II-40 - II-47, Tables 17 & 18, Figure 9.

## B. Price Effects of Imports

As discussed above with respect to negligibility, the degree of substitutability between the subject imports from Thailand and the bulk of domestically produced products is limited because most of the imports are colored pencils, while most of the domestically produced products are commodity pencils.<sup>99</sup>

Pencils are priced differently, *inter alia*, according to pencil type, with colored pencils priced higher than commodity pencils.<sup>100</sup> Moreover, prices for a specific pencil type, such as colored pencils, do not demonstrably influence prices for other types of pencils, such as commodity pencils.<sup>101</sup> The fact that Thai imports of mostly colored pencils are priced higher than domestically produced commodity pencils further suggests that they will not likely have significant adverse effects on the prices of domestically produced pencils.<sup>102</sup> Furthermore, price is a less important factor in deciding whether to purchase non-commodity pencils or which non-commodity pencil to purchase.<sup>103</sup>

Because Thai imports enter in negligible volumes, they are not likely to have significant adverse price effects on domestic like products. Combined with the limited substitutability of Thai imports, which are mostly colored pencils, with domestic pencils, which are primarily commodity pencils, the likelihood of any significant adverse price effects is further reduced.

Although Thai colored pencils undersold domestically produced colored pencils in every instance for which pricing comparisons could be made,<sup>104</sup><sup>105</sup> the prices of pencils imported from Thailand increased throughout the period.<sup>106</sup> Average prices for comparable domestically produced colored pencils for which data were reported decreased irregularly.<sup>107</sup> Prices of other domestically produced pencils for which data were reported either fluctuated, increased slightly, or varied among suppliers.<sup>108</sup>

We find that the negligible imports from Thailand have not suppressed or depressed domestic prices to a significant degree.

## C. Impact of Imports on the Domestic Industry

Finally, we consider the impact of subject imports from Thailand on the domestic industry producing cased pencils. In this investigation, we find that due primarily to their very

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<sup>99</sup> CR at I-80, I-96 - I-98, PR at II-48, II-53 - II-54; Final Economic Memorandum EC-R-100 at 13, 22, 25 (Sept. 30, 1994); Hearing Transcript at 87-88 (Mr. Spies, Senior Vice President of Berol Corporation).

<sup>100</sup> CR at I-79, PR at II-47.

<sup>101</sup> CR at I-82, PR at II-48; Preliminary Investigation Conference Transcript at 87-88, 90-91 (testimony of Mr. Spies, Vice President of Berol Corporation and Mr. Jorgensen, Chairman and CEO of Faber-Castell, respectively).

<sup>102</sup> Chairman Watson and Commissioner Crawford further note that the ready availability of domestic supply suggests that even if Thai imports were eliminated from the domestic market, they could have been easily replaced by domestic producers, with little or no effect on market prices.

<sup>103</sup> As noted above, while price may be an important factor in deciding which commodity or economy pencil to purchase, price has less influence in decisions of whether to purchase non-commodity pencils or which non-commodity pencil to purchase. CR at I-82, I-96 - I-97 PR at II-48, II-53 - II-54; Final Economic Memorandum at 22-23, 25 EC-R-100 (Sept. 30, 1994); Hearing Transcript at 87-88 (Mr. Spies, Senior Vice President of Berol Corporation).

<sup>104</sup> CR at I-95, PR at II-53, Table 21.

<sup>105</sup> Commissioner Crawford rarely gives much weight to evidence of underselling since it usually reflects some combination of differences in quality, other nonprice factors, or fluctuations in the market during the period in which price comparisons were sought.

<sup>106</sup> CR at I-89, I-91, I-94, PR at II-51 - II-52, Table 20, Figure 13.

<sup>107</sup> CR at I-87, I-89, I-91 - I-92, PR at II-51 - II-52, Table 20, Figure 13. We note that unit values of domestic shipments of colored pencils increased significantly from 1991 to 1993. CR at C-7, PR at C-5, Table C-4.

<sup>108</sup> CR at I-87 - I-93, PR at II-51 - II-52, Tables 19-20, Figures 12-14.



small volume and market share, subject imports from Thailand have not had an adverse impact on the domestic industry.

Thai imports in the most recent reporting periods were negligible and consisted primarily of colored pencils.<sup>109</sup> While we evaluate the domestic industry as a whole, we note that the domestic colored pencils operations would be the most likely to be affected by the Thai imports. Rather than showing any adverse effects, the colored pencils operations of the domestic were positive.<sup>110 111</sup>

Even assuming that the domestic industry would have captured the entire market share of subject imports from Thailand, the result would have been only a very minor increase in domestic market share. This increase in market share would be so small that the impact on the domestic industry's output and revenues would not be significant.

We<sup>112</sup> also note that the economic analysis in this investigation demonstrates that the adverse effects of the less than fair value imports of cased pencils from Thailand on prices, shipment volumes, and overall revenues in the domestic industry were very small during 1993.<sup>113</sup> We do not find these effects to be material, which further supports a finding of no present material injury by reason of subject imports from Thailand.

Although there were various allegations of lost sales/revenues involving imported Chinese pencils, there was only one allegation of lost sales with respect to imports from Thailand.<sup>114 115</sup> This allegation arose in the preliminary investigation and was not confirmed.<sup>116</sup>

In sum, we conclude that the evidence fails to establish a causal connection between the condition of the domestic industry and the LTFV imports from Thailand. We therefore determine that the U.S. industry producing cased pencils is not materially injured by reason of the LTFV imports of pencils from Thailand.

## **VI. NO THREAT OF MATERIAL INJURY BY REASON OF THE IMPORTS FROM THAILAND**

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."<sup>117</sup> The Commission may not make such a determination "on the basis of mere conjecture or supposition."<sup>118</sup> In making

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<sup>109</sup> Bencia pencils from Thailand entered at de minimis levels from 1991 to 1993 and were not imported in 1994. CR at I-66, PR at II-38. Moreover, the Bencia pencil manufacturer in Thailand produces only a small amount of these pencils. *Id.*

<sup>110</sup> CR at C-7, PR at C-5, Table C-4. Indeed, data received by the Commission regarding colored pencil operations indicate that net sales quantity and value, as well as gross profits and operating income for these products, all increased from 1991 to 1993. Although data on colored pencil operations were reported by only a limited number of domestic producers, these data nonetheless show a more positive picture than do data for the domestic cased pencils industry as a whole, suggesting that any significant adverse effects experienced by the domestic industry are a result of factors other than imports of colored pencils from Thailand.

<sup>111</sup> Chairman Watson and Commissioner Crawford note that improvement in domestic operations does not necessarily preclude a finding of material injury by reason of LTFV imports. However, in this investigation, we do not find material injury by reason of LTFV imports.

<sup>112</sup> Vice Chairman Nuzum and Commissioner Rohr do not join the discussion in this paragraph.

<sup>113</sup> See Final Economic Memorandum EC-R-100 (Sept. 30, 1994).

<sup>114</sup> CR at I-100 - I-104, PR at II-54 - II-57.

<sup>115</sup> Commissioner Crawford does not place great weight on anecdotal evidence of lost sales and revenues in reaching her determination.

<sup>116</sup> CR at I-101, PR at II-55.

<sup>117</sup> 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

<sup>118</sup> 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallwerken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990) (citing American Spring Wire, 8 CIT at 28, 590

(continued...)

our determination, we have considered all of the statutory factors that are relevant to this investigation.<sup>119</sup>

We do not find that the information concerning Thai production capacity and capacity utilization shows that a significant increase in subject imports of cased pencils from Thailand into the United States is likely. Although production capacity is increasing for the major Thai exporter to the United States, this additional production capacity reportedly is dedicated to its home market and markets other than the United States, such as the European market, and therefore does not pose a threat of increased exports to the United States.<sup>120</sup> This Thai company's exports to the United States, which are negligible, are expected to decrease in full-year 1994.<sup>121</sup> Finally, this exporter is currently the sole Thai producer exporting to the United States and it reportedly is now operating at full capacity.<sup>122</sup>

There has been no rapid increase in Thai imports. On the contrary, as discussed above, the volume and market share of Thai imports have been negligible and have been declining over the period.<sup>123</sup> In sum, market penetration by LTFV imports has not been significant, and there is no indication that it will be in the future. The reasons we discuss above regarding the lack of causal nexus between subject Thai imports and the condition of the domestic industry also demonstrate that there is no probability that the domestic industry will experience any demonstrable adverse effects as a result of future imports from Thailand.

Prices of Thai imports are rising. We do not find that subject imports from Thailand will enter the United States at prices that will have a significant depressing or suppressing effect on domestic prices for the reasons explained in the pricing discussion above.

End-of-period inventories of imports from Thailand are very small.<sup>124</sup> The record does not support a finding that these low inventory levels will have an injurious effect on the U.S. industry in light of the lack of any causal nexus between Thai imports and the domestic industry and in light of our assessment of other threat factors.

We find no "other demonstrable adverse trends" that indicate that subject imports from Thailand will be the cause of actual injury, or any "actual and potential negative effects on existing development and production efforts of the domestic industry."<sup>125</sup> We therefore determine that the domestic industry producing cased pencils is not threatened with material injury by reason of the LTFV imports from Thailand.

## CONCLUSION

For the reasons discussed above, we find that the domestic industry producing cased pencils is neither materially injured nor threatened with material injury by reason of LTFV imports from Thailand.

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<sup>118</sup> (...continued)

F.Supp. at 1280); see also *Calabrian Corp. v. United States*, 794 F. Supp. 377, 387 and 388(Ct. Int'l Trade 1992) (citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984)).

<sup>119</sup> 19 U.S.C. § 1677(7)(F)(i). Two of the statutory threat factors have no relevance to this investigation and need not be discussed. Because subsidies are not at issue, factor I is not applicable. Moreover, factor IX regarding raw and processed agriculture products also is not applicable to this case.

For the reasons discussed above in declining to cumulate due to the negligible level of imports from Thailand, we decline to cumulate for purposes of our threat analysis. See 19 U.S.C. § 1677(7)(C)(v). In addition to the factors listed above, the declining trends in quantity and value of imports from Thailand are in contrast to those of imports from China.

<sup>120</sup> CR at I-67 - I-68, PR at II-38 - II-39, Table 16.

<sup>121</sup> Id.

<sup>122</sup> Id. at I-68, PR at II-38, Table 16.

<sup>123</sup> Indeed, Bencia pencil imports from Thailand ceased in 1993. CR at I-66, PR at II-38.

<sup>124</sup> CR at I-59, PR at II-36, Table 14.

<sup>125</sup> See 19 U.S.C. §§ 1677(7)(F)(i)(VII) and (X).

**ADDITIONAL VIEWS OF VICE CHAIRMAN JANET A. NUZUM**  
**Certain Cased pencils from Thailand**  
**Inv. No. 731-TA-670 (Final)**

I join my colleagues in making a negative final determination in this investigation. These additional views address petitioner's arguments regarding the negligible imports exception to cumulation.

In response to my invitation and request,<sup>126</sup> the petitioner presented arguments in its post-hearing brief with regard to the application of the negligibility exception in this investigation.<sup>127</sup> Those arguments draw, in particular, on my views on negligibility as expressed in last year's determinations in the flat-rolled carbon steel investigations (hereinafter "Steel").<sup>128</sup> Petitioner correctly points to my "sparing" application of the negligibility exception in Steel, and to my focus on whether the allegedly negligible imports "discernibly contribute" to the adverse impact being experienced by the domestic industry.<sup>129</sup> My application of the negligibility exception to this investigation is based on the same statutory and legislative history guidance that I relied on in Steel.

In the instant investigation, the volume of the subject imports from Thailand fell substantially during the period examined.<sup>130</sup> The market share of the Thai products likewise fell and was consistently at low levels.<sup>131 132</sup>

Petitioner has urged reliance on an alternative calculation of market penetration, based only on the colored pencil market.<sup>133</sup> This argument is purportedly based on my consideration of import penetration in the merchant market in Steel. I note, however, that my approach in Steel as well as in other investigations, does not rely exclusively on market penetration figures for a submarket (whether it is a case involving the merchant market, or involving a submarket such as colored pencils). Instead, I recognize that measurements relevant to a certain submarket may be more useful or revealing for certain parts of an analysis. For example, price competition tends to be visible in the merchant market, but not in the captive market. Therefore, the share of imports in the merchant market is likely to be more indicative of the potential effect of those imports on price. In the instant investigation, I recognize that the subject imports from Thailand are concentrated in the colored pencils segment of the market, and have examined domestic performance indicators in that segment particularly closely. That does not mean, however, that import penetration within the colored pencil segment is the only relevant level of analysis; to do so would run counter to the like product finding.

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<sup>126</sup> See Transcript of the Hearing at 95.

<sup>127</sup> See Petitioner's Responses to Commission Questions at 23-27.

<sup>128</sup> See Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 (Aug. 1993) (Vol. 1) at 354-360.

<sup>129</sup> Id. at 354.

<sup>130</sup> The volume of the subject imports from Thailand fell by 52.8 percent from 1991 to 1992, from 432,000 gross to 204,000 gross. The imports reached a level of 80,000 gross in 1993, representing a further 60.8-percent drop. Import levels in the Jan.-June 1994 period were another 16.3 percent lower than during the corresponding period of 1993. Public Report ("PR") at Table 17, II-42; Confidential Report ("CR") at Table 17, I-71.

<sup>131</sup> Based on the U.S. market for the like product, Thai market share fell from 2.2 percent in 1991 to 1.0 percent in 1992, and to 0.4 percent in 1993. Thai market share was a mere 0.3 percent in interim 1994 compared with 0.4 percent in interim 1993. PR at Table 18, II-44; CR at Table 18, I-75. These shares are based on volumes, the market shares by value being necessary less because of the lower import unit values.

<sup>132</sup> In Steel, all of the suppliers I excluded, or noted as strong candidates for exclusion, showed low levels of import penetration and declining volumes of imports towards the end of the period examined.

<sup>133</sup> Petitioner's Responses to Commission Questions at 24-25.

Price comparisons between Thai and domestic colored pencils show consistent underselling at margins that I cannot view as insignificant, even in view of a reported quality differential.<sup>134</sup> Petitioner argues that the observed magnitude of underselling in a price sensitive market will "cause consumers to shift their purchases to lower-priced imports."<sup>135</sup> In light of the substantial drop in imports from Thailand as compared with the trend in U.S. shipments of colored pencils,<sup>136</sup> however, U.S. consumers do not appear to be shifting their purchases to Thai pencils. The prices of Thai pencils, moreover, showed a rising trend overall during the period examined, with prices mostly steady in the first half of the period and rising in the second half.<sup>137</sup>

Finally, in examining the standard indicators of domestic industry performance, I find no evidence of adverse impact from the subject pencils from Thailand. Notwithstanding the observed underselling, domestic producers' operations producing colored pencils showed relatively healthy financial performance that does not suggest a materially injured industry.<sup>138</sup> Absent any indication of adverse impact within the market segment where the Thai import competition is concentrated, I cannot conclude that the Thai pencils had a discernible adverse impact on the industry as a whole producing the like product.

In sum, the volume of the subject imports from Thailand is small and declining; the record lacks evidence of significant price depressing or price suppressing effects by these imports; and there is no evidence of any discernible adverse impact within the domestic market segment in which the imports are concentrated. I find that the imports from Thailand are negligible and have no discernible adverse impact on the domestic industry. In this investigation, I have therefore not cumulated the imports from Thailand with other imports subject to investigation.

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<sup>134</sup> PR at Table 21, II-53; CR at Table 21, I-95.

<sup>135</sup> Petitioner's Responses to Commission Questions at 26. This argument, however, goes well beyond the point made in my discussion of Romania plate which was cited by petitioner. See Steel at 371.

<sup>136</sup> These data are confidential. See PR at Table C-4, C-5; CR at Table C-4, C-7.

<sup>137</sup> PR at Table 20, II-51 ; CR at Table 20, I-89.

<sup>138</sup> PR at Table C-4, C-7; CR at Table C-4, C-7.

## ADDITIONAL VIEWS OF COMMISSIONER NEWQUIST

Except as otherwise noted in the majority opinion, I concur in my colleagues' discussion of like product, domestic industry, and condition of the domestic industry. I also concur with their conclusion concerning cumulation; however, my rationale differs significantly. Similarly, my interpretation of the effect of finding one country's imports negligible is unlike that of my colleagues. Accordingly, I provide these additional views.

### I. CUMULATION

As a preliminary matter, I more fully explain the administrative history of this investigation. The final investigations of pencils from Thailand and China were simultaneously instituted by the Commission, effective June 16, 1994. Subsequently, at the request of the Chinese respondents, the Department of Commerce postponed its final investigation of less-than-fair-value imports from China. The effect of this postponement requires that the Commission separately vote on the two investigations. This separate voting notwithstanding, imports from both countries are "subject to investigation." As such, a cumulation analysis is appropriate.

The statute requires that I cumulatively assess the subject imports if: (i) there is competition between the subject imports themselves and the domestic like product;<sup>139</sup> and (ii) no one country's imports are negligible and without discernible adverse impact on the domestic industry.<sup>140</sup> The latter factor is more important in my analytical framework for determining whether subject imports are appropriate to cumulate.

As I explained in the Flat-Rolled Carbon Steel investigations,<sup>141</sup> I view the competition language to require scrutiny of primarily geographic and temporal competition between the subject imports and the domestic like products; assessing competition on the basis of the substitutability of these products is a lesser consideration.<sup>142</sup> Nowhere does the cumulation provision state that competition is a function of interchangeability based upon the imported and domestic products' characteristics and uses. Such competition is appropriately addressed in the like product analysis.<sup>143</sup> In my view, once a like product determination is made, that determination establishes some inherent level of fungibility within that like product. Only in exceptional circumstances could I anticipate finding products to be "like," and then turn around and find that, for purposes of cumulation, there is no reasonable overlap of competition based upon some roving standard of fungibility.

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<sup>139</sup> 19 U.S.C. § 1677(7)(C)(iv)(I). In addition, I need find only a "reasonable overlap" of competition. Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

<sup>140</sup> 19 U.S.C. § 1677(7)(C)(v).

<sup>141</sup> USITC Pub. 2616 (August 1993).

<sup>142</sup> My interpretation of this language is similarly reflected in my application of the Commission's traditional four factor "competition for cumulation" test. This four factor test has generally been articulated as follows:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market.

See, e.g., Certain Cast Iron Pipe Fittings from Brazil, Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

<sup>143</sup> See 19 U.S.C. § 1677(10).

Rather, in my analytical framework, fungibility is more relevant to the assessment of whether imports are negligible. In that analysis, the fungibility within any like product can be pertinent in determining what level of imports may or may not have a discernible adverse effect on the industry producing the like product.<sup>144</sup> In this regard, I note that there is no magical bellwether to determine negligibility. What may be negligible and without discernible adverse impact will vary from industry to industry -- a function of both the characteristics and condition of the industry.

#### **A. Reasonable Overlap of Competition**

I find that there is a reasonable overlap of competition between the imports from Thailand and China and the domestic like product. The subject pencils are imported by importers throughout the United States and, like domestically produced pencils, are marketed nationwide, as well as in national retail office outlets and catalogues.<sup>145</sup> Moreover, imports from both countries have been simultaneously present in the United States throughout the period of investigation.<sup>146</sup>

#### **B. Negligibility**

I agree with the Respondent Government of Thailand that Thai imports are negligible and without discernible adverse impact on the domestic industry.<sup>147</sup> In 1991, imports from Thailand were 432,000 gross and accounted for 2.2% by quantity and 0.6% by value of U.S. consumption.<sup>148</sup> By 1993, Thai imports had fallen to just 80,000 gross and accounted for 0.4% by quantity and 0.2% by value of U.S. consumption.<sup>149</sup> Imports of Thai pencils in interim 1994 (January thru June) were even less than during the same period 1993.<sup>150</sup>

Based on the foregoing, I find that imports of pencils from Thailand are negligible and without discernible adverse impact on the domestic industry.

Unlike my colleagues, I believe that once a country's imports are deemed negligible and without discernible adverse impact for purposes of cumulation, no further analysis is required or expected. It is wholly unnecessary to consider whether imports which have no discernible adverse impact might, in some manner, be a cause or threat of material injury to the domestic industry.

Alternatively, it might be argued that negligible imports, even if not a cause of material injury, nonetheless could threaten such injury. In my view, while slightly less illogical than a present injury analysis, it must be recalled that the same negligibility "exception" that applies to cumulation for purposes of present material injury, also applies to cumulation for purposes of threat.<sup>151</sup> Thus, it is inconceivable that imports could be deemed negligible by one analysis and not the other.

Accordingly, having determined that imports from Thailand are negligible and without discernible adverse impact for purposes of cumulation, I concomitantly determine that such negligible imports are neither a cause nor a threat of material injury to the domestic industry.

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<sup>144</sup> 19 U.S.C. §§ 1677(7)(C)(v), 1677(7)(F)(iv). Accordingly, I address the parties' "lack of competition" arguments in my assessment of whether each country's imports are negligible.

<sup>145</sup> Confidential Report ("CR") at I-22 thru 25; Public Report ("PR") at II-13 thru II-15.

<sup>146</sup> Report at Tables 19 and 20.

<sup>147</sup> Thailand prehearing brief at 1-5.

<sup>148</sup> Report at Tables 17 and 18.

<sup>149</sup> *Id.*

<sup>150</sup> Report at Table 17. In contrast, imports from China were 1.23 million gross in 1991 and 4.64 million gross in 1993. *Id.*

<sup>151</sup> See 19 U.S.C. §§ 1677(7)(C)(v) and 1677(7)(F)(iv).

**PART II**

**INFORMATION OBTAINED IN THE INVESTIGATION**





## INTRODUCTION

Following preliminary determinations by the U.S. Department of Commerce that imports of certain cased pencils<sup>1</sup> from the People's Republic of China (China) and Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV) (59 F.R. 30911, June 16, 1994), the U.S. International Trade Commission, effective June 16, 1994, instituted investigations Nos. 731-TA-669 and 670 (Final) under section 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* on July 7, 1994 (59 F.R. 34865).<sup>2</sup> The hearing was held in Washington, DC, on August 25, 1994.<sup>3</sup>

On August 31, 1994, Commerce published in the *Federal Register* its notice of final affirmative determination of LTFV imports from Thailand. At the request of the Chinese respondents, Commerce postponed the date of its final determination of LTFV imports from China until not later than 135 days after the date of publication of its preliminary determination, or until October 31, 1994.<sup>4</sup> The applicable statute directs that the Commission make its final injury determinations within 45 days after the final determinations by Commerce.

## BACKGROUND

These investigations result from a petition filed on November 10, 1993, by counsel on behalf of the Pencil Makers Association, Inc. (PMA), and the individual companies comprising its membership,<sup>5</sup> alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain cased pencils from China and Thailand. In response to that petition the Commission instituted investigations Nos. 731-TA-669 and 670 (Preliminary) under section 733 of the Act (19 U.S.C. § 1673b(a)) and, on December 20, 1993, determined that there was a reasonable indication of such material injury.

On July 22, 1994, petitioners filed an amendment to the petition alleging critical circumstances with respect to imports from China.<sup>6</sup> On August 26, 1994, Commerce published a notice in the *Federal Register* of its preliminary affirmative determination of critical circumstances.

A summary of the data collected in these investigations is presented in appendix C.

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

<sup>2</sup> Copies of cited *Federal Register* notices are presented in app. A.

<sup>3</sup> A list of witnesses who appeared at the hearing is presented in app. B.

<sup>4</sup> The request to postpone the investigation was filed on July 21, 1994, on behalf of Shanghai Foreign Trade Corp., Shanghai Lansheng Corp., China First Pencil Co., Ltd., Anhui Stationery Corp., and Three Star Stationery Industry Co., Ltd.

<sup>5</sup> The PMA was a "trade association representing the domestic pencil manufacturing industry." Effective Jan. 1, 1994, the PMA ceased to exist as a separate entity and now exists as the Pencil Section of the Writing Instrument Manufacturers Association (WIMA). Petitioner's membership consists of eight manufacturers of cased pencils and one manufacturer of cosmetic pencils.

<sup>6</sup> As set forth under section 733(e) of the Act (19 U.S.C. § 1673(b)(e)), a petitioner may allege critical circumstances by amending the original petition more than 20 days before the date Commerce is due to make its final determination.

## THE PRODUCT

### Description and Uses

A cased pencil is a writing, drawing, or marking instrument usually having a graphite core encased within a wooden sheath.<sup>7</sup> The wood, in most instances, is covered with several coats of quick-drying lacquer (painted) and is tipped with an eraser and ferrule (the small circular band of aluminum which affixes the eraser to the top of the pencil) to make a finished pencil.

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. 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.

The most commonly sold pencil is the so-called commodity or economy pencil, the standard yellow No. 2 pencil,<sup>8</sup> and the majority of subject imports consist of this product (colored pencils, decorated pencils, and "raw" pencils are also imported). The differences in appearance between U.S.-produced and imported pencils are not sufficiently great for the average retail customer to detect them.<sup>9</sup> However, the imported pencils subject to these investigations are made from lower quality, less expensive wood, erasers, ferrules, and cores than comparable U.S.-made articles.<sup>10</sup>

A "raw" pencil has neither been lacquered nor had the eraser and ferrule added.<sup>11</sup> A pencil "blank" is the next stage of production after the raw pencil, where lacquer and sometimes a ferrule and eraser have been added.<sup>12</sup> Pencil blanks are sometimes sold to other producers for finishing or to advertising firms for imprinting logos of clients.

### Production Process

The production process for both domestic and imported pencils is believed to be essentially the same, although there are differences from plant to plant in the degree of automation.<sup>13</sup> Even within the same factory, some U.S. producers have lines with different degrees of automation. The largest U.S. firms are more vertically integrated (making the core (the "lead"), ferrule, and/or eraser), while others may purchase those items.

The standard core is made of graphite, clay, wax, and proprietary chemical mixtures, the specific combination of which determines its "hardness." The clay is weighed and mixed with water and graphite. This mixture is passed through a formulated wax solution that determines the strength and

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<sup>7</sup> Empire uses a polymer core as well as an extruded plastic case for some of its pencils. Faber recently introduced a pencil with a sheath made from recycled cardboard and paper.

<sup>8</sup> The number designation on a pencil refers to the hardness of the core, 1 being the softest, and 4 the hardest. Artists' drawing pencils and drafting pencils each have separate hardness designation labeling systems.

<sup>9</sup> Transcript of the public conference (herein-after "conference TR") held in connection with the Commission's preliminary investigations of certain cased pencils from the People's Republic of China and Thailand, Invs. Nos. 731-TA-669 and 670 (Preliminary), pp. 61-62.

<sup>10</sup> \*\*\*.

<sup>11</sup> The petitioners use this definition of a raw pencil. Pentech, a nonpetitioning domestic producer, defines this as a raw pencil blank; conference TR, pp. 152-155.

<sup>12</sup> The petitioners use this definition of a pencil blank. Pentech defines a finished pencil blank (in contrast to its "raw" pencil blank) as a pencil having the lacquer, eraser, and ferrule added, without any imprinting, and which is usually round and white; conference TR, p. 125.

<sup>13</sup> The Chinese pencil industry is believed to be fully integrated, i.e., the pencil manufacturers produce all components; petition, p. 30.

quality of the core. It is then processed in a centrifuge, ground in a hot tank, sent through a filtration process (to reduce the amount of water), cooled on rotating rollers, pressed into pellets that are shaped by a die into cores, and cut to length, dried, and furnace heated (to add strength). The process of making colored cores is similar except that pigments are used in place of graphite to give color, more wax is added, and the mixture is not furnace heated. Of those few cores made from plastic, the polymer is extruded.

The ferrules are stamped from coils of thin aluminum strip. Following stamping, they are shaped in a series of dies that form the ends and add the circular indentations needed to attach them to the wood and the eraser.

The pencil sheaths are usually made of wood, but small quantities are made of extruded plastic (by Empire) and recycled cardboard/paper (by Faber). Virtually all the rest of U.S.-produced pencils with wood sheaths use California incense cedar wood.<sup>14</sup> The producer receives a precut rectangular piece of wood called a slat, slightly over 7 inches long and slightly under 3 inches wide (see figure 1 for the nine steps to produce a pencil). The number of pencils that can be made from a slat depends on the ply of the wood. Traditionally, 7 pencils were made from a 7-ply slat, the most commonly used size, but most producers now make 9 pencils from this slat. A single groove is cut lengthwise on one side of the slat to allow it to be guided through the equipment and multiple grooves are cut on the other side for the cores.

These slats are fed into a gluing machine from two points. One slat lying flat with the core grooves facing up has glue placed on this surface. The slat passes under a rotating ferris wheel type machine that puts cores in the grooves. A second slat with glue coated on its grooved side is placed on top of the first slat, making what is called a "sandwich." About 40 sandwiches are clamped together under pressure for at least 2 hours to insure bonding and reduce warping.

Next, an end saw trims the rough ends of the sandwich. The sandwich then passes through a shaping or milling blade that cuts the top half into pencil shapes. The unshaped half then passes through either the same milling blade or another blade further along the production line. Changing the milling blade allows cutting the hexagonal standard commodity pencil, the round pencil used in decorated pencils and other applications, or other shapes and sizes.

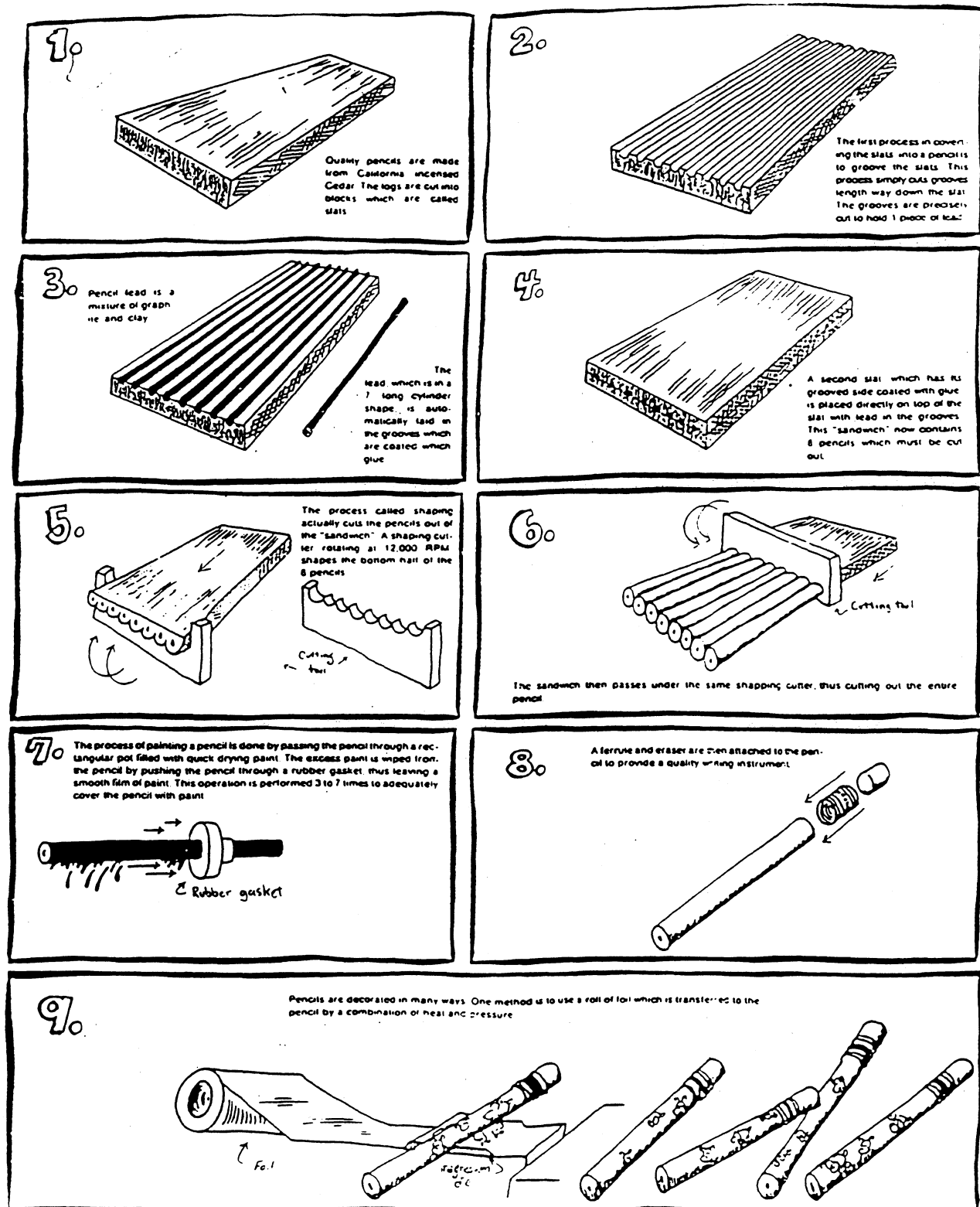
Next, from three to seven coats of quick-drying colored lacquer are added to "paint" the pencil, followed by a final clear coat. The pencil passes through a container of lacquer after which it is forced through a rubber gasket that removes the excess paint to hasten the drying process. The number of coats varies, depending upon the use and quality of the pencil. To improve appearance and quality, a heading machine shaves off the tip of one end of the pencil where paint has gathered. The process of tipping also indents the other end of the pencil to form a shoulder onto which the ferrule is fixed. The other end of the ferrule receives the eraser. Crimping pressure or piercing holes secure the ferrule to the wood and the eraser to the ferrule.

Specialty pencils, such as decorated pencils, undergo other operations to improve appearance, catch the eye of the customer, or encourage collecting of different designs. These operations are more labor-intensive and require more skill than those used to produce commodity pencils because greater care must be taken in monitoring the various decoration application processes and to assure quality control. The specialized design of these pencils allows producers to charge more to overcome this cost disadvantage. One printing technique is to transfer designs from a roll of colored and/or design-covered foil to a round pencil by a combination of a hot die and pressure. Multicolored designs, including intricate comic strips produced under license, can be created using a carefully monitored \*\*\*. A recent innovation used by certain producers of specialty pencils is a UPC bar code labeling machine. This machine places a label with a code on it on a single pencil so it can be purchased separately.

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<sup>14</sup> Dixon uses a small amount of imported Indonesian jelutong wood, a rain forest product. Pentech imports raw Chinese basswood pencils (raw pencil blanks) from China that it processes into finished pencils.

Figure 1  
The nine steps to produce a pencil



Source: J.R. Moon Pencil Co., Inc.

Throughout the production process, manual quality control checks identify rejects or seconds that may be sold at reduced prices. The reject rate is much higher for specialty pencils.

### Substitute Products

Many substitute products perform the same writing, drawing, and marking functions as pencils, including all types of pens, mechanical pencils,<sup>15</sup> markers and/or highlighters, chalk, wax crayons, and even word processing and other computer software.<sup>16</sup> The most direct substitutes are used for writing, the principal function for which pencils are used.

Most U.S. producers and importers reported in their questionnaire responses that close substitutes for cased pencils were mechanical pencils (especially the disposable mechanical pencil), disposable stick pens, and erasable pens. These products are priced within the range of cased pencils. However, some U.S. importers and one of the largest U.S. producers, \*\*\*, reported that substitution is limited for the lowest priced black-lead commodity pencil, the economy pencil, because it is priced lower than any other writing instrument.

### U.S. Tariff Treatment

Pencils and crayons with leads encased in a rigid sheath are classified in HTS subheading 9609.10.00, with a column 1-general duty rate of 14 cents per gross (144 pencils) plus 4.3 percent ad valorem.<sup>17</sup> This rate applies to countries entitled to the column 1-general (most-favored-nation) duty rate, including China. Such pencils, if the product of designated beneficiary countries under the Generalized System of Preferences (GSP), are eligible to be entered free of duty under the special rates of duty subcolumn. Thailand is a GSP-eligible country.

## THE NATURE AND EXTENT OF SALES AT LTFV

### China

On June 16, 1994, Commerce published in the *Federal Register* its preliminary determination of LTFV sales of certain cased pencils from China. The weighted-average dumping margins found by Commerce ranged from 58.34 percent to 107.63 percent.<sup>18</sup>

In calculating the dumping margins, Commerce compared the U.S. price of the subject merchandise to its foreign market value. U.S. price was based on purchase price, which, for those exporters that were assigned separate rates, was based on packed, f.o.b. foreign-port prices to unrelated purchasers in the United States. As in past antidumping investigations, Commerce treated China as a nonmarket economy and, therefore, based foreign market value on the factors of production (i.e., materials, labor, and energy). India and Pakistan were used as surrogates in valuing the factors of production used in producing pencils.

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<sup>15</sup> One inexpensive type of mechanical pencil is a nonrefillable disposable pencil with a retractable polymer core, eraser, and plastic pen-like case with a clip, but having a hexagonal shape like the standard yellow pencil.

<sup>16</sup> For example, many accountants, formerly major users of pencils, use spread sheet programs. Last year the New Jersey-based Educational Testing Service announced that the Graduate Record Exam will be given in a computerized version, eliminating the use of the No. 2 pencil. Mary Jordan, "'Mouse' Replaces No. 2 Pencil on Graduate Test," *The Washington Post*, Nov. 15, 1993, p. A-1.

<sup>17</sup> Mechanical pencils are covered in HTS heading 9608; cosmetic pencils are covered in chapter 33, according to note 1(a) to chapter 96.

<sup>18</sup> Commerce assigned separate, company-specific rates of 58.34 percent to Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. and 100.98 percent to Shanghai Foreign Trade Corp. and Shanghai Lansheng Corp. A country-wide rate of 107.63 percent applies to all other producers/exporters.

On August 26, 1994, Commerce published in the *Federal Register* a notice of preliminary affirmative determination of critical circumstances with respect to imports of certain cased pencils from China. Because there was a history of dumping and because imports of the subject merchandise from China were massive over a relatively short period of time, Commerce determined that critical circumstances exist for all Chinese producers/exporters except Guangdong Stationery & Sporting Goods I/E Corp.

#### **Thailand**

On August 31, 1994, Commerce published in the *Federal Register* its final determination of LTFV sales of certain cased pencils from Thailand. The final country-wide weighted-average dumping margin found by Commerce was 115.52 percent. Because the one Thai exporter (Aruna Co., Ltd.) that accounts for a majority of the subject pencils exported to the United States did not respond to Commerce's questionnaire, Commerce based the final LTFV rate on best information available (BIA), using as BIA the highest rate alleged in the petition.

### **THE U.S. MARKET**

#### **Apparent U.S. Consumption**

Data on apparent consumption of cased pencils based on U.S. producers' shipments and official U.S. imports are presented in table 1.<sup>19</sup> Demand for cased pencils is based, among other things, on population levels that have been increasing in recent years.<sup>20</sup> Apparent consumption of cased pencils by quantity increased steadily during the period for which information was requested, rising by 10.5 percent from 1991 to 1993 and increasing by 3.6 percent from interim 1993 to interim 1994. In absolute terms, the quantity of apparent consumption rose from 19.3 million gross in 1991 to 21.4 million gross in 1993, and increased from 10.9 million gross in January-June 1993 to 11.3 million gross in January-June 1994. The value of apparent consumption increased similarly, increasing by 24.3 percent from 1991 to 1993 and rising by 3.7 percent from interim 1993 to interim 1994.

#### **U.S. Producers**

The Commission sent questionnaires to 11 U.S. producers, 8 of which were identified in the petition as producers and petitioning members of WIMA.<sup>21</sup> Responses were received from eight firms, six of which supplied useable quantitative information on their operations in producing cased pencils. General and Panda provided very limited information on their pencil operations. Table 2 presents the names of the U.S. producers, the locations of their manufacturing facilities, each company's share of reported production in 1993, and each company's position with respect to the petition.

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<sup>19</sup> To avoid double counting, the data are adjusted for U.S. imports of raw or unfinished pencils (mainly by Pentech) that are subsequently finished in the United States.

<sup>20</sup> For example, according to data published by the U.S. Department of Education's National Center for Education Statistics, the number of students enrolled in U.S. schools grades K thru 12 increased from 47.2 million in 1991 to an estimated 48.9 million in 1993. The number of such students is estimated to increase to 49.8 million in 1994 (*Projections of American Statistics through 2004*, NCES publication 93-256, table 1, p. 8).

<sup>21</sup> During the 1980s, many domestic pencil producers either consolidated or went out of business as imported pencils gained increasing market share (hearing TR, p. 24).

Table 1

Certain cased pencils: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<hr/>					
	Quantity (1,000 gross)				
<hr/>					
Domestic production:					
Producers' U.S. shipments of finished product:					
Pentech . . . . .	***	***	***	***	***
All other firms . . . . .	***	***	***	***	***
Total . . . . .	16,508	16,908	16,340	8,327	7,882
U.S. imports of foreign- origin raw pencils from--					
China/Hong Kong . . . . .	***	***	***	***	***
Thailand . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Other sources . . . . .	***	***	***	***	***
Total . . . . .	266	541	1,686	427	924
Producers' U.S. shipments of finished product of U.S. origin . . . . .	16,242	16,354	14,632	7,900	6,910
U.S. imports from--					
China/Hong Kong . . . . .	1,306	3,276	4,724	1,752	3,458
Thailand . . . . .	432	204	80	43	36
Subtotal . . . . .	1,738	3,481	4,804	1,795	3,494
Other sources . . . . .	1,359	1,438	1,929	1,175	859
Total . . . . .	3,098	4,918	6,734	2,970	4,353
Apparent consumption . . . . .	19,340	21,272	21,366	10,870	11,263
<hr/>					
	Value (1,000 dollars)				
<hr/>					
Domestic production:					
Producers' U.S. shipments of finished product:					
Pentech . . . . .	***	***	***	***	***
All other firms . . . . .	***	***	***	***	***
Total . . . . .	129,924	145,392	157,492	77,370	77,976
U.S. imports of foreign- origin raw pencils from--					
China/Hong Kong . . . . .	***	***	***	***	***
Thailand . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Other sources . . . . .	***	***	***	***	***
Total . . . . .	691	1,425	3,938	895	2,341

Table continued on next page.

Table 1--Continued

Certain cased pencils: U.S. shipments of domestic product, U.S. imports, by sources, and apparent U.S. consumption, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
	Value (1,000 dollars)				
Producers' U.S. shipments of finished product of U.S. origin . . . . .	129,233	143,967	153,554	76,475	75,635
U.S. imports from--					
China/Hong Kong . . . . .	9,029	17,957	21,691	9,247	11,788
Thailand . . . . .	993	620	399	243	171
Subtotal . . . . .	10,022	18,578	22,089	9,490	11,959
Other sources . . . . .	22,558	28,146	25,516	13,931	15,966
Total . . . . .	32,580	46,724	47,605	23,421	27,925
Apparent consumption . . . . .	161,813	190,691	201,159	99,896	103,560

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

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

Table 2

Certain cased pencils: U.S. producers during the period Jan. 1991-June 1994, plant locations, shares of reported production in 1993, and position taken with respect to the petition

Firm	Plant location	Share of reported production in 1993	Position taken with respect to the petition
Blackfeet . . . . .	Browning, MT	( <sup>1</sup> )	Petitioner
Dixon . . . . .	Versailles, MO	***	Petitioner
Empire . . . . .	Shelbyville, TN	***	Petitioner
Faber . . . . .	Lewisburg, TN	***	Petitioner
General . . . . .	Jersey City, NJ	( <sup>1</sup> )	Petitioner
Harcourt . . . . .	Milroy, IN	( <sup>1</sup> )	( <sup>1</sup> )
IFB . . . . .	Milwaukee, WI	( <sup>1</sup> )	( <sup>1</sup> )
Moon . . . . .	Lewisburg, TN	***	Petitioner
Musgrave . . . . .	Shelbyville, TN	***	Petitioner
Panda . . . . .	Trenton, OH	( <sup>1</sup> )	Petitioner
Pentech . . . . .	Edison, NJ	***	Opposes

<sup>1</sup> No data provided.

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



### **Blackfeet Indian Writing Instrument Co. (Blackfeet)<sup>22</sup>**

The Blackfeet pencil business was started in 1971 when Small Business Administration consultants recommended that the tribe make pencils as a minority supplier to the Government. With \$200,000 from the Government and private sources, the tribe built the factory and leased the pencil-producing equipment. Approximately a year later Congress opted to give pencil-making preference to the blind. The Blackfeet company managed to survive by winning minority contracts from more than 300 Fortune 500 customers. A deal with K-mart, for instance, more than tripled its sales to retail outlets.<sup>23</sup> Corporate customers and catalog houses currently make up the bulk of its customer base. Although the company produces some colored pencils, the bulk of its production consists of standard No. 2 yellow or commodity pencils. It also produces such nonsubject writing instruments as ballpoint pens and markers. Although the company did not respond to the Commission's questionnaire, information obtained by telephone indicates that it is a quite small producer, producing about \*\*\* gross in 1993.<sup>24</sup>

### **Dixon Ticonderoga Corp. (Dixon)**

Dixon, Versailles, MO, accounting for \*\*\* percent of reported U.S. pencil production in 1993, mainly produces and sells commodity wood-cased pencils.<sup>25</sup> Dixon also produces cased crayons (commonly referred to as colored pencils) and drafting and specialty pencils. Dixon has been producing pencils in the United States since 1827. Dixon acquired the Wallace Pencil Co., Versailles, MO; Ruwe Pencil Co., CT; and National Pen & Pencil Co., TN, in the 1980s.<sup>26</sup> Dixon \*\*\*.

### **Empire Berol Corp. (Empire)**

Empire, Brentwood, TN, a wholly-owned subsidiary of Pen Investors II and Pen Holdings, Inc., New York, NY, accounted for \*\*\* percent of reported pencil production in 1993. Empire was formed in 1986 when Empire Pencil acquired Berol Corp. and Reliance Pencil Co. Empire has a wholly-owned subsidiary in \*\*\*. In 1992, Empire eliminated pencil production in its wholly owned Canadian and United Kingdom subsidiaries and moved such production to its Shelbyville plant and to \*\*\*. In addition to wood-cased pencils,<sup>27</sup> Empire also produces pencils using a proprietary plastic extrusion process. These plastic pencils are indistinguishable from wood-cased pencils by the average consumer.

### **Faber-Castell Corp. (Faber)**

Faber, Parsippany, NJ, has an 800,000 square foot manufacturing facility in Lewisburg, TN, that produces wood-cased pencils, pens, and markers. A plant in Newark, NJ, produces the erasers it uses on its pencils. Faber has a subsidiary in \*\*\*. In addition, Faber has a \*\*\*. Faber accounted for \*\*\* percent of reported U.S. pencil production in 1993.

Faber began producing pencils in Germany in the mid-1700s. The U.S. pencil industry started in the early 1800s when many of the German pencil producers moved pencil producing facilities to the United States. In the beginning there were four companies: American Lead Pencil, Eagle, Faber

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<sup>22</sup> This producer did not respond to the Commission's questionnaire.

<sup>23</sup> Daniel Cohen, "The Blackfeet Discover Capitalism," *Success*, Jan./Feb. 1988.

<sup>24</sup> Based on telephone conversation between Commission staff and \*\*\*, Blackfeet, Sept. 12, 1994. Such production is equivalent to only \*\*\* percent of aggregate reported U.S. production in 1993.

<sup>25</sup> Dixon purchases both California incense cedar and jelutong wood from Indonesia for use in its production of pencils.

<sup>26</sup> Conference TR, p. 20.

<sup>27</sup> Empire mainly produces \*\*\*.

(which was a sales office for the German parent), and Eberhard Faber, owned by the brother of A.W. Faber of Faber-Castell. The structure of the industry remained this way until the 1920s, when new firms began entering the market. By 1950 there were 13 other pencil producers in addition to the 4 original companies.<sup>28</sup> Faber bought Eberhard Faber in the late 1980s in order to obtain its worldwide trademarks for exporting purposes.

#### **General Pencil Co. (General)**

General, Jersey City, NJ, has been a pencil producer since 1889 and is also a producer of office and art products. In addition to yellow commodity pencils, General also produces advertising and golf pencils.

#### **J.R. Moon Pencil Co. (Moon)**

Moon, a family-owned business in Lewisburg, TN, accounted for \*\*\* percent of reported U.S. pencil production in 1993. Moon produces a range of different types of pencils and pens but specializes in the production of decorated pencils. Moon's decorated pencils come in many varieties, such as awards and gifts, promote a positive image (e.g., Caught doing good!), scribble'n sniff, seasonal glitz, and personalized pencils.

#### **Musgrave Pen & Pencil Co., Inc. (Musgrave)**

Musgrave, Shelbyville, TN, accounted for \*\*\* percent of U.S. production of pencils in 1993. Approximately \*\*\* percent of its production consists of blanks for advertising and roughly \*\*\* percent consists of finished pencils that go to school districts. Musgrave uses only California incense cedar in its production of cased pencils. Musgrave supplied less than complete information in its questionnaire response.

#### **Panda Pencil, Inc. (Panda)**

Panda provided a limited response to the Commission's questionnaire. Formerly a subsidiary of Dur-O-Lite Corp. operating under the name Panda, Inc., Panda (Trenton, OH) produced pencils almost entirely for the account of the parent firm. On April 21, 1993, a private investor purchased the assets of Panda and changed its name to Panda Pencil, Inc. Under its new ownership, Panda produces blank, nondecorated pencils for ad specialty companies.<sup>29</sup> Panda's total annual pencil production capacity is \*\*\*.

#### **Pentech International (Pentech)**

Pentech, Edison, NJ, was founded in 1984 but only began production in 1992 after having trouble with its Korean suppliers. With an investment of \$5 million in plant and equipment,<sup>30</sup> Pentech started up Sawdust Pencil Co. (Sawdust),<sup>31</sup> its 50,000 square foot manufacturing facility. Forsaking the low-end market of standard yellow pencils, Pentech decided to concentrate its efforts in the high-end

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<sup>28</sup> Many of these firms subsequently consolidated or went out of business. Most recently, Mallard Pencil Co., KY, Connecticut Pencil Co., CT, and Richard Best Pencil Co., NJ, ceased producing pencils and left the industry.

<sup>29</sup> See letter from Panda dated Sept. 1, 1994.

<sup>30</sup> Approximately \*\*\* percent of the equipment was purchased from \*\*\*.

<sup>31</sup> Conference TR, p. 122.

design, fashion, and novelty side of the pencil market.<sup>32</sup> The investment expanded annual production to 900,000 gross and added about 150 employees to the workforce. Pentech accounted for a relatively small percentage (\*\*\*) of U.S. pencil production in 1993.<sup>33</sup> Pentech produces a patented pencil called the Grip Stix from U.S. incense cedar, which is designed to help children write with better handwriting.<sup>34</sup> In addition to producing pencils, Pentech also imports raw pencil blanks from China that it further processes to produce decorated pencils. In 1992, Pentech began developing new items to catch the growth curve in the child-oriented activity marketplace. This fast-growing market provides year-round opportunity and is less seasonal than the back-to-school market.<sup>35</sup>

### U.S. Importers

The petition identified 22 firms believed to be importing pencils from China and Thailand. Questionnaires were sent to all 22 firms as well as to an additional 77 firms identified in the Customs Net Import File as importers of the subject merchandise. Of those firms that responded to the questionnaire, 30 supplied usable questionnaire information, 3 supplied less than complete information, and 6 reported that they did not import the subject merchandise during the period for which information was requested. Of those firms that supplied usable data, 27 reported imports of cased pencils from China, either directly or via Hong Kong, during the period for which information was requested. Three of the 27 firms also reported imports from Thailand. Firms involved in importing pencils from China are located throughout the United States and reportedly sell the imported product nationwide.<sup>36</sup> The bulk of the reported imports from China was comprised of raw pencils and commodity pencils, accounting for a combined 80 percent of total reported imports. Cased crayons (colored pencils) accounted for the bulk (90 percent in 1993) of U.S. importers' reported imports from Thailand.<sup>37</sup> U.S. importers generally concede that the Chinese-produced pencils that they import are of lower quality than U.S.-produced pencils. \*\*\* imported pencil blanks from China until 1992, when it stopped importing the Chinese product because of poor quality and delivery schedules. \*\*\* began importing pencils from China in 1992. It noted in its questionnaire response that its customers are willing to use lower quality pencils so long as the instrument performs its basic writing function.

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<sup>32</sup> Ibid., pp. 124 and 127.

<sup>33</sup> However, Pentech's share \*\*\* from the \*\*\* percent of reported production in 1992.

<sup>34</sup> Conference TR, p. 124.

<sup>35</sup> \*\*\*.

<sup>36</sup> Because Chinese pencils are now offered for sale in nationally circulated catalogues, they are sold and offered for sale on a nationwide basis; conference TR, pp. 35-36.

<sup>37</sup> Also imported into the United States from Thailand are pencils produced by Bensia Co., Ltd. Bensia pencils are nonsharpening writing, marking, or drawing instruments encased in a plastic sheath. The sheath contains a series of 6-11 lead points partially encased in a tapered plastic core. The pencil is operated by removing the worn point encased in plastic from the writing end of the sheath, shaking the sheath to bring the next point forward, and inserting the used point in the opening in the top of the sheath's cap. Respondent Government of Thailand (GOT) argues that, because these pencils are nonsharpening and are analogous to mechanical pencils, Bensia pencils are nonsubject merchandise. The basis for the GOT's opinion is the scope language articulated in Commerce's notice, which specifies subject pencils as sharpened or unsharpened and which specifically excludes mechanical pencils. (See respondent GOT's posthearing brief, p. 5.)

The Commission received questionnaire response from 3 firms (\*\*\*) that reported information on their imports of cased pencils from Thailand. Aruna was identified as the Thai producer of pencils imported by \*\*\*, and Atico International was identified as the producer of pencils imported by \*\*\*. \*\*\* identified Bensia as the Thai producer of cased pencils it imports. \*\*\* questionnaire response shows \*\*\* during January-June 1994. According to \*\*\* (telephone conversation with staff, Sept. 12, 1994). Based on information provided by the GOT counsel in these investigations, Bensia does not tranship Thai-produced pencils through Taiwan (staff telephone conversation with Ms. Jacqueline A. Weisman, of counsel).

Pentech imports \*\*\* from China, although the bulk of its imports consists of raw pencils.<sup>38</sup> Pentech argues that a significant portion of the value of the raw pencil is added in the United States.<sup>39</sup> \*\*\* reported imports of pencils from \*\*\*.

The petition alleges that cased pencils produced in China are often transshipped through Hong Kong. Information supplied in questionnaire responses supports this allegation. Nearly all of the U.S. importers that supplied usable data reported that their imports were either through Hong Kong or through an agent in Hong Kong.

### Channels of Distribution

Cased pencils produced in the United States are mainly sold to retailers such as K-mart, Wal-Mart, Staples, Target, and National Office Supply, and to distributors such as United Stationers, Associated Stationers, and S.P. Richards,<sup>40</sup> which in turn sell to end users, including schools, businesses, and individual consumers.<sup>41</sup> U.S. producers of pencils reported that shipments of pencils in 1993 went to the following unrelated channels of distribution: \*\*\* percent to distributors/wholesalers, \*\*\* percent to retailers, \*\*\* percent to office supply superstores, \*\*\* percent to school suppliers, and \*\*\* percent to government and other distribution channels. Commodity pencils accounted for \*\*\* percent of U.S. producers' total shipments of cased pencils in 1993.<sup>42</sup> During the first half of 1993, 58.4 percent of total shipments of U.S.-produced pencils were in retail packs and 41.6 percent were in commercial packs or in bulk.<sup>43</sup> Many distributors sell both domestic and imported pencils.<sup>44</sup> Pencils imported from China and Thailand reach the market essentially through the same channels of distribution, including the mass retail, school supply, and office supply segments. U.S. importers of pencils from China reported that shipments of the imported pencils in 1993 went to the following channels of distribution: \*\*\* percent to distributors/wholesalers, \*\*\* percent to retailers, and \*\*\* percent to school suppliers.

The largest segment of the U.S. market for pencils is the retail mass market segment. This consists of pencils that are sold directly to the public in retail and discount store chains, drug stores, supermarkets, and similar outlets, usually in boxes or blister-packed cards containing a dozen pencils or fewer. Mass market purchasers generally buy pencils for back-to-school or general household use. The office supply market is another large market segment and has tended to be the most profitable for domestic producers. The pencils sold in this market tend to be higher priced than in the mass market. The office supply market is undergoing significant change. Smaller regional distributors are being increasingly supplanted by nationwide catalogue wholesalers or by office supply superstore chains such as Staples. Direct sales to government agencies and school districts are also a factor in the market for pencils. For many years U.S. pencil manufacturers have been foreclosed from selling to the Federal Government, which has established an exclusive procurement set-aside for pencils manufactured in

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<sup>38</sup> Pentech also imports \*\*\* from China. At the conference held in connection with Commission's preliminary investigations, Pentech argued that its imports of raw pencils from China are different than the pencil blanks produced and sold by other U.S. firms. Raw pencils have no paint, lacquer, erasers, or ferrules, whereas pencil blanks are painted and may have erasers and ferrules for sale to advertising firms (conference TR, p. 125).

<sup>39</sup> Conference TR, p. 127. Pentech estimates that the imported wood blanks constitute only \*\*\* percent of the value of its decorated pencils, while \*\*\* percent of the value is added in the United States; Pentech's postconference brief, pp. 5-6.

<sup>40</sup> The distinction between the retail mass market and office supply segments of the domestic industry is blurring as more office supply firms offer their wares through national catalogues and office supply superstores; petitioners' postconference brief, p. 41.

<sup>41</sup> Officials at Pentech characterized the segments of the pencil market as follows: \*\*\*; fieldtrip to Pentech, Nov. 24, 1993.

<sup>42</sup> Based on data reported by firms that were able to supply information on their cased pencil operations by types of pencils. Those firms were Empire, Faber, Moon, and Pentech.

<sup>43</sup> Calculated from data prepared for the WIMA.

<sup>44</sup> Conference TR, p. 23.

sheltered workshops for the blind and physically handicapped. These workshops are integrated U.S. producers. Decorated and novelty pencils form another significant market segment.<sup>45</sup>

### **CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES**

Dixon, Empire, Faber, Moon, Musgrave, and Pentech each supplied information in response to the Commission's producers' questionnaire. The information supplied by Musgrave was somewhat less than complete in that it did not, for the most part, provide the requested information for the interim periods. The information in this section of the report is based on the responses of all six firms. Summary data supplied by these firms are presented in appendix C. In its preliminary determination, the Commission excluded Pentech from the domestic industry as a related party under section 771(4)(b) of the Tariff Act of 1930. A summary table providing data excluding Pentech is also included in appendix C.

#### **U.S. Producers' Capacity, Production, and Capacity Utilization**

Data on U.S. producers' capacity, production, and capacity utilization are presented in figure 2 and table 3. U.S. producers' average-of-period capacity to produce cased pencils increased by 9 percent from 1991 to 1992, rose by 5 percent from 1992 to 1993, and remained virtually unchanged from the interim period in 1993 to the comparable 1994 period. Three firms, \*\*\*, reported increases in capacity over the period for which information was requested. \*\*\* increased its capacity by nearly \*\*\* percent from 1991 to 1992; \*\*\* reported an increase of \*\*\* percent from 1991 to 1993 and a decrease of \*\*\* percent from interim 1993 to interim 1994;<sup>46</sup> and \*\*\* reported an increase of \*\*\* percent from 1992 to 1993 and an increase of \*\*\* percent from interim 1993 to interim 1994. Although \*\*\* did not report increased capacity during the period for which information was requested, information previously provided suggests that it may have plans to expand capacity.<sup>47</sup>

U.S. production of cased pencils increased by 9 percent from 1991 to 1992, rose by 2 percent from 1992 to 1993, but fell by 14 percent from interim 1993 to interim 1994.<sup>48</sup> While production increased annually over the 1991-93 period, U.S. producers' capacity utilization fell overall from 80.0 percent in 1991 to 78.2 percent in 1993. The operating rate continued downward in the interim periods, falling from 78.3 percent in interim 1993 to 67.3 percent in interim 1994.

Figures 3 and 4 show cased pencil production by individual producers. As depicted in the figures, the two firms accounting for the predominant share of U.S. production, Empire and Faber, \*\*\*, from 1991 to 1992, but \*\*\* in production in 1993 and from interim 1993 to interim 1994. Two producers, \*\*\*, reported \*\*\* in production over the period for which information was requested. \*\*\*'s production of cased pencils \*\*\* percent from 1991 to 1993 and \*\*\* from interim 1993 to interim 1994. \*\*\*'s production \*\*\* from 1992 to 1993 and \*\*\* from interim 1993 to interim 1994.

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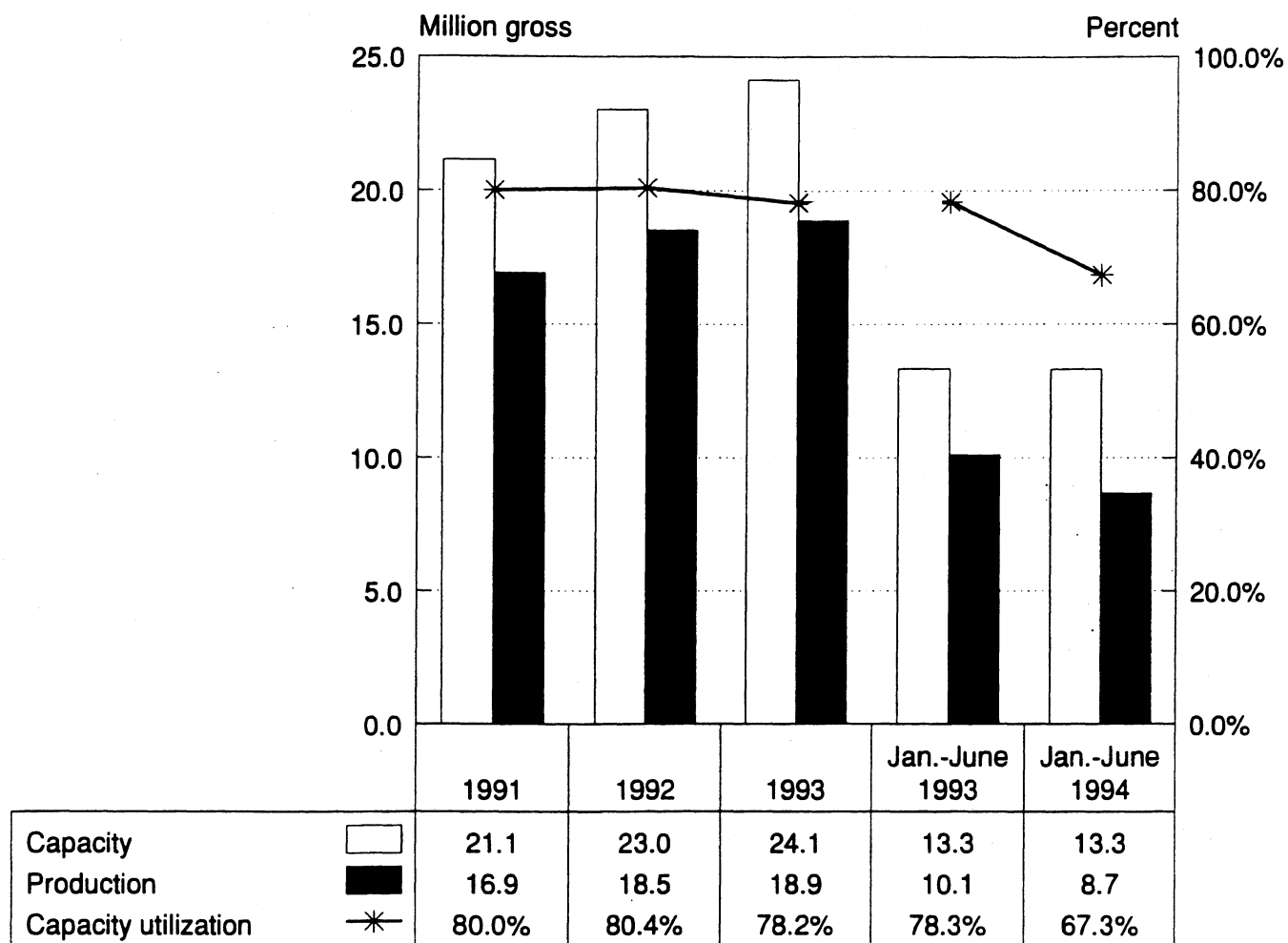
<sup>45</sup> Conference TR, pp. 29-34.

<sup>46</sup> \*\*\*.

<sup>47</sup> \*\*\*, \*\*\* at \*\*\*, explained in a telephone conversation on Dec. 2, 1993, that \*\*\* is forced to expand because of purchasers merging or starting to purchase together as a group. These large customers prefer to purchase from one source. A problem resulting from these large purchasers is a shrinking number of overall customers and a larger volume of discounts resulting from the larger sales. U.S. producers have trouble meeting the orders of these large customers and are thus expanding capacity.

<sup>48</sup> Data on U.S. production capacity, production, and capacity utilization by types of cased pencils are shown in app. C.

**Figure 2**  
**Certain cased pencils: U.S. production capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994**



Source: Table 3

Table 3

Certain cased pencils: U.S. capacity, production, and capacity utilization, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
Average-of-period capacity (1,000 gross) <sup>1 2</sup> . . . . .	21,135	23,017	24,144	13,321	13,304
Production (1,000 gross) <sup>3</sup> . . . . .	16,912	18,505	18,876	10,091	8,656
Capacity utilization (percent) . . . . .	80.0	80.4	78.2	78.3	67.3

<sup>1</sup> Reported bases of capacity by firms were as follows: \*\*\* hours per week, \*\*\* weeks per year, Dixon; \*\*\* hours per week, \*\*\* weeks per year, Empire; \*\*\* hours per week, \*\*\* weeks per year, Faber; \*\*\* hours per week, \*\*\* weeks per year, Moon; \*\*\* hours per week, \*\*\* weeks per year, Musgrave; and \*\*\* hours per week, \*\*\* weeks per year, Pentech.

<sup>2</sup> \*\*\*.

<sup>3</sup> \*\*\* did not report production data for the interim periods.

Note.--Capacity utilization is calculated using data of firms providing both capacity and production information.

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

Figure 3

Certain cased pencils: U.S. production, by firms, 1991-93

\* \* \* \* \*

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

Figure 4

Certain cased pencils: Shares of U.S. production, by firms, 93

\* \* \* \* \*

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

## U.S. Producers' Shipments

### U.S. Shipments

Data on U.S. producers' shipments of cased pencils are shown in table 4. Two firms, \*\*\*, reported company transfer shipments during the period for which information was requested. Such shipments, however, accounted for \*\*\* share of the two firms' combined U.S. shipments. The bulk of U.S. producers' U.S. shipments, therefore, consisted of shipments to unrelated customers. After increasing by slightly more than 2 percent from 1991 to 1992, the volume of U.S. producers' U.S. shipments of cased pencils declined in each period thereafter. The quantity of such shipments fell from 16.9 million gross in 1992 to 16.3 million gross in 1993 and dropped from 8.3 million gross in interim 1993 to 7.9 million gross in interim 1994. The 1992-93 change represented a 3-percent falloff whereas the interim period change represented a 5-percent decrease. The value of such shipments, however, rose steadily over the same period, increasing by 12 percent from 1991 to 1992, by 8 percent from 1992 to 1993, and by slightly less than 1 percent from interim 1993 to interim 1994. In absolute terms, the value of U.S. producers' U.S. shipments increased by \$15.5 million from 1991 to 1992 and by \$12.1 million from 1992 to 1993. The unit value of U.S. producers' U.S. shipments also increased steadily over the period for which information was requested, rising from \$7.87 per gross in 1991 to \$9.64 per gross in 1993, and increasing from \$9.29 per gross in the interim 1993 period to \$9.89 per gross in the comparable 1994 period.

Data showing the volume of U.S. producers' U.S. shipments by firms are presented in figure 5. Notable among the data is \*\*\* in \*\*\*'s U.S. shipments of cased pencils over the period for which data were reported. Conversely, the quantity of U.S. shipments as reported by \*\*\* rose annually from 1991 to 1993 and again from interim 1993 to interim 1994.

### Export Shipments

As a share of total shipment quantity, U.S. producers' exports of cased pencils ranged between 5.7 percent and 10.6 percent of the total over the period for which information was reported. Such exports, mostly to Canada, Mexico, Latin America, and the Middle East, increased by 60 percent in quantity and 84 percent in value from 1991 to 1993. Between the interim periods, such exports fell by 25 percent in quantity and by 9 percent in value.<sup>49</sup>

### Total Shipments

The quantity and value of U.S. producers' total shipments of domestically produced cased pencils increased by 2.3 percent and 11.5 percent, respectively, from 1991 to 1992, rose by 0.2 and 11.7 percent, respectively, from 1992 to 1993, and fell by 7.4 and 0.1 percent, respectively, from interim 1993 to interim 1994.

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<sup>49</sup> During the 1991-92 period, Empire and Dixon shut down pencil plants in Canada and moved the operations to their plants in the United States. A large part of the increase in U.S. exports may be accounted for by the exports of these two firms into the Canadian market.



Table 4

Certain cased pencils: Shipments by U.S. producers, by types, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- <sup>1</sup> 1993	1994
<i>Quantity (1,000 gross)</i>					
Company transfers . . . . .	***	***	***	***	***
Domestic shipments . . . . .	***	***	***	***	***
U.S. shipments . . . . .	16,508	16,908	16,340	8,327	7,882
Exports . . . . .	1,018	1,023	1,632	988	743
Total . . . . .	17,526	17,931	17,972	9,315	8,625
<i>Value (1,000 dollars)</i>					
Company transfers . . . . .	***	***	***	***	***
Domestic shipments . . . . .	***	***	***	***	***
U.S. shipments . . . . .	129,924	145,392	157,492	77,370	77,976
Exports . . . . .	7,292	7,627	13,405	7,508	6,800
Total . . . . .	137,216	153,019	170,897	84,878	84,776
<i>Unit value (per gross)</i>					
Company transfers . . . . .	\$***	\$***	\$***	\$***	\$***
Domestic shipments . . . . .	***	***	***	***	***
U.S. shipments . . . . .	7.87	8.60	9.64	9.29	9.89
Exports . . . . .	7.16	7.46	8.21	7.60	9.15
Average . . . . .	7.83	8.53	9.51	9.11	9.83

<sup>1</sup> \*\*\* did not report shipment data for the interim periods.

Note.--Unit values are calculated using data of firms supplying both quantity and value information.

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

Figure 5

Certain cased pencils: U.S. producers' U.S. shipments, by firms, 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

## U.S. Producers' Inventories

Data on U.S. producers' end-of-period inventories are shown in table 5. Such inventories rose steadily during the period for which information was requested, rising by 41.1 percent from yearend 1991 to yearend 1993 and increasing by 4.3 percent from interim 1993 to interim 1994. The ratio of inventories to production dipped slightly from 15.9 percent in 1991 to 15.6 percent in 1992, increased to 20.1 percent in 1993, and rose from 18.1 percent to 22.0 percent from interim 1993 to interim 1994. The ratio of inventories to total shipments increased somewhat similarly, rising from 15.4 percent in 1991 to 21.1 percent in 1993, and increasing from 19.6 percent in interim 1993 to 22.1 percent in interim 1994.

Table 5

Certain cased pencils: End-of-period inventories of U.S. producers, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June--	
				1993	1994
Inventories ( <i>1,000 gross</i> ) . . . . .	2,692	2,893	3,798	3,672	3,829
Ratio of inventories to--					
Production ( <i>percent</i> ) . . . . .	15.9	15.6	20.1	18.1	22.0
Total shipments ( <i>percent</i> ) . . . . .	15.4	16.1	21.1	19.6	22.1

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

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

## Employment, Wages, and Productivity

U.S. producers' employment and productivity data are presented in table 6. Generally, employment indicators for the U.S. industry producing cased pencils were higher in 1993 than in 1991 and lower in interim 1994 than in interim 1993. The number of production and related workers (PRWs) producing cased pencils rose irregularly by 2.4 percent from 1991 to 1993 and declined by 11.9 percent from interim 1993 to interim 1994.<sup>50</sup> The number of hours worked by such PRWs increased from 2.3 million hours in 1991 to 2.8 million hours in 1993, an increase of 20.2 percent. From interim 1993 to interim 1994, however, the number of hours worked by such workers fell by 13.5 percent. Wages and total compensation paid to those same PRWs rose and fell similarly, increasing by 23.3 percent and 27.9 percent, respectively, from 1991 to 1993, and falling by 10.7 percent and 11.7 percent, respectively, between the interim periods. Productivity of PRWs declined from 7.2 gross per hour in 1991 to 6.7 gross per hour in 1993 and remained unchanged in the interim periods at 7.3 gross per hour. U.S. producers' unit labor costs rose by 14.6 percent from 1991 to 1993, increasing from \$1.50 in 1991 to \$1.72 in 1993, and increased by nearly 3 percent from interim 1993 to interim 1994.

In the Commission's questionnaire, U.S. producers were requested to provide detailed information concerning reductions in the number of PRWs producing cased pencils during January 1991 through June 1994, if such reductions involved at least 5 percent of the workforce or 50 workers. \*\*\*

<sup>50</sup> \*\*\* both reported that their PRWs have union representation.

Table 6

Average number of total employees and production and related workers in U.S. establishments wherein certain cased pencils are produced, hours worked,<sup>1</sup> wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs,<sup>2</sup> by products, 1991-93, Jan.-June 1993, and Jan.-June 1994<sup>3</sup>

Item	1991	1992	1993	Jan.-June-- 1993	1994
<hr/> Number of employees <hr/>					
All products . . . . .	2,605	2,727	2,594	2,637	2,535
<hr/> Number of production and related workers (PRWs) <hr/>					
All products . . . . .	2,018	2,220	1,993	2,062	1,956
Certain cased pencils . . . . .	1,352	1,449	1,385	1,442	1,270
<hr/> Hours worked by PRWs ( <i>1,000 hours</i> ) <hr/>					
All products . . . . .	3,673	4,296	3,998	2,071	1,936
Certain cased pencils . . . . .	2,339	2,741	2,812	1,472	1,274
<hr/> Wages paid to PRWs ( <i>1,000 dollars</i> ) <hr/>					
All products . . . . .	30,715	36,226	34,398	17,766	17,024
Certain cased pencils . . . . .	19,104	22,522	23,561	12,346	11,026
<hr/> Total compensation paid to PRWs ( <i>1,000 dollars</i> ) <hr/>					
All products . . . . .	42,407	50,744	48,314	24,974	23,776
Certain cased pencils . . . . .	25,412	30,523	32,507	17,085	15,081
<hr/> Hourly wages paid to PRWs <hr/>					
All products . . . . .	\$8.36	\$8.43	\$8.60	\$8.58	\$8.79
Certain cased pencils . . . . .	8.17	8.22	8.38	8.39	8.65
<hr/> Hourly total compensation paid to PRWs <hr/>					
All products . . . . .	\$11.55	\$11.81	\$12.08	\$12.06	\$12.28
Certain cased pencils . . . . .	10.86	11.14	11.56	11.61	11.84
<hr/> Productivity ( <i>gross per hour</i> ) <hr/>					
Certain cased pencils . . . . .	7.2	6.8	6.7	7.3	7.3
<hr/> Unit labor costs ( <i>per gross</i> ) <hr/>					
Certain cased pencils . . . . .	\$1.50	\$1.65	\$1.72	\$1.62	\$1.66

See footnotes to table 6 on next page.

Footnotes to table 6.

<sup>1</sup> Includes hours worked plus hours of paid leave time.

<sup>2</sup> On the basis of total compensation paid.

<sup>3</sup> Firms providing employment data accounted for 100 percent of reported total U.S. shipments (based on quantity) in 1993.

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information.

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

reported a reduction of approximately \*\*\* employees in \*\*\* due to economic conditions,<sup>51</sup> \*\*\*; \*\*\* reported a reduction of workers producing \*\*\* in \*\*\* that were absorbed elsewhere in the business due to internal reorganizations and loss of business; \*\*\* reported a reduction of \*\*\* PRWs producing \*\*\* at various times during the period due to reduced sales; and \*\*\* reported that it reduced its workforce for \*\*\* by \*\*\* workers on \*\*\*, due to low orders. U.S. producers were also asked in the questionnaire if they produce other products using the same PRWs employed in the production of cased pencils. \*\*\* each reported that PRWs used to produce cased pencils are dedicated solely to that task. \*\*\*, on the other hand, reported that PRWs employed in the production of cased pencils are also used to produce other products in their reporting establishments.<sup>52</sup> Generally, PRWs employed in the production of cased pencils do not require unique or special skills to carry out assigned production tasks. As more than one producer reported, with training, PRWs can be used to produce any other products produced in the reporting establishments.<sup>53</sup>

### Financial Experience of U.S. Producers

Six producers<sup>54</sup> of certain cased pencils, representing all reported U.S. production of such merchandise in 1993, reported income-and-loss and other financial information on their operations.

### Overall Establishment Operations

In addition to the various types of cased pencils, some producers manufacture mechanical pencils, pens, markers, crayons, etc. within their establishments. Moon produces only cased pencils in its establishment. Both Dixon's and Musgrave's sales of cased pencils accounted for over \*\*\* percent of their establishment sales in fiscal 1993 and fiscal 1994. Pentech's sales of cased pencils accounted for approximately \*\*\* percent of its establishment sales in fiscal 1993.

The two largest producers, Empire and Faber, provided data on several establishments. Empire's establishment submission included plants in Shelbyville, TN (cased pencils, pens, and markers), Georgetown, KY (finishing of cased pencils), Rockford, IL (pencil sharpeners), and San Fernando, CA (templates). Faber's establishment data included plants in Lewisburg, TN (cased pencils, pens, markers,

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<sup>51</sup> \*\*\* also noted in its response that its workforce increases by \*\*\* part-time student employees during its peak selling season of April through July each year. An equal reduction in employees occurs in late July and August.

<sup>52</sup> Other products produced in U.S. producers' reporting establishments include erasers and miscellaneous office products (Dixon), pens, markers, pencil sharpeners, mechanical pencils, erasers, and templates (Empire), and ball pens and markers, eraser products, and art/portfolio products (Faber).

<sup>53</sup> See producers' questionnaire responses of Moon, Musgrave, and Pentech at p. 39.

<sup>54</sup> The producers are Dixon, Empire, Faber, Moon, Musgrave, and Pentech.

imports, and warehousing and distribution of all products), Newark, NJ (rubber and eraser products), Chicago, IL (artist portfolios and cases), and Parsippany, NJ (corporate headquarters). \*\*\*. Data on overall establishment operations of the U.S. producers excluding Pentech are shown in table 7.

Table 7

Income-and-loss experience of U.S. producers, **excluding Pentech**, on the overall operations of their establishments wherein certain cased pencils are produced, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

### Operations on Certain Cased Pencils

Income-and-loss data for the cased pencil operations of the producers, **excluding Pentech**, are shown in table 8. Net sales \*\*\* from \$\*\*\* in 1991 to \$\*\*\* in 1992. In 1993, sales were \$\*\*\*, \*\*\* of \*\*\* percent. There were \*\*\* \$\*\*\* in 1991, \$\*\*\* in 1992, and \$\*\*\* in 1993. \*\*\*, as a share of net sales, were \*\*\* percent in 1991, \*\*\* percent in 1992, and \*\*\* percent in 1993 (figure 6). \*\*\*.

Table 8

Income-and-loss experience of U.S. producers, **excluding Pentech**, on their operations producing certain cased pencils fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

Net sales were \$\*\*\* in interim 1994, \*\*\* of \*\*\* percent from interim 1993 sales of \$\*\*\*. Operating \*\*\* were \$\*\*\* in interim 1993 and \$\*\*\* in interim 1994. Operating \*\*\* margins were \*\*\* percent in interim 1993 and \*\*\* percent in interim 1994. \*\*\*.

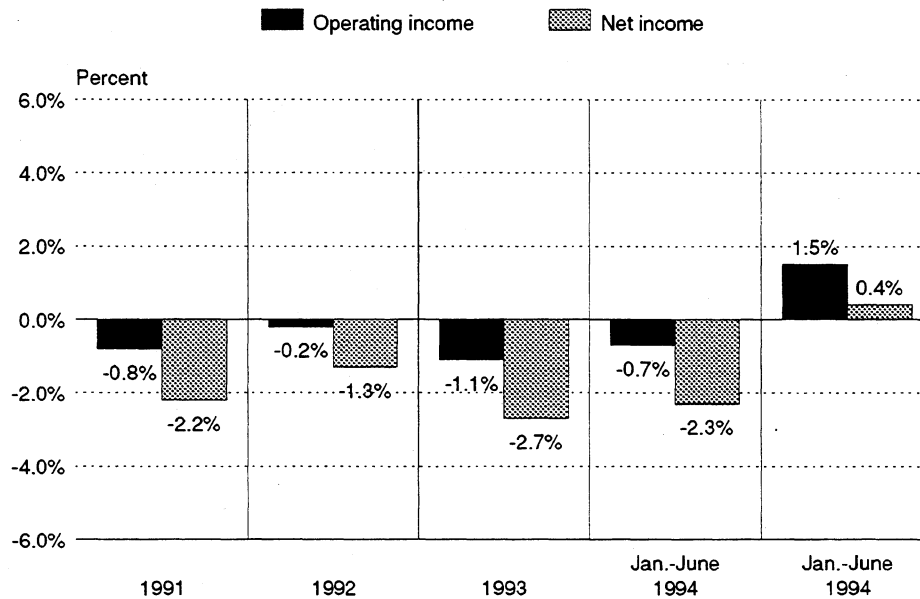
Income-and-loss data for the cased pencil operations of the producers, **including Pentech**, are shown in figure 7 and table 9. \*\*\*. The aggregate industry incurred operating losses in all other periods.

Figure 6  
 Certain cased pencils: Operating and net income (loss)  
 ratios of U.S. producers, excluding Pentech, 1991-93,  
 Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

Source: Table 8.

Figure 7  
 Certain cased pencils: Operating and net income (loss)  
 ratios of U.S. producers, including Pentech, 1991-93,  
 Jan.-June 1993, and Jan.-June 1994



Source: Table 9.

Table 9

Income-and-loss experience of U.S. producers,<sup>1</sup> including Pentech, on their operations producing certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994<sup>2</sup>

				Jan.-June--	
Item	1991	1992	1993	1993	1994
	Value (1,000 dollars)				
Net sales . . . . .	138,926	158,776	171,562	85,233	84,949
Cost of goods sold . . . . .	113,542	128,387	137,038	66,858	66,513
Gross profit . . . . .	25,384	30,389	34,524	18,375	18,436
Selling, general, and administrative expenses . . . . .	26,529	30,637	36,449	18,975	17,193
Operating income or (loss) . . . . .	(1,145)	(248)	(1,925)	(600)	1,243
Interest expense . . . . .	1,401	1,632	2,042	962	650
Other expense items . . . . .	687	382	764	461	351
Other income items . . . . .	134	142	141	82	97
Net income or (loss) before income taxes . . . . .	(3,099)	(2,120)	(4,590)	(1,941)	339
Depreciation and amortiza- tion . . . . .	3,016	3,443	3,702	1,794	2,045
Cash flow <sup>3</sup> . . . . .	(83)	1,323	(888)	(147)	2,384
	Ratio to net sales (percent)				
Cost of goods sold . . . . .	81.7	80.9	79.9	78.4	78.3
Gross profit . . . . .	18.3	19.1	20.1	21.6	21.7
Selling, general, and administrative expenses . . . . .	19.1	19.3	21.2	22.3	20.2
Operating income or (loss) . . . . .	(0.8)	(0.2)	(1.1)	(0.7)	1.5
Net income or (loss) before income taxes . . . . .	(2.2)	(1.3)	(2.7)	(2.3)	0.4
	Number of firms reporting				
Operating losses . . . . .	1	1	2	1	1
Net losses . . . . .	1	1	2	2	1
Data . . . . .	5 <sup>4</sup>	6	6	5	5

<sup>1</sup> The producers and their respective fiscal year ends are Dixon, Empire, Faber, Moon, and Pentech (Sept. 30); and Musgrave (Mar. 31). The data for Dixon's, Empire's, Faber's, Moon's, and Pentech's fiscal years ending Sept. 30, 1991, 1992, and 1993 are included in data for 1991, 1992, and 1993, respectively. The data for Musgrave's fiscal years ending Mar. 31, 1992, 1993, and 1994 are included in data for 1991, 1992, and 1993, respectively.

<sup>2</sup> Musgrave was unable to provide interim data.

<sup>3</sup> Cash flow is defined as net income or loss plus depreciation and amortization.

<sup>4</sup> Pentech was not a producer in fiscal 1991.

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

## Individual Company Analysis

Income-and-loss data, by company, are presented in table 10.<sup>55</sup> Product mix (type of pencil) was one of the key factors in determining profitability differences among the producers. Dixon was \*\*\*.<sup>56</sup> It produces commodity pencils, colored pencils, and specialty pencils. Moon \*\*\*, with operations consisting mostly of decorated pencils. Musgrave, which specializes in producing blanks for advertising, \*\*\*.

Pentech, which began operations in fiscal 1992, \*\*\*. Its operations are primarily decorated pencils. Pentech imports raw pencils in order to produce decorator/novelty pencils. In his posthearing brief, Mr. Kalin testified that:

As the evidence shows, Pentech uses 100% of its imports of raw pencils in the production of decorator/novelty pencils. Pentech manufactures no commodity pencils and it would be unable to manufacture commodity pencils on an economical basis using raw pencils. Not only has the decorator/novelty pencil segment of the market not been affected by the highly competitive commodity pencil segment, it has been the engine of growth for increased demand and profitability in the overall pencil industry.<sup>57</sup>

For all of the producers, except Pentech, the cost of wood is the primary cost of producing cased wooden pencils.<sup>58</sup> The wood, usually California incense cedar, is used to make the pencil sheath. Faber also manufactures pencils made out of recycled newspaper and cardboard.<sup>59</sup> Empire has been moving away from wood, using a proprietary plastic extrusion process.<sup>60</sup> Shown below is a summary of the imported raw pencil, wood, and purchased core costs in 1993 for the reporting producers (in 1,000 dollars):

\* \* \* \* \*

Empire, \*\*\*.<sup>61</sup> During the period of investigation \*\*\*.<sup>62</sup> Empire \*\*\*.<sup>63</sup> A tabulation of Empire's sales revenues and operating income/(loss), by type of pencil, is shown below (in 1,000 dollars):

\* \* \* \* \*

Faber, \*\*\*.<sup>64</sup> \*\*\*. Faber's operations consist of commodity pencils, pencil blanks, imprints, thick leads, and cased crayons. Its sales of commodity pencils, as a proportion of total sales, \*\*\*.<sup>65</sup> A tabulation of Faber's sales revenues and operating income/(loss), by type of pencil, is shown below (in 1,000 dollars).

\* \* \* \* \*

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<sup>55</sup> Income-and-loss data by type of pencil are presented in app. C.

<sup>56</sup> \*\*\*.

<sup>57</sup> Posthearing brief of Richard S. Kalin (representing Pentech), p. 7.

<sup>58</sup> The aggregate industry's cost of production is presented in app. D. Data are presented for U.S. producers, including Pentech, Pentech, and U.S. producers, excluding Pentech.

<sup>59</sup> Hearing TR, p. 46, statement by Mr. Wiedenmayer, Chairman of the Board and Chief Executive Officer of Faber.

<sup>60</sup> Hearing TR, p. 74, Mr. Spies, Senior Vice-President of Empire.

<sup>61</sup> \*\*\*.

<sup>62</sup> \*\*\*.

<sup>63</sup> Empire's data, by type of pencil, are included in the aggregate data in app. C.

<sup>64</sup> \*\*\*.

<sup>65</sup> Faber's data, by type of pencil, are included in the aggregate data in app. C.



Table 10

Income-and-loss experience of U.S. producers on their operations producing certain cased pencils, by firms, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (1,000 gross)</i>					
Net sales:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	17,611	18,520	17,620	9,309	8,651
<i>Value (1,000 dollars)</i>					
Net sales:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	138,926	158,776	171,562	85,233	84,949
Cost of goods sold:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	113,542	128,387	137,038	66,858	66,513
Gross profit or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	25,384	30,389	34,524	18,375	18,436
Selling, general, and administrative expenses:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***

Table continued on next page.

Table 10--Continued

Income-and-loss experience of U.S. producers on their operations producing certain cased pencils, by firms, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Value (1,000 dollars)</i>					
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	26,529	30,637	36,449	18,975	17,193
Operating income or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Total . . . . .	(1,145)	(248)	(1,925)	(600)	1,243
<i>Ratio to net sales (percent)</i>					
Cost of goods sold:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	81.7	80.9	79.9	78.4	78.3
Gross profit or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	18.3	19.1	20.1	21.6	21.7
Selling, general, and administrative expenses:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***

Table continued on next page.

Table 10--Continued

Income-and-loss experience of U.S. producers on their operations producing certain cased pencils, by firms, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
	Ratio to net sales ( <i>percent</i> )				
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	19.1	19.3	21.2	22.3	20.2
Operating income or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	(0.8)	(0.2)	(1.1)	(0.7)	1.5
	Value ( <i>per gross</i> )				
Net sales:					
Dixon . . . . .	\$***	\$***	\$***	\$***	\$***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	7.89	8.57	9.74	9.16	9.82
Cost of goods sold:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	6.45	6.93	7.78	7.18	7.69
Gross profit or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***

Table continued on next page.

Table 10--Continued

Income-and-loss experience of U.S. producers on their operations producing certain cased pencils, by firms, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
	Value (per gross)				
Average . . . . .	1.44	1.64	1.96	1.97	2.13
Selling, general, and administrative expenses:					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	1.51	1.65	2.07	2.04	1.99
Operating income or (loss):					
Dixon . . . . .	***	***	***	***	***
Empire . . . . .	***	***	***	***	***
Faber . . . . .	***	***	***	***	***
Moon . . . . .	***	***	***	***	***
Musgrave . . . . .	***	***	***	***	***
Average . . . . .	***	***	***	***	***
Pentech . . . . .	***	***	***	***	***
Average . . . . .	(0.07)	(0.01)	(0.11)	(0.06)	0.14

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

Faber \*\*\*.<sup>66</sup> \*\*\*. Faber and Empire are the two largest producers of commodity pencils. Both Faber and Empire sell the basic economy pencil, but Empire also produces plastic extrusion commodity pencils which sell at higher prices. Faber does not produce decorated pencils, a highly profitable product which is Pentech's only cased pencil product. Empire initiated production of decorated pencils in 1993. As noted in the pricing section, retailers attempt to buy economy pencils at the lowest price possible.<sup>67</sup> Mr. Robert Spies, Senior Vice-President of Empire, testified that

"Mass market purchases [sic] generally buy pencils for back to school or general household use. These pencils have traditionally been the lowest priced pencils in the market. And, not surprisingly, the mass market is where imports have made their strongest inroads."<sup>68</sup>

<sup>66</sup> Faber's data were verified by the staff, with no significant modifications.

<sup>67</sup> P. I-84.

<sup>68</sup> Hearing TR, p. 32.

## Investment in Productive Facilities and Net Return on Assets

Data on assets and return on assets for the six producers are shown in table 11.

Table 11

Value of assets and return on assets of U.S. producers' operations producing certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	As of the end of fiscal year--			As of June 30--	
	1991	1992	1993	1993	1994
<hr/>					
	Value (1,000 dollars)				
<hr/>					
All products:					
Fixed assets:					
Original cost:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	108,125	99,071	109,825	101,934	111,315
Book value:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	46,905	53,283	56,261	54,849	56,238
Total assets: <sup>1</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	201,284	217,222	217,204	266,437	251,730
Certain cased pencils:					
Fixed assets:					
Original cost:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	41,047	44,808	50,618	45,471	50,548
Book value:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	19,196	20,244	22,901	21,900	24,113
Total assets: <sup>2</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	84,564	88,786	92,588	108,765	110,080
<hr/>					
	Return on fixed assets (percent) <sup>3</sup>				
<hr/>					
All products:					
Operating return: <sup>4</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	66.7	49.9	44.5	46.9	44.4

See footnotes at end of table.

Table 11--Continued

Value of assets and return on assets of U.S. producers' operations producing certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	As of the end of fiscal year--			As of June 30--	
	1991	1992	1993	1993	1994
Return on fixed assets (percent) <sup>3</sup>					
Net return: <sup>5</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	41.1	34.5	26.6	33.8	38.1
Certain cased pencils:					
Operating return: <sup>4</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	(6.6)	(1.2)	(8.4)	(5.5)	10.3
Net return: <sup>5</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	(17.9)	(10.5)	(20.0)	(17.7)	2.8
Return on total assets (percent) <sup>3</sup>					
All products:					
Operating return: <sup>4</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	15.0	12.2	11.5	9.6	9.9
Net return: <sup>5</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	9.3	8.5	6.9	7.0	8.5
Certain cased pencils:					
Operating return: <sup>4</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	(1.4)	(0.3)	(2.1)	(1.1)	2.3
Net return: <sup>5</sup>					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Average . . . . .	(3.8)	(2.4)	(5.0)	(3.6)	0.6

<sup>1</sup> Defined as book value of fixed assets plus current and noncurrent assets.

<sup>2</sup> Total establishment assets are apportioned, by firm, to product groups on the basis of the ratio of the respective book values of fixed assets.

<sup>3</sup> Computed using data from only those firms supplying both asset and income-and-loss information and, as such, may not be derivable from data presented. Data for the partial-year periods are calculated using annualized income-and-loss information.

<sup>4</sup> Defined as operating income or loss divided by asset value.

<sup>5</sup> Defined as net income or loss divided by asset value.

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

## Capital Expenditures

Data on capital expenditures by the six producers are shown in table 12.

Table 12

Capital expenditures by U.S. producers of certain cased pencils, by products, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

(In 1,000 dollars)					
Item	1991	1992	1993	Jan.-June-- 1993	1994
All products:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	9,935	13,631	11,901	6,993	6,342
Certain cased pencils:					
Pentech . . . . .	***	***	***	***	***
All other producers . . . . .	***	***	***	***	***
Total . . . . .	5,424	4,391	5,579	3,821	3,068

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

## Research and Development Expenses

Research and development expenditures are shown in table 13. \*\*\* and \*\*\* were the only two producers to report such expenses.

Table 13

Research and development expenses of U.S. producers of certain cased pencils, by products, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

## Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of cased pencils from China and/or Thailand on their growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix E.

## CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors<sup>69</sup>--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

---

<sup>69</sup> Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."



(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.<sup>70</sup>

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in these investigations; information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Alleged Material Injury to an Industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above), and any dumping in third-country markets, follows. Other threat indicators have not been alleged or are otherwise not applicable.

### **U.S. Importers' Inventories**

Reported data on U.S. importers' end-of-period inventories of cased pencils are shown in table 14. Fifteen firms, including producers Dixon and Pentech, reported having end-of-period inventories of imports during the period for which information was requested. U.S. importers' end-of-period inventories of cased pencils from all sources increased by 309 percent from 1991 to 1993 and rose nearly threefold from interim 1993 to interim 1994. The ratio of inventories to imports was virtually unchanged at 37 percent in 1991 and 1992 but then increased by 11 percentage points in 1993 and almost doubled from interim 1993 to interim 1994, increasing from 28.9 percent to 56.0 percent.

### **Chinese-Produced Pencils**

Reported end-of-period inventories of Chinese-produced cased pencils increased by 50.9 percent from 1991 to 1992, rose by 176.3 percent from 1992 to 1993, and increased by 309.7 percent from interim 1993 to interim 1994. The ratio of inventories to imports fell from 54.9 percent in 1991 to 40.4 percent in 1992, increased to 48.6 percent in 1993 and rose to 56.3 percent in interim 1994 from 28.4 percent in interim 1993. The ratio of inventories to total shipments, on the other hand, increased steadily over the same period, rising by 12 percentage points from 1991 to 1992 and increasing by 23 percentage points from 1992 to 1993. Between the interim periods, the ratio jumped more than 67 percentage points, increasing from 29.3 percent in interim 1993 to 96.5 percent in interim 1994. The composition of reported inventories in 1993 was as follows: raw pencils, 59 percent; commodity pencils, 16 percent; decorated pencils, 14 percent; and all other types 11 percent. \*\*\* accounted for \*\*\* percent of the reported inventories of \*\*\* in 1991 and 1992 and \*\*\* percent of the total in 1993 and interim 1994.

### **Thai-Produced Pencils**

As shown in table 14, U.S. importers' end-of-period inventories of cased pencils produced in Thailand were small relative to U.S. importers' total inventories from all sources. Although the ratio of inventories to imports and the ratio of inventories to total shipments increased steadily throughout the period for which information was requested, both ratios were far below those for China and other sources.

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<sup>70</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table 14

Certain cased pencils: End-of-period inventories of U.S. importers, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (1,000 gross)</i>					
China/Hong Kong . . . . .	383	578	1,597	619	2,536
Thailand . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Other sources . . . . .	***	***	***	***	***
Total . . . . .	431	663	1,764	708	2,719
<i>Ratio to imports (percent)</i>					
China/Hong Kong . . . . .	54.9	40.4	48.6	28.4	56.3
Thailand . . . . .	3.4	6.4	7.5	14.0	16.1
Average . . . . .	52.8	39.3	48.1	28.0	55.8
Other sources . . . . .	11.2	28.3	54.5	40.7	59.2
Average . . . . .	37.6	37.5	48.6	28.9	56.0
<i>Ratio to total shipments of imports (percent)</i>					
China/Hong Kong . . . . .	35.0	46.7	69.8	29.3	96.5
Thailand . . . . .	3.1	6.5	6.7	16.7	23.8
Average . . . . .	32.4	45.3	68.6	29.0	95.3
Other sources . . . . .	11.1	25.9	55.7	36.0	37.5
Average . . . . .	21.5	42.0	67.5	29.5	91.1

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information. Part-year inventory ratios are annualized.

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

### U.S. Importers' Current Orders

In the Commission's questionnaire, U.S. importers were asked to report future contracts for importing certain cased pencils from China and Thailand after June 30, 1994. Seven importers reported orders that were scheduled for delivery after June 30, 1994. One importer reported an order of cased pencils due for delivery from Thailand in July totaling \*\*\* gross. Orders for Chinese-produced cased pencils totaled \*\*\* gross and were scheduled for arrival in the United States from July through September 1994.

### Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

This section of the report is based on information supplied by Anhui Stationery Co., Ltd. (Anhui), China First Pencil Co., Ltd. (China First), Guangdong Stationery & Sporting Goods I/E Corp. (Guangdong), Shanghai Foreign Trade Corp. (SFTC), Shanghai Lansheng Corp. (SLC), and Shanghai Three Star Stationery Industry Corp. (Shanghai Three Star), producers and/or exporters of the subject

merchandise in China, and Aruna Co., Ltd., a producer/exporter of the subject merchandise in Thailand.<sup>71</sup>

### The Industry in China

The Chinese pencil industry is heavily labor-intensive and uses significant amounts of energy and raw materials in the production process.<sup>72</sup> Chinese pencils are mainly produced from basswood or lindenwood<sup>73</sup> although some jelutong wood from Indonesia is also used. These raw materials are less expensive than the California incense cedar used by U.S. pencil producers. According to petitioners, the Chinese capacity to produce cased pencils is virtually limitless.<sup>74</sup>

Data supplied by counsel on behalf of Anhui, China First, Guangdong, SFTC, SLC, and Shanghai Three Star on these firms' cased pencil operations are shown in table 15. Guangdong, SFTC, and SLC are not producers but only exporters of the subject merchandise. Production capacity, production, and inventory data shown in the table, therefore, are for Anhui, China First, and Shanghai Three Star, while shipment data are for all six firms.

Table 15

Certain cased pencils: Anhui, China First, Guangdong, SFTC, SLC, and Shanghai Three Star's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

\* \* \* \* \*

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

Reported Chinese cased pencil production capacity increased by \*\*\* percent from 1991 to 1992, increasing from \*\*\* gross to \*\*\* gross. Production capacity remained unchanged from 1992 to 1993 and from interim 1993 to interim 1994. Reported production rose unevenly by \*\*\* percent from 1991 to 1993 and increased by \*\*\* percent from interim 1993 to interim 1994. Reported total shipments, the bulk of which consisted of home market shipments, increased by \*\*\* percent from 1991 to 1993 and rose by \*\*\* percent from interim 1993 to interim 1994.<sup>75</sup> As a share of total shipments, reported exports to the United States increased from \*\*\* percent in 1991 to \*\*\* percent in 1993, and increased from \*\*\* percent in interim 1993 to \*\*\* percent in interim 1994.<sup>76</sup> End-of-period inventories held by

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<sup>71</sup> The Commission requested information from the U.S. Embassies in Beijing and Bangkok; the Embassy in Beijing contacted the Shanghai Municipal Foreign Economic and Trade Commission (SMERT) and was told that the U.S. law firm representing certain of the Chinese producers advised SMERT that the requested information would be submitted by the law firm on behalf of its clients. The Embassy in Bangkok provided limited information.

<sup>72</sup> The majority of the production costs are reportedly accounted for by the costs of raw materials, labor wages, and energy; petition, p. 27.

<sup>73</sup> The Chinese and Thai producers reportedly have access to virtually unlimited quantities of such woods. In Northern China, these woods are harvested without regard for environmental consequences, often by military units. Many Chinese pencil producers are believed to be supplied with wood free of charge or at minimal cost; petitioners' postconference brief, p. 35; conference TR, p. 79.

<sup>74</sup> Conference TR, p. 49.

<sup>75</sup> As a share of overall establishment sales, cased pencils accounted for \*\*\* percent of Anhui's total sales in its most recent fiscal year; \*\*\* percent of China First's total sales; \*\*\* percent of Guangdong's total sales; \*\*\* percent of SFTC's total sales; \*\*\* percent of SLC's total sales; and \*\*\* percent of Shanghai Three Star's total sales.

<sup>76</sup> In Apr. 1994, Mexico imposed a 451-percent dumping duty on pencils imported from China. Petitioners argue that the dumping order imposed by Mexico will cause China to divert its exports away from the Mexican market to the market in the United States. However, the Chinese respondents argue that no such diversion is likely (continued...)

the three Chinese producers declined by \*\*\* percent from 1991 to 1992, by \*\*\* percent from 1992 to 1993, and by \*\*\* percent from interim 1993 to interim 1994.

In terms of future operations, Anhui's questionnaire response indicated that \*\*\*. China First's plan to acquire several local pencil producers was derailed following a breakdown in negotiations. These acquisitions would have enabled China First to expand its production capacity to approximately 800 million pencils.<sup>77</sup> Nonetheless, the company's plans to build a new factory dedicated principally to the production of nonsubject mechanical pencils appear to be on track. A limited quantity of "high-quality" wood-cased pencils will also be produced at the new factory.<sup>78</sup> Guangdong, SFTC, SLC, and Shanghai Three Star did not supply projected 1994-95 data on their pencil operations.

As shown in figure 8, raw pencils accounted for the vast majority of cased pencils exported to the United States from China by the reporting producers/exporters in 1993, followed distantly by commodity pencils, cased crayons (colored pencils), and decorated pencils. Based on information supplied in the questionnaire responses of the Chinese respondents, the United States was the only export market for Chinese-produced raw pencils. Although the data do not precisely agree, a comparison of the data reported by the Chinese producers/exporters and the data supplied by Pentech in its importer's questionnaire response appears to indicate that Pentech is the primary recipient of the Chinese exports, as shown in the following tabulation (in 1,000 gross):

\* \* \* \* \*

Figure 8  
Certain cased pencils: Exports from China, by types, 1993

\* \* \* \* \*

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

### The Industry in Thailand<sup>79</sup>

The U.S. Embassy in Bangkok identified three Thai firms that manufacture cased pencils for export: Aruna Co., Ltd. (Aruna) (manufactures Mitsubishi brand pencils); Nan Mee Industry Co., Ltd. (manufactures Horse brand pencils); and S.N. Siamagraph Co., Ltd. (manufactures Panda brand pencils but is not currently exporting pencils to the United States). A fourth producer, Bensia Co., Ltd., produces nonsharpening pencils.<sup>80</sup> In briefs submitted in connection with these investigations, respondent

<sup>76</sup> (...continued)

since Mexico is a relatively minor market in terms of overall exports. To bolster this claim, counsel to the Chinese respondents supplied the Commission with data, provided through the Shanghai Commission on Foreign Trade and Economic Cooperation by the Chinese Ministry of Foreign Trade & Economic Cooperation, on Chinese exports of pencils to Central and South America in 1993. These data show that Mexico accounted for \*\*\* percent of the volume and \*\*\* percent of the value of Chinese pencil exports to markets in Latin America in 1993. (See submission dated Sept. 6, 1994, filed by Debevoise & Plimpton on behalf of Chinese respondents, Francis J. Sailer and Ariadne D. Makris of counsel.)

<sup>77</sup> Hearing TR, pp. 139-141.

<sup>78</sup> Ibid., p. 140.

<sup>79</sup> Thailand has competitive advantages vis-a-vis the United States based on its low-cost labor and its use of jelutong wood, a cheaper raw material than incense cedar, but the quality of its pencils is believed to be inferior to those produced in the United States; Report to the President on Invs. Nos. TA-131-18, 503(a)-23, and 332-319, ITC Pub. 2491, Mar. 1992.

<sup>80</sup> Based on information supplied by the U.S. Embassy, Bensia's annual pencil production capacity did not exceed \*\*\* gross between 1991 and the first 6 months of 1994. Similarly, its annual exports of pencils to the United States during the same period topped out at \*\*\* gross.

GOT poses the argument, using as its reasoning descriptive language contained in the petition,<sup>81</sup> that such nonsharpening pencils should be regarded as nonsubject pencils.<sup>82</sup>

The Government of Thailand believes that Aruna is Thailand's major exporter of the subject merchandise to the United States.<sup>83</sup> Based on information supplied on behalf of Aruna, the bulk of its exports to the United States between 1991 and the first 6 months of 1994 consisted of cased crayons or colored pencils. As shown in table 16, Aruna's production capacity \*\*\* from 1991 to 1993 and is projected to \*\*\*. Aruna indicated \*\*\*. Although Aruna's export shipments to the United States \*\*\* from 1991 to 1993, such exports represented \*\*\* of its total shipments during the period and are projected to \*\*\*.

Table 16

Certain cased pencils: Aruna's capacity, production, inventories, capacity utilization, and shipments, 1991-93, Jan.-June 1993, Jan.-June 1994, and projected 1994-95

\* \* \* \* \*

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

## CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

### U.S. Imports

Commission questionnaires were sent to 99 firms believed to be importing cased pencils.<sup>84</sup> Usable data were supplied by 30 firms, 27 of which reported imports of cased pencils from China, either directly or via Hong Kong, during the period for which information was requested. Three of the 27 firms also reported data on their imports of pencils from Thailand. For a number of reasons, the sum of U.S. imports from China and Thailand as reported in questionnaire responses falls considerably short of U.S. imports as shown in official statistics of Commerce. By way of illustrating the magnitude of the differences in the data, figure 9 presents three sets of data from three different sources: official U.S. statistics, questionnaire responses, and Government of China export statistics. As shown in the figure, the magnitude of the difference between the quantity of U.S. imports from China as reported in questionnaire responses and as reflected in Chinese Government statistics was relatively small in most

<sup>81</sup> Respondent GOT's prehearing brief at pp. 13 and 14. See also respondent's posthearing brief at pp. 4 and 5 and hearing testimony of Mr. Kenneth J. Pierce, of counsel (hearing TR, pp. 164 and 165).

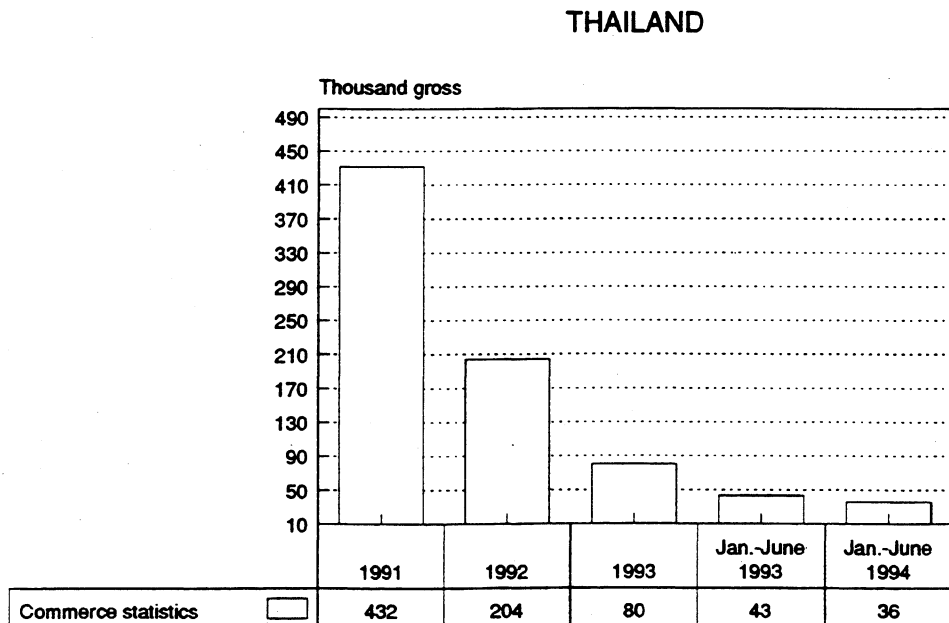
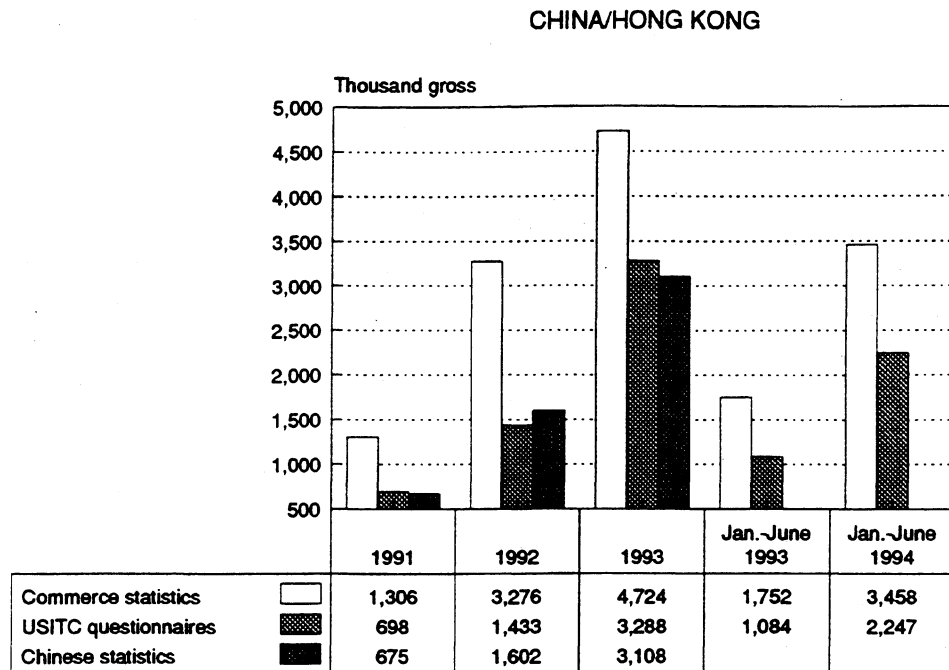
<sup>82</sup> At the Commission's hearing, staff was requested to communicate with Commerce to confirm whether it shared the view held by respondent GOT that Bensia's nonsharpening pencils are in fact nonsubject merchandise for the purposes of these investigations. Commerce staff indicated that it holds no particular view with respect to the Bensia pencils since neither Bensia nor any other Thai producer cooperated in its investigations (telephone conversation between Woodley Timberlake of the Commission's staff and Mr. Vincent Kane, Office of Countervailing Investigations, International Trade Administration, Sept. 7, 1994). As a followup, staff, on Sept. 9, 1994, contacted the New York regional office of the U.S. Customs Service to inquire whether or not it was Customs' view that, when and if entered or withdrawn from warehouse, Bensia pencils would be subject to Commerce's suspension of liquidation order. According to the view of James Smyth, national import specialist for pens and pencils, Bensia's nonsharpening pencils are subject to the order. On Sept. 12, 1994, the Commission sent a letter to the area director of the New York region requesting confirmation of this opinion.

<sup>83</sup> Aruna estimates that in the first 6 months of 1994 it accounted for \*\*\* percent of total production of cased pencils in Thailand. Aruna estimates that its exports to the United States in 1993 accounted for \*\*\* percent of total exports to the United States from Thailand. Information developed by Commerce in the course of its investigation indicated that Aruna accounted for at least 60 percent of the exports from Thailand to the United States during the period of its investigation.

<sup>84</sup> Twenty-two firms were identified in the petition as importing the subject merchandise from China and Thailand.

Figure 9

Certain cased pencils: U.S. imports from China and Thailand based on various data sources, by quantity, 1991-93, Jan.-June 1993, and Jan.-June 1994



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

periods. However, the quantity of U.S. imports based on official Commerce statistics greatly exceeds both the data reflected in Commission questionnaires and official Chinese Government statistics. A similar problem exists with respect to U.S. imports from Thailand.<sup>85</sup>

Data on U.S. imports of cased pencils based on official U.S. statistics are shown in table 17. The quantity and value of U.S. imports from all sources rose steadily from 1991 to 1993 and increased further from interim 1993 to interim 1994. Such imports increased from 3.1 million gross, valued at \$32.6 million, in 1991 to 6.7 million gross, valued at \$47.6 million, in 1993, an increase of 117.4 percent in quantity and 46.1 percent in value. Between the interim periods, U.S. imports from all sources increased by 46.6 percent in quantity and rose by 19.2 percent in value.

#### **China<sup>86</sup>**

The quantity and value of U.S. imports of cased pencils from China/Hong Kong rose significantly from 1991 to 1993, increasing from 1.3 million gross, valued at \$9.0 million, in 1991 to 4.7 million gross, valued at \$21.7 million, in 1993, representing increases of 261.7 percent in quantity and 140.2 percent in value over the period. Such imports also rose sharply between the interim periods, increasing by 97.4 percent in quantity and 27.5 percent by value from interim 1993 to interim 1994. The unit values of such imports from China/Hong Kong decreased sharply over the same period, falling by 33.6 percent from 1991 to 1993 and dropping by 35.4 percent between the interim periods.

Figure 10 shows U.S. imports of cased pencils from China on a month by month basis covering the period January 1992 through June 1994. Noticeable from the data is the significant increase in the monthly volume of U.S. imports during January-April 1994 compared with comparable periods in 1992 and 1993, and the sharp decline in May 1994.

#### **Thailand**

The quantity and value of U.S. imports of cased pencils from Thailand fell steadily from 1991 to 1993 and continued this trend between the interim periods. Conversely, the unit value of such imports rose by 32.3 percent from 1991 to 1992 and increased by 63.6 percent from 1992 to 1993. The unit value fell by 16.4 percent between the interim periods. As a share of the quantity of total U.S. imports, imports from Thailand declined from 13.9 percent in 1991 to 1.2 percent in 1993 and fell to 0.8 percent in interim 1994.

### **Market Penetration by the Subject Imports**

The market shares of U.S. producers and imports from China, Thailand, and all other sources, based on apparent U.S. consumption of cased pencils, are presented in table 18 and figure 11. Apparent consumption is calculated from U.S. shipment data provided in response to Commission questionnaires and from imports provided in official statistics.

The U.S. producers' share of the quantity of apparent consumption, based on U.S. producers' shipments of finished product of U.S. origin, fell from 84.0 percent in 1991 to 68.5 percent in 1993 and dropped from 72.7 percent in interim 1993 to 61.4 percent in interim 1994. By value, the U.S. producers' market share fell from 79.9 percent in 1991 to 76.3 in 1993 and declined from 76.6 percent in interim 1993 to 73.0 percent in interim 1994.

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<sup>85</sup> Counsel for the Government of Thailand argues that the official statistics of Commerce for imports of the subject merchandise from Thailand are grossly overstated and that the Government of Thailand's export statistics should be used instead. Counsel argues that nonsubject merchandise (e.g., sets, mechanical type pencils, wax crayons, etc.) are included in Commerce's official statistics. (Respondent's (Thailand) postconference brief, pp. 5-21; exhibits 1-11).

<sup>86</sup> The imports reported from Hong Kong in official statistics are believed to be transshipments of Chinese pencils (although some pencils may also be from Taiwan) since cased pencils are not produced in Hong Kong. Nearly all of the importers that responded to the Commission's questionnaires indicated that some or all of their imports of Chinese pencils were through Hong Kong.

Table 17

Certain cased pencils: U.S. imports, by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994

Item	1991	1992	1993	Jan.-June-- 1993	1994
<i>Quantity (1,000 gross)</i>					
China . . . . .	1,230	3,241	4,646	1,726	3,448
Hong Kong . . . . .	76	35	78	26	10
Subtotal . . . . .	1,306	3,276	4,724	1,752	3,458
Thailand . . . . .	432	204	80	43	36
Subtotal <sup>1</sup> . . . . .	1,738	3,481	4,804	1,795	3,494
Other sources <sup>2</sup> . . . . .	1,359	1,438	1,929	1,175	859
Total . . . . .	3,098	4,918	6,734	2,970	4,353
<i>Value (1,000 dollars)<sup>3</sup></i>					
China . . . . .	8,429	17,412	21,200	9,033	11,709
Hong Kong . . . . .	601	546	491	214	79
Subtotal . . . . .	9,029	17,957	21,691	9,247	11,788
Thailand . . . . .	993	620	399	243	171
Subtotal <sup>1</sup> . . . . .	10,022	18,578	22,089	9,490	11,959
Other sources <sup>2</sup> . . . . .	22,558	28,146	25,516	13,931	15,966
Total . . . . .	32,580	46,724	47,605	23,421	27,925
<i>Unit value (per gross)</i>					
China . . . . .	\$6.85	\$5.37	\$4.56	\$5.23	\$3.40
Hong Kong . . . . .	7.93	15.39	6.31	8.35	7.59
Average . . . . .	6.91	5.48	4.59	5.28	3.41
Thailand . . . . .	2.30	3.04	4.97	5.72	4.78
Average . . . . .	5.77	5.34	4.60	5.29	3.42
Other sources <sup>2</sup> . . . . .	16.59	19.58	13.22	11.86	18.58
Average . . . . .	10.52	9.50	7.07	7.89	6.41

<sup>1</sup> Subtotals not including Hong Kong are 1,662,585 gross/\$9.42 million in 1991; 3,445,201 gross/\$18.03 million in 1992; 4,726,326 gross/\$21.60 million in 1993; 1,768,930 gross/\$9.28 million in interim 1993; and 3,483,788 gross/\$11.88 million in interim 1994.

<sup>2</sup> Imports of pencils from nonsubject countries such as Japan and Germany tend to be sold in specialty markets, or feature licensed characters or logos. Taiwan was traditionally a major supplier of low-priced pencils and continues to supply such pencils to the U.S. market.

<sup>3</sup> C.i.f. duty-paid value.

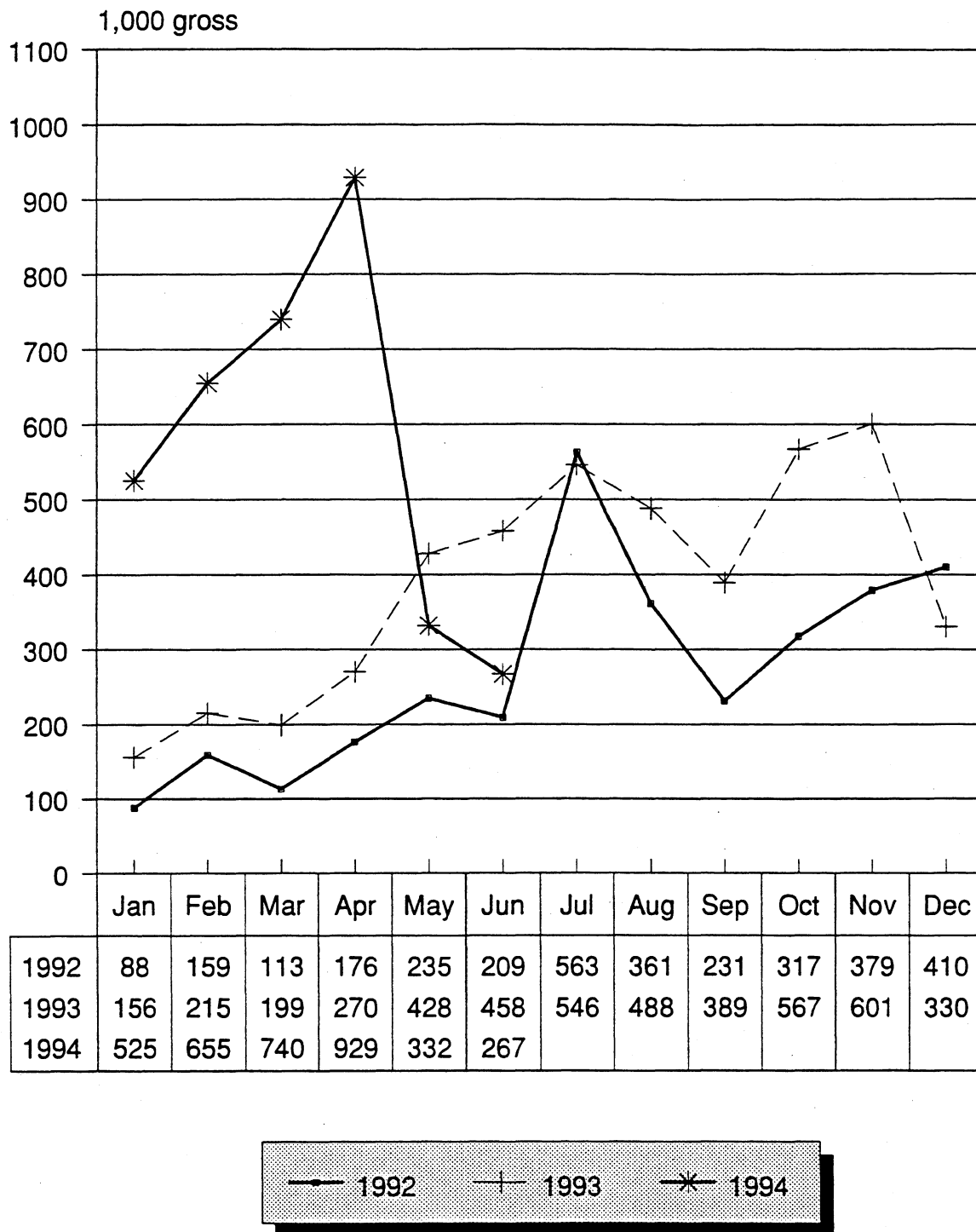
Note.--Because of rounding, figures may not add to the totals shown; unit values are calculated from unrounded figures.

Source: Compiled from official statistics of the U.S. Department of Commerce.



Figure 10

Certain cased pencils: U.S. imports from China, by months, Jan. 1992-June 1994



Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 18

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

Item	(In percent)				
	1991	1992	1993	Jan.-June-- 1993	1994
Share of the quantity of U.S. consumption					
Domestic production:					
Producers' U.S. shipments of finished product:					
Pentech . . . . .	***	***	***	***	***
All other firms . . . . .	***	***	***	***	***
Total . . . . .	***	***	***	***	***
U.S. imports of foreign-origin raw pencils from--					
China/Hong Kong . . . . .	***	***	***	***	***
Thailand . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Other sources . . . . .	***	***	***	***	***
Total . . . . .	***	***	***	***	***
Producers' U.S. shipments of finished product of U.S. origin . . . . .	84.0	76.9	68.5	72.7	61.4
U.S. imports from--					
China/Hong Kong . . . . .	6.8	15.4	22.1	16.1	30.7
Thailand . . . . .	2.2	1.0	.4	.4	.3
Subtotal . . . . .	9.0	16.4	22.5	16.5	31.0
Other sources . . . . .	7.0	6.8	9.0	10.8	7.6
Total . . . . .	16.0	23.1	31.5	27.3	38.7
Share of the value of U.S. consumption					
Domestic production:					
Producers' U.S. shipments of finished product:					
Pentech . . . . .	***	***	***	***	***
All other firms . . . . .	***	***	***	***	***
Total . . . . .	***	***	***	***	***
U.S. imports of foreign-origin raw pencils from--					
China/Hong Kong . . . . .	***	***	***	***	***
Thailand . . . . .	***	***	***	***	***
Subtotal . . . . .	***	***	***	***	***
Other sources . . . . .	***	***	***	***	***
Total . . . . .	***	***	***	***	***
Producers' U.S. shipments of finished product of U.S. origin . . . . .	79.9	75.5	76.3	76.6	73.0

See footnote at end of table.

Table 18--Continued

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

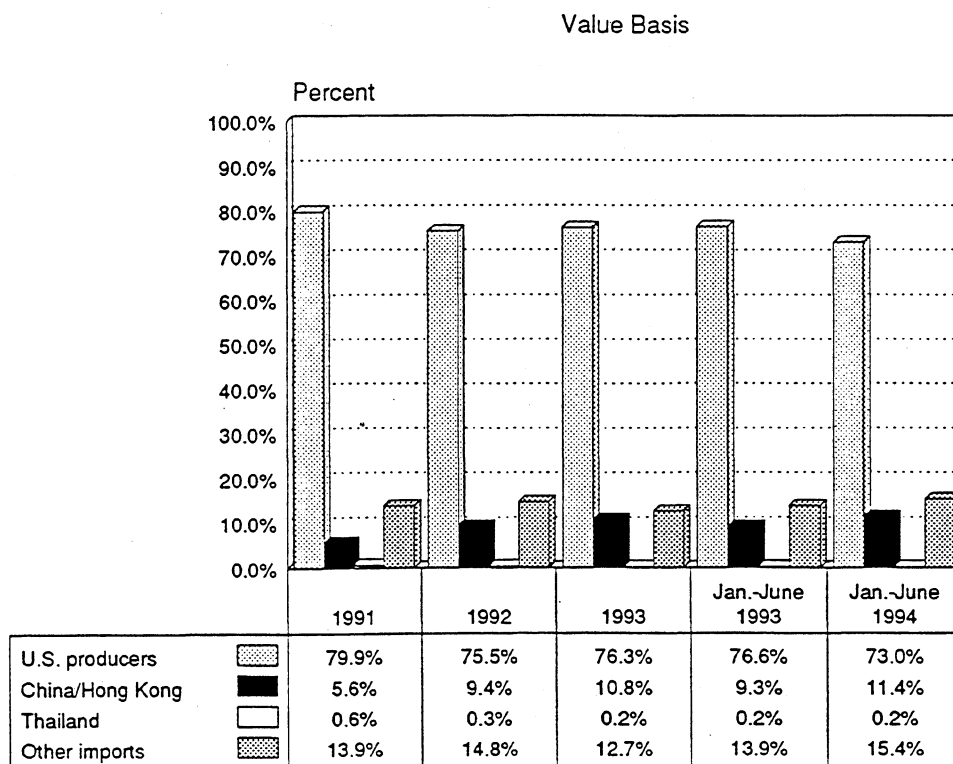
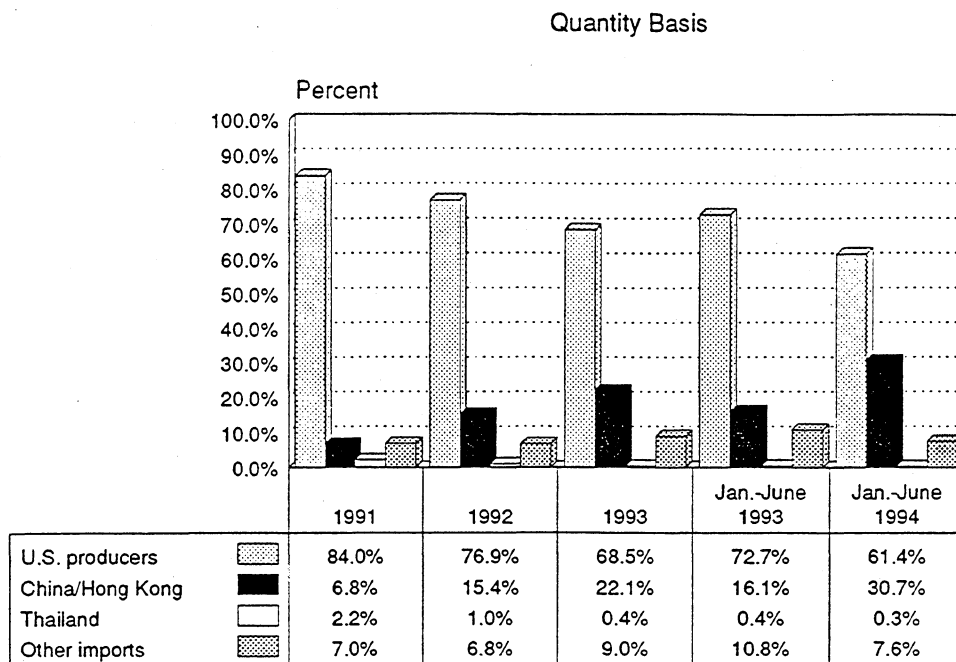
Item	(In percent)				
	1991	1992	1993	Jan.-June-- 1993	1994
	Share of the value of U.S. consumption				
U.S. imports from--					
China/Hong Kong . . . . .	5.6	9.4	10.8	9.3	11.4
Thailand . . . . .	.6	.3	.2	.2	.2
Subtotal . . . . .	6.2	9.7	11.0	9.5	11.5
Other sources . . . . .	13.9	14.8	12.7	13.9	15.4
Total . . . . .	20.1	24.5	23.7	23.4	27.0

<sup>1</sup> Positive figure, but less than significant digits displayed.

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

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

Figure 11  
 Certain cased pencils: Shares of U.S. consumption,  
 by sources, 1991-93, Jan.-June 1993, and Jan.-June 1994



Source: Table 18.

## China

The market share of imports from China based on the quantity of apparent U.S. consumption increased from 6.8 percent in 1991 to 22.1 percent in 1993 and increased from 16.1 percent in interim 1993 to 30.7 percent in interim 1994. As a share of the value of apparent U.S. consumption, U.S. imports from China rose similarly (at lower levels), increasing from 5.6 percent in 1991 to 10.8 percent in 1993 and rising from 9.3 percent to 11.4 percent from interim 1993 to interim 1994.

## Thailand

The market share of U.S. imports from Thailand, based on the quantity of apparent consumption, fell from 2.2 percent in 1991 to 0.4 percent in 1993 and decreased from 0.4 percent in interim 1993 to 0.3 percent in interim 1994. The Thai share of the value of apparent consumption fell and increased similarly (also at lower levels), declining from 0.6 percent in 1991 to 0.2 percent in 1993 and remaining at 0.2 percent in interim 1993 and interim 1994.

## Prices

### Marketing Characteristics

The demand for pencils tends to be seasonal and is influenced by population changes, especially in the school-age (kindergarten through 12th grade) population category.<sup>87</sup> As the general and school-age population increases, demand for pencils increases. Since 1991, consumption of pencils in the United States increased by over 2.0 million gross pencils (10.5 percent) while the overall U.S. population increased by 5.8 million (2.3 percent) and the school-age sector of the population increased by 1.0 million (1.5 percent).<sup>88</sup> This growth in demand was apparent not only in the standard, black-lead commodity pencil (i.e., the yellow No. 2) but also in specialty pencils.<sup>89</sup>

Pencils are sold through virtually all channels of distribution within the mass merchant and office products markets, including wholesalers, office supply superstores, mail-order catalogs, retail mass marketers, advertisement specialty dealers, and major discount stores. While sales to office supply wholesalers have traditionally been the most profitable for U.S. producers, significant changes in this market segment are occurring. As stated earlier, smaller regional distributors are being supplanted by larger nationwide wholesalers and this has placed downward pressure on pencil prices as larger buyers demand lower prices for the increased volume of pencils purchased.<sup>90</sup>

### Pricing Practices

Pencils are priced differently according to the pencil type (e.g., commodity, carpenter, colored, specialty, etc.), the quality of the specific pencil, the size of the order, and the required packaging (i.e., blister-wrapped packages for retail sales or boxed in bulk). Pencils are generally sold on a delivered basis and typically priced by the gross by both U.S. producers and importers. Pencils sold through the retail mass market will typically be sold in blister-wrapped packages containing many configurations, e.g., 3, 5, 10, 12, or 20 pencils per pack. U.S. producers reported that their average lead times generally ranged between 7 and 14 days whereas U.S. importers reported lead times ranging between 1 and 4 weeks for product from inventory and between 2 and 4 months for new pencil orders. Sales terms typically ranged from a 1-percent discount if paid within 30 days to a 2-percent discount if paid within 45 days for U.S. producers and net 30 days to a 2-percent discount if paid within 30 days for U.S. importers. Nearly all of the U.S. producers and importers reported that transportation

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<sup>87</sup> The demand is seasonal in that a large portion of pencils are sold in the mid to late summer for the back-to-school season.

<sup>88</sup> Statistical Information Office, Bureau of the Census.

<sup>89</sup> Specialty pencils are those that are decorated with characters, designs, and shapes. \*\*\* reported that the demand for decorator pencils continues to increase dramatically, which provides opportunities for domestic producers to penetrate this lucrative market.

<sup>90</sup> Hearing TR, pp. 35 and 102.

costs are not considered an important factor in the sale of pencils and ranged generally between 2 and 5 percent of the total price of the product.

### *Product Types*

U.S. producers reported selling the full range of pencil products including commodity, colored, carpenter, drafting, golf and specialty pencils, and pencil blanks. U.S. importers of the Chinese products reported that they sell primarily low-priced commodity pencils (the economy pencil), specialty pencils, and pencil blanks.<sup>91</sup> U.S. importers of the Thai product reported that they sell primarily colored pencils. Respondents argue that the U.S. pencil market consists of several submarkets (based on pencil types) which have slightly different demand characteristics and thus, competition across market segments is more limited than competition within market segments. Information indicates that there are differences in the types of firms that purchase pencils; some firms are more interested in the price of the product and are willing to accept a lower quality product to obtain a lower price.<sup>92</sup> On the other hand, some purchasers (such as office supply buyers) are willing to pay a higher price for pencils in order to get a higher quality product.<sup>93</sup>

One U.S. producer, Pentech, imports raw pencils from China as an input for its U.S.-produced specialty pencil. Raw pencils are nonlacquered wood-cased pencils. Pentech reported that the cost of the raw pencil represents only \*\*\* percent of the value of its finished specialty pencil.<sup>94</sup> Pentech then adds a markup of nearly \*\*\* percent for the final selling price.<sup>95</sup> Although raw pencils are not sold by U.S. producers, they argue that the cost of the lacquering process is a small portion of the cost of the pencil blank.<sup>96</sup>

Although as a group, U.S. producers offer a full line of pencil products, each producer may specialize in a specific type of pencil. The three largest producers, Faber, Empire, and Dixon, offer primarily the standard, black-lead, commodity pencil. Moon and Pentech concentrate primarily in the higher priced specialty pencils.<sup>97</sup> One U.S. producer, Musgrave, reported that it sells primarily pencil blanks, or finished pencils without any writing on them, to advertising specialty companies who will imprint some form of advertisement or promotion. The larger U.S. producers also reported producing pencil blanks but stated that this product is a minor portion of their business, sold mainly to keep up their pencil-making capacity.

U.S. producers have alleged that the imported products from China and Thailand compete, for the most part, within the standard, black-lead commodity pencil category, and specifically with the lowest priced pencil in this category, the economy pencil. Commodity pencils as a category vary according to the quality of the pencil and its price. U.S. producers reported that prices for commodity pencils range from \$\*\*\* to \$\*\*\* per gross. Higher priced commodity pencils have a better quality wood casing, ferrule, and eraser, and have a smoother lead. The lower priced economy pencil is the low-end, standard, yellow No. 2 pencil and is typically targeted for the back-to-school market segment. At the preliminary conference, Erik Jorganson, chairman of Faber, reported that prices for a specific pencil type do not influence prices for other types of pencils.<sup>98</sup> For example, prices for commodity pencils do not influence prices for specialty pencils or carpenter pencils. However, U.S. producers argued that

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<sup>91</sup> Some importers reported that the specialty pencils they import from China consist of a Taiwan-produced pencil and a Chinese-produced topper such as a troll head for the top of the pencil. The topper is attached in China.

<sup>92</sup> Jim Moon, Executive Vice President of Moon, reported that the mass market and the low-end economy school market are almost entirely price-driven and quality differences between domestic and Chinese or Thai pencils do not greatly influence purchasers (hearing TR, pp. 50-51).

<sup>93</sup> Empire reported that the office supply purchasers are becoming more concerned with price and less concerned with quality (hearing TR, p. 73).

<sup>94</sup> Pentech's postconference brief, p. 5.

<sup>95</sup> Field trip to Pentech, Nov. 24, 1993, and conference TR, p. 165.

<sup>96</sup> Empire reported that lacquering adds approximately \*\*\* percent to the cost of a finished wood-cased pencil blank. However, a finished wood-cased pencil blank is not only a lacquered raw pencil, but also has a ferrule and an eraser, \*\*\*. Pentech reported that the cost of the raw pencil represents approximately \*\*\* percent of the cost of an equivalent finished pencil blank, deducting the cost for decoration (telephone interview, Dec. 13, 1993).

<sup>97</sup> Dixon and Empire also produce specialty pencils. Faber attempted to enter this market but did not succeed.

<sup>98</sup> Conference TR, pp. 90-91.

prices for the different-quality pencils being sold within the commodity pencil segment can be influenced by pricing tactics for the low-end economy pencil.

Similar to the commodity pencil, specialty pencils also vary widely in price but not necessarily due to differing levels of quality. Rather, specialty pencil prices can range widely depending on the complexity of the specific design or the type of the topper attached at the top of the pencil. Some U.S. importers reported purchasing specialty pencils with a more decorative topper than just an eraser that costs far more than the pencil itself.<sup>99</sup> Specialty pencils are also fashion-oriented pencil products and they are quickly changed to follow the current style or trend. Because of the fashion/trendy nature of this type of pencil, they are also more likely to be collected.

### *Sales Practices and Terms*

U.S. producers and importers of pencils also sell other products to the same customers that purchase pencils. These products include writing instruments such as pens, markers, and mechanical pencils, as well as other stationery products. In addition, U.S. importers also sell other office products or novelty items. U.S. producers and importers agreed that pencils are often bought as part of a package that includes some of these other products. The three largest U.S. producers, Faber, Empire, and Dixon, reported that sales of the economy pencil drive sales of the other more profitable products that they sell and that they will typically link low-priced economy pencils with the more profitable products that they sell.

Six U.S. producers and eight importers also reported offering incentive programs for their sales of pencil products. Both U.S. producers and importers offer volume discounts to customers based on the total value of their total purchases of all products from the supplier and not necessarily only pencils. Some producers and importers also offer cooperative advertising allowances to customers up to a specific percentage of the previous year's purchases, typically 3 to 5 percent.

A large portion of pencil sales each year occur during mid summer for the back-to-school season. The economy pencil is the largest selling pencil product during this season and is often used by large retailers as a loss leader to encourage traffic in their stores.<sup>100</sup> As such, these retailers attempt to buy economy pencils at the lowest price possible. \*\*\* also reported that retailers are becoming more concentrated, increasing the volume of their purchases, and thereby benefiting from even more volume discounts and lower prices. \*\*\* stated that its plan to increase pencil capacity was due to the growth in large retailers who prefer to purchase their pencils from one supplier.

### *Product Comparisons*

Five of the 7 responding U.S. producers and 7 of 24 responding importers reported that U.S.-produced pencils are of better quality than Chinese-produced pencils.<sup>101</sup> Two of the responding U.S. producers stated that Chinese pencils use lower quality wood, did not sharpen or erase well, had loose ferrules and erasers, and had leads that would break easily. However, one U.S. producer indicated that the Chinese quality had been improving and that the price differential was more significant than and outweighed the quality differences between the U.S. and Chinese pencils.<sup>102</sup> One U.S. importer that uses Chinese pencils for \*\*\* agreed. It reported that, in this specific market segment, the pencil is used for promotional giveaways and its purchasers are less likely to care about the quality of the pencil. Finally, \*\*\* reported that its design and decorating are superior to that of the Thai producers.<sup>103</sup>

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<sup>99</sup> For example, \*\*\* reported purchasing an Easter-decorated pencil with a white bunny topper. \*\*\* paid \*\*\* each for these pencils; the pencil cost \*\*\* and the topper cost \*\*\*.

<sup>100</sup> One importer, \*\*\*, remarked that pencils were historically sold as school supplies; however, recently, pencils have become a "give-away" item, typically centered around holidays or events (e.g., birthdays).

<sup>101</sup> The remaining 17 firms reported that there were no significant differences in the quality of Chinese and/or Thai pencils vis-a-vis domestic pencils.

<sup>102</sup> Hearing TR, pp. 49-50.

<sup>103</sup> During the preliminary investigations, a few importers of the Thai pencil reported that the quality of the Thai pencil was lower than that of the U.S. product but better than the Chinese pencil. Accordingly, these importers reported that the Thai product tends to be priced below the U.S. pencil but was typically higher than the Chinese pencil.

The Commission requested U.S. producers and importers to report whether they were ever unable to supply pencils to a customer in a timely manner at prevailing prices and in the quantities desired during January 1991-June 1994. Three U.S. producers and most importers of the subject pencils reported no problems with product supply for the U.S. market. However, two U.S. pencil manufacturers and two importers did report some supply problems.<sup>104</sup> \*\*\* reported that the back-to-school season was generally a problem for deliveries to its retail mass market customers. These customers require different product packaging, typically requested at the last moment, and delivery during a very narrow time period. \*\*\* reported that it reduced pencil production during 1992 and part of 1993 because of difficulty in receiving specific raw materials such as ferrules.

### *Input Costs*

U.S. producers reported that their primary raw material input used in the production of the subject pencils is the wood slats. The cost of the wood slats accounts for roughly \*\*\* to \*\*\* percent of cost of U.S.-produced pencils. Wood slats used by U.S. producers are made from either California incense cedar or Indonesian jelutong. According to the Incense Cedar Institute, the average selling prices for California incense cedar wood slats increased by 42.3 percent, from \$2.67 per slat to \$3.80 per slat, during 1990-93, whereas prices for the Indonesian jelutong wood slats increased by 12.7 percent from \$1.80 per slat to \$2.03 per slat. U.S. producers were requested to provide purchase prices for their primary raw material costs during January 1991-June 1994. Five U.S. producers provided cost data; in all five cases, the prices paid for wood slats increased since 1991. The increases in the cost of wood slats for \*\*\* were \*\*\* percent, respectively. The increase in the prices for California incense cedar wood slats is due to the reduced harvest for environmental concerns, including the spotted owl. \*\*\* reported that harvests of California incense cedar are down by 75 percent since 1988-89.<sup>105</sup>

### **Questionnaire Price Data**

The Commission requested price and quantity information from U.S. producers and importers for their largest quarterly and total quarterly sales of five types of pencils during the period January 1991-June 1994.<sup>106</sup> The five products are described below:<sup>107</sup>

- Product 1: Commodity (economy) pencils - retail packaging (i.e., sold to retail outlets).
- Product 2: Commodity (economy) pencils - boxed (i.e., sold to wholesalers or office supply superstores).
- Product 3: Raw pencils - unpainted and untipped.
- Product 4: Colored pencils.
- Product 5: Specialty pencils with normal eraser top (specialty pencils are defined as decorated pencils with different designs, shapes, or characters).

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<sup>104</sup> In addition, five firms, who imported pencils for retail sales to small or individual customers, reported difficulty in purchasing pencils; these firms generally reported difficulty in getting their shipments on time.

<sup>105</sup> Telephone interview, Nov. 23, 1993.

<sup>106</sup> Prices discussed in this section are average prices computed from quarterly total sales and quantity data. U.S. retailers that imported directly from China or Thailand were also requested to provide purchase price data on their imports of the five pencil products. These data are not presented because the data reported are limited (relative to data reported by producers and importers). Moreover, price comparisons between U.S. producers' sales prices and retailers' purchase prices (for the imported product) may not be directly comparable due to additional charges that may not be included in the retailers' purchase prices.

<sup>107</sup> These products were selected after discussions with U.S. producers and importers of pencils. U.S. producers reported that their competition with the Chinese and Thai pencils was primarily in the low-priced commodity pencil market, specifically with the so-called economy pencil.



Usable price data were received from 5 U.S. producers and 14 U.S. importers of pencils.<sup>108</sup> Reported pricing for pencil products 1-5 accounted for approximately 75.5 percent of U.S. producers' domestic shipments of pencils and approximately 52.5 and 48.8 percent of U.S. importers' imports of Chinese and Thai pencils, respectively, in 1993.

Staff requested U.S. producers and importers to provide separate pricing data for sales of different pencil brands within a given specified product definition. It has been alleged that the imported pencils compete with the lower quality brands of the U.S. producers. U.S. producers reported that they have reduced the quality of some pencils in order to sell them at lower prices to compete with imports. Therefore, price data are presented separately for high and low quality U.S. brands and price comparisons are made between the lower quality brands of the U.S. producers and the imported products.

### *U.S. Price Trends*

Average delivered sales prices for U.S.-produced pencil products 1, 2, and 4, economy pencils sold in retail packaging and bulk and colored pencils, fluctuated throughout the period January-March 1991 to April-June 1994 (tables 19-20 and figures 12-13). Average prices for product 1 (both high and low quality) were higher at the end of the period as compared with the beginning, with increases of \*\*\* and \*\*\* percent, respectively.<sup>109</sup> Average sales prices for U.S.-produced products 2 (both high and low quality economy pencils sold in bulk) and 4 (colored pencils) decreased irregularly, falling \*\*\*, \*\*\*, and \*\*\* percent during the period for which data were reported.

Table 19

Average net delivered selling prices and quantities of U.S.-produced and imported pencil products 1 and 2 from China, by products and by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

Table 20

Average net delivered selling prices and quantities of U.S.-produced and imported pencil products 3-5 from China and Thailand, by products and by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

Figure 12

Average delivered selling prices of U.S.-produced and imported pencil products 1 and 2, by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

<sup>108</sup> One U.S. producer, Pentech, also reported purchase price data for its imports of raw pencils from China.

<sup>109</sup> As the table indicates, the quantity of high quality pencils sold was much lower than the quantity of lower quality pencils.

Figure 13  
Average delivered selling prices of U.S.-produced and imported pencil products 3 and 4, by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

Average delivered sales prices for product 5, specialty pencils, varied from supplier to supplier. Of the three producers reporting sizable sales in this product category, the range of \*\*\*'s prices for its specialty pencils was wider than either \*\*\*'s or \*\*\*'s specialty pencils. \*\*\*'s prices ranged between \$\*\*\* and \$\*\*\* per gross, whereas \*\*\*'s prices ranged between \$\*\*\* and \$\*\*\* per gross and \*\*\*'s prices ranged between \$\*\*\* and \$\*\*\* per gross. Average sales prices for U.S.-produced product 5 increased irregularly from January-March 1991 to April-June 1994, rising \*\*\* percent during that time (figure 14).

Figure 14  
Average delivered selling prices of U.S.-produced and Chinese pencil product 5, by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

### Chinese Price Trends

Average sales prices for Chinese pencils were reported for all of the five products for which price data were requested.<sup>110</sup> Prices for these Chinese products fluctuated from January-March 1991 to April-June 1994; however, prices for products 1 and 4 had overall decreases of \*\*\* and \*\*\* percent, while those for product 2 had an overall increase of \*\*\* percent. \*\*\*'s purchase prices for \*\*\*. Prices for specialty pencils were reported by two importers, \*\*\* and \*\*\*. Average prices reported by \*\*\* ranged from \$\*\*\* to \$\*\*\* while those reported by \*\*\* ranged from \$\*\*\* to \$\*\*\*. Weighted-average prices for Chinese specialty pencils fluctuated with a downward trend from the third quarter of 1991 to the second quarter of 1994, falling \*\*\* percent in that time.

### Thai Price Trends

Prices for pencils imported from Thailand were only reported for one of the products, product 4, colored pencils. Average delivered sales prices for this Thai product increased irregularly throughout the period for which data were reported. Overall, these prices were \*\*\* percent higher in the second quarter of 1994 than they were in the first quarter of 1991.

<sup>110</sup> As stated earlier, \*\*\*.

### *Price Comparisons*

There were 42 instances where price comparisons between the domestic and Chinese products were possible (table 21).<sup>111</sup> In 41 of these instances, the Chinese product was priced below the U.S. product, with margins ranging from 9.0 to 60.1 percent. In the remaining instance, the Chinese product was priced 37.2 percent above the domestic product.

In all 14 of the instances where price comparisons were possible, the Thai product was priced below the U.S. product, with margins ranging between 28.0 and 53.0 percent.

Table 21

Margins of under(over)selling from average sales prices of importers of the Chinese and Thai product, by products and by quarters, Jan. 1991-June 1994

\* \* \* \* \*

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

### **Purchaser Responses**

The Commission sent questionnaires to approximately 50 firms believed to be purchasers of pencils. Responses were received from 34 firms, of which 23 provided usable data.<sup>112</sup> These firms are generally distributors or wholesalers who resell the pencils to a variety of firms, including art stores, gift shops, catalog companies, industrial firms, schools, and advertising specialty companies. Information obtained from these purchasers is summarized below.

These purchasers reported buying pencils from a number of different suppliers, both domestic and foreign; in addition to the U.S. firms and suppliers from countries subject to investigation, these purchasers also reported buying pencils from suppliers in Taiwan. While virtually all of the responding purchasers reported that they seldom change suppliers, four stated that they had changed suppliers within the last 3 years. Purchasers reported changing suppliers for better service, better pricing, customer preference, and to obtain "new fashion designs."

Purchasers stated that they generally contact between 1 and 5 suppliers before buying pencils. Most purchasers stated that contracts or agreements are closed and many times the bidding firms do not know who the competing firms are. In some cases, suppliers have more than one opportunity to bid on a particular order; however, several purchasers reported that they do not discuss the bids of competing firms. Furthermore, 19 of 20 responding purchasers reported that the lowest price offered for pencils does not always win a sale. These firms stated that factors such as quality, delivery time, reliability, customer preference, service, and ability to offer private label pencils are taken into account when buying pencils.

Purchasers were asked to list the major factors generally considered when choosing a supplier for pencils. Price was mentioned most frequently as one of the three most important factors considered in purchasing decisions; 11 purchasers ranked it as the number one consideration, 2 firms ranked it second, and 9 firms ranked it third. The fact that a supplier was a traditional source of supply and availability were also frequently reported to be important considerations.<sup>113</sup> While not ranked as the number one consideration, quality was mentioned as being an important consideration when choosing

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<sup>111</sup> Comparisons are not made between U.S. and Chinese prices for specialty pencils because the products can vary significantly.

<sup>112</sup> Eleven of these firms reported that they did not purchase pencils during the period Jan. 1991-June 1994. In addition, 21 firms that imported pencils for retail sales to small or individual customers provided some information on their purchases of pencils. Where appropriate, responses from these firms are included.

<sup>113</sup> Four firms rated traditional supplier as the number one consideration and one ranked it second. Availability was rated first by three firms, second by two firms, and third by one firm.

a supplier of pencils; more than one half (i.e., 14) of responding purchasers ranked it as the second most important factor. Other factors mentioned include delivery time, reliability of supply, service, variety of product line, and ability to supply private labels/designs.

Purchasers were divided on the issue of product comparability between U.S. and imported pencils. While about one half of responding purchasers (i.e., 7 of 16) reported that there were no significant differences between domestic and imported pencils, the remaining purchasers stated that there were. Nine of 15 firms reported that the quality of the domestic product was superior to that of the pencils imported from China and Thailand.<sup>114</sup> <sup>115</sup> Purchasers stated that U.S. pencils have a better finish, paint covering, centering of lead, and attachment of ferrule and eraser. Moreover, the majority of responding purchasers reported that quality was very important in their decisions to buy U.S. pencils instead of imported pencils from China and/or Thailand.<sup>116</sup>

Eleven of the responding purchasers reported that prices of the imported product were generally lower than those for the domestic product. A similar number of firms also stated that the price of the Chinese or Thai pencils was very important in their decision to buy Chinese or Thai pencils instead of U.S. pencils. Purchasers reported that since 1991, the price of the U.S. product has increased relative to that of the subject imports. Eleven firms, however, reported paying more for domestic pencils when imports were available for a lower price; reasons given include higher quality,<sup>117</sup> customer preference for specific brand, supply reliability, better delivery time, favorable order sizes, and brand variety.

### Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1991 through April-June 1994, the nominal value of the Chinese yuan depreciated by 39.8 relative to the U.S. dollar,<sup>118</sup> whereas the Thai baht fluctuated, appreciating by 0.3 percent relative to the U.S. dollar (figure 15). Adjusted for movements in producer price indexes in the United States and Thailand, the real value of the Thai currency showed an overall depreciation of 0.8 percent relative to the dollar through the third quarter of 1993, the latest period for which data were available. The real value of the Chinese currency is not shown because producer price information for China is not known.

### Lost Sales and Lost Revenues

Although four U.S. producers reported to the Commission that they lost sales to imported pencils from China and Thailand, they were not able to provide information on specific allegations. Three producers cited eight purchasers that they believed bought imported product in lieu of domestic product. However, only one producer, \*\*\*, was able to report a dollar value associated with its lost sales, and it was not able to identify either the specific time period or the quantities for any of the allegations. \*\*\* reported \*\*\* to whom it allegedly lost \$\*\*\* in sales of its economy pencil to the imported Chinese product. \*\*\* reported losing sales to \*\*\* but could not report any other information. \*\*\* cited \*\*\* in its lost sales allegations, but commented it did not lose any sales to these firms. \*\*\* believed that other U.S. producers had lost sales to these firms because of the imported products. The Commission

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<sup>114</sup> Furthermore, purchasers were asked to list the advantages and disadvantages of each country's pencils. Eleven firms reported that the advantages of the U.S. product included quality. Poor quality was listed as one of the disadvantages of the Chinese and Thai pencils.

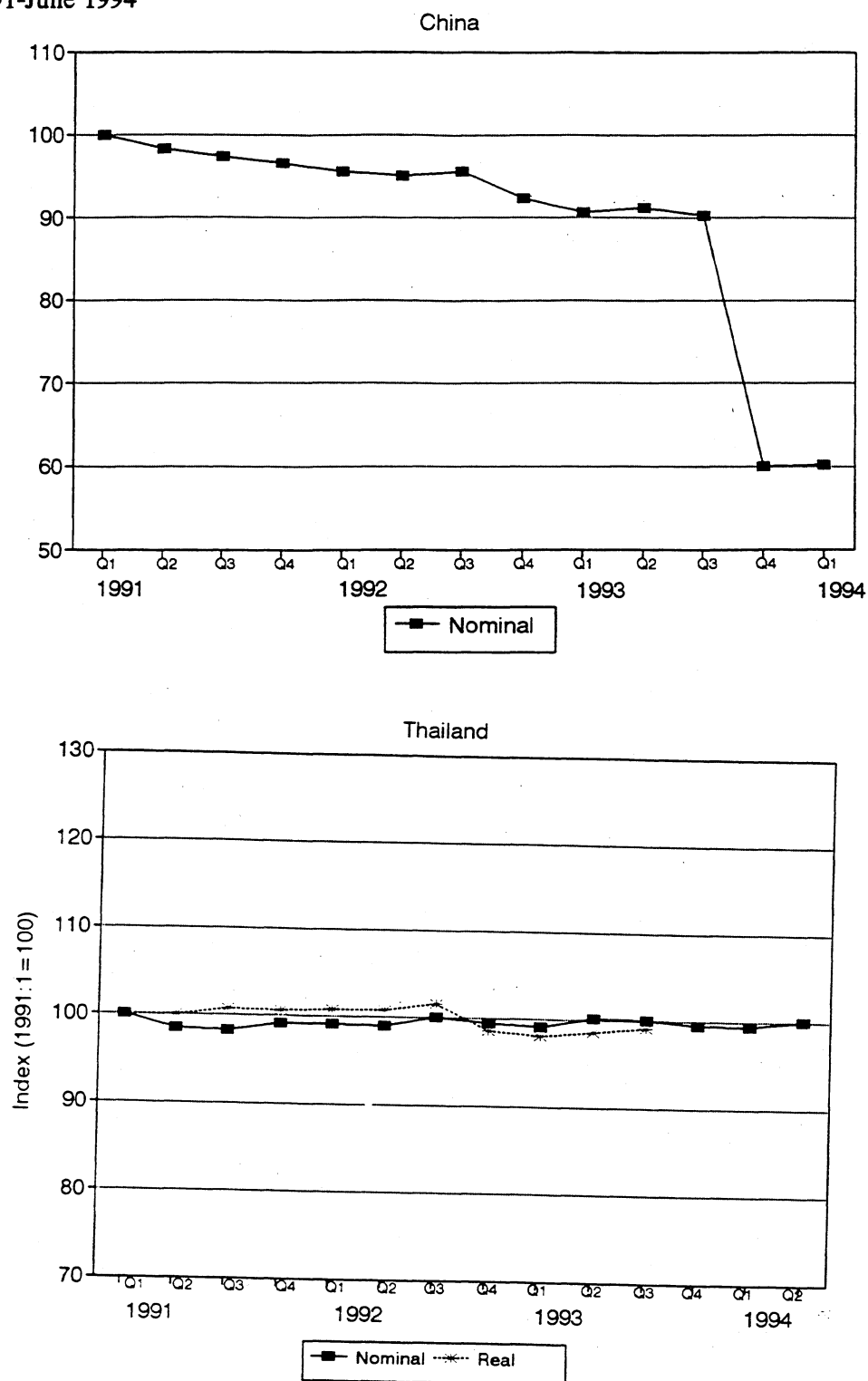
<sup>115</sup> Fourteen of the 22 importer/purchaser firms reported that differences in quality between domestic pencils and those imported from China or Thailand were not a significant factor in their purchases of pencils. Furthermore, the majority (i.e., 14 of 15) of these firms reported that there were no differences in the quality of Chinese pencils vis-a-vis Thai pencils.

<sup>116</sup> Purchasers also reported that delivery time and service were very important factors in their decision to buy U.S. pencils instead of the imported product.

<sup>117</sup> Quality of the pencil includes the quality of the paint, ferrule, lead, and wood; proper attachment of the ferrule and eraser; centered lead; and good packaging.

<sup>118</sup> Beginning Jan. 1, 1994, the People's Bank of China changed the manner in which the official exchange rate was determined. In addition, Chinese exchange rate data for the second quarter of 1994 are for Apr.-May only.

Figure 15  
Exchange rates: Indexes of the nominal and real exchange rates between the U.S. dollar and the currencies of China and Thailand, by quarters, Jan. 1991-June 1994



Source: International Monetary Fund, International Financial Statistics, September 1994.

contacted all of the purchasers cited by the three manufacturers. There were no allegations of lost revenues due to the imported product.<sup>119</sup>

\*\*\*, a \*\*\*, was cited by \*\*\* for lost sales of \$\*\*\* involving economy pencils from China. \*\*\* could not identify any specific pencil quantities or the time period of the lost sale. \*\*\*, \*\*\*, reported that in the last \*\*\* months it purchased approximately \*\*\* pencils totalling \$\*\*\*. He reported that nearly \*\*\* percent of its purchases were Chinese product and \*\*\* percent involved U.S.-produced pencils. \*\*\* stated that over \*\*\* percent of \*\*\*'s purchases of the imported pencils were for the \*\*\* and involved economy-type pencils. He reported that the price was significantly lower for the imported Chinese product, and he decided to purchase the imported product for the \*\*\*. \*\*\* commented that for the rest of the year, \*\*\* purchased mostly from domestic producers. \*\*\* acknowledged that although the Chinese pencil was of lower quality than the U.S. pencil, it was not significant enough to offset the price difference between the Chinese and U.S. pencil.

\*\*\*, an \*\*\*, was cited by \*\*\* for purchasing \*\*\* from Thailand. \*\*\*'s representative reported that this allegation did not represent a lost sale to his firm since he did not sell to \*\*\*, but that it represented a lost sale for another U.S. manufacturer. \*\*\* could not report any specific information concerning this allegation. \*\*\*, buyer of this product for \*\*\*, reported that \*\*\* purchases approximately \*\*\* pencils per year for \*\*\*. \*\*\* had imported \*\*\* of Thai \*\*\* and had purchased between \*\*\* and \*\*\* Chinese \*\*\* from another importer. These purchases of imported product, in total, were less than \*\*\* percent of its overall pencil purchases. The Chinese and Thai pencils cost approximately \$\*\*\* per gross compared with a U.S. price ranging between \$\*\*\* and \$\*\*\* per gross. \*\*\* reported that the quality of the Thai pencil was closer to the U.S.-produced pencil, whereas the quality of the Chinese product was not quite as good. He believed that the finish of the Chinese pencil was not good enough for \*\*\*. \*\*\* reported that he purchased the imported product to compete primarily against other \*\*\* that use imported product. \*\*\* commented that some purchasers do not care about the quality of the finished product because it is a giveaway item.

\*\*\*, an \*\*\*, was cited by \*\*\* for lost sales of \$\*\*\* involving economy pencils from China. \*\*\* could not identify any specific pencil quantities or the time period of the lost sale. \*\*\* also cited \*\*\* for lost sales but could not identify any specific allegation. \*\*\* reported that \*\*\* purchased approximately \*\*\* wood cased pencils during the \*\*\* months ending in September 1993. Of this amount, approximately \*\*\* pencils were of Chinese origin purchased from \*\*\*. \*\*\* purchased the Chinese product because it needed a low-price-point pencil product for purchasers that did not care about the quality of the pencil. \*\*\* had previously lost business to other \*\*\* that offered a lower priced pencil to these types of purchasers. \*\*\* reported that \*\*\* was unable to convince its U.S. supplier, \*\*\*, to lower its current prices. \*\*\* commented that although the quality of the Chinese product was lower than the U.S. product, some purchasers were willing to make this trade-off for the lower price. \*\*\* also stated that \*\*\* continues to offer U.S.-produced pencils in its \*\*\* catalog.

\*\*\*, an \*\*\* company located in \*\*\*, was cited by \*\*\* for purchasing \*\*\* from China. \*\*\*'s representative reported that this allegation did not represent a lost sale to his firm since he did not sell to \*\*\*, but that it represented a lost sale to another U.S. manufacturer, most likely \*\*\*. \*\*\* could not report any specific information concerning this allegation. \*\*\* reported that it purchases approximately \*\*\* per year for \*\*\*. Approximately \*\*\* percent of its purchases are U.S.-produced pencils and \*\*\* percent are from importers of the Chinese product. \*\*\* reported that it purchased the imported product because some of its customers wanted an inexpensive pencil and were willing to buy a lower quality product since it was a giveaway item. \*\*\* commented that the Chinese pencil does not sharpen as well as the U.S. pencil and uses a cheaper wood, ferrule, and eraser. However, \*\*\* reported that approximately \*\*\* percent of its customers refuse to purchase an imported pencil either due to its lower quality or the fact that it is imported.

\*\*\*, a \*\*\*, was cited by \*\*\* for lost sales of \$\*\*\* involving \*\*\* pencils from China. \*\*\* could not identify any specific pencil quantities or the time period of the lost sale. \*\*\*, buyer of this product for \*\*\*, reported that it did not purchase any pencils from Thailand or from China. Rather it had purchased pencils from \*\*\* during \*\*\*. Overall, \*\*\* purchased approximately \*\*\* gross of pencils

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<sup>119</sup> U.S. producers reported that they did not reduce prices or roll back announced price increases because of the imported products from China or Thailand.

during \*\*\*, with \*\*\* from \*\*\*. \*\*\* reported that he had been sent some samples from China but that he thought the pencils were junk. The price of the \*\*\* pencils was approximately \$\*\*\* per gross, while the U.S. pencils were \$\*\*\* per gross.

\*\*\*, a \*\*\* located in \*\*\*, was cited by \*\*\* for lost sales of \$\*\*\* involving economy pencils from China. \*\*\* could not identify any specific pencil quantities or the time period of the lost sale. \*\*\*, buyer of this product for \*\*\*, reported that he had not purchased any imported product since \*\*\* when he became pencil purchaser. All of his pencils had been purchased from \*\*\*. In total, \*\*\* purchases approximately \*\*\* pencils per year, typically, in \*\*\*.

\*\*\*, an \*\*\* specializing in \*\*\*, was cited by \*\*\* for purchasing \*\*\* pencils from China. \*\*\* reported that \*\*\* had purchased \*\*\* pencils from \*\*\* during \*\*\* because of late deliveries of imports, but had not purchased any product from \*\*\* during \*\*\*. \*\*\* could not report any specific information concerning this allegation. \*\*\*, buyer of pencils for \*\*\*, reported that it is primarily an importer of pencils and other novelty products and not typically a purchaser of U.S.-produced products. He reported that \*\*\* had purchased less than \*\*\* percent of its pencils from U.S. sources. These purchases occurred only to replace late deliveries of imported product. \*\*\* reported that \*\*\* is in the \*\*\* business and sells \*\*\* items.

\*\*\*, an \*\*\*, was cited by \*\*\* for lost sales of \$\*\*\* involving economy pencils from China. \*\*\* could not identify any specific pencil quantities or the time period of the lost sale. \*\*\* also cited \*\*\* for lost sales but could not identify any specific allegation. \*\*\* did not respond to telephone calls from the Commission's staff.





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



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

**EFFECTIVE DATE:** June 16, 1994.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202-205-1895 (N.8.1).

**SUPPLEMENTARY INFORMATION:**

**Background**

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

**Participation in the Investigations and Public Service List**

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

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

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will pencils, pens, noncased crayons (wax), pastels, charcoals, or chalks.

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

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

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of final antidumping investigations.

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

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

Specifically excluded from the scope of these investigations are mechanical pencils, cosmetic

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

#### Staff Report

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

#### Hearing

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

#### Written Submissions

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

written statement of information pertinent to the subject of the investigations on or before August 22, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

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

By order of the Commission.

Issued: June 28, 1994.

Donna R. Koehnke,

Secretary.

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

BILLING CODE 7020-02-P

**International Trade Administration**  
[A-570-827]

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

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

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Kristin Heim, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4087 or (202) 482-3798, respectively.

**PRELIMINARY DETERMINATION:** We preliminarily determine that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the initiation of this investigation on November 29, 1993 (58 FR 64548, December 8, 1993), the following events have occurred.

On December 27, 1993, the U.S. International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pencils from the PRC that are alleged to be sold at less than fair value.

On January 5, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and certain companies in the PRC requesting information on production and sales of pencils exported to the

United States. The names of the companies were found in the petition and in data supplied by the Port Import-Export Reporting Service (PIERS). We requested MOFTEC's assistance in forwarding the survey to all exporters and producers of pencils and submitting complete responses on their behalf. On January 14, the survey was sent to the Asia Pencil Association.

On January 31, 1994, responses to the survey were received from the China First Pencil Co., Ltd. (China First), an exporter and producer; Shanghai Foreign Trade Corp. (SFTC), an exporter; Shanghai Lansheng Corp. (Shanghai Lansheng), an exporter; Shanghai Machinery & Equipment Import & Export Corp. (Shanghai Machinery), an exporter; and Shanghai Three Star Stationery Industry Corp. (Three Star), a producer and domestic reseller. Shanghai Machinery reported that while it had exported pencils in the past, it did not make any sales to the United States during the POI.

On February 9, 1994, four more companies responded to our survey: Songnan Pencil Factory, a producer; Xinhang Joint Venture Factory, a producer; Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), an exporter; and Anhui Stationery Company (Anhui), a producer.

On February 16, 17, and 23, 1994, all PRC producers and exporters identified in the course of this proceeding, i.e., through the petition, in PIERS data, in letters of appearance and as provided by MOFTEC, for which we had addresses were sent full questionnaires. During the month of March, in response to our questionnaire, we received letters from a number of companies stating that they either did not export cased pencils to the United States during the POI or acted merely as freight forwarders.

On March 8, 1994, we postponed the preliminary determination in this investigation (see 59 FR 10784, March 8, 1994).

SFTC requested on March 24, 1994, that it not be required to submit sales and factors of production information for certain pencils it exported to the United States during the POI. On April 4, 1994, SFTC amended its request. Because the sales and factor of production information covered a small percentage of SFTC's sales to the United States, we granted SFTC's amended request (see Memorandum from E. Graham to B. Stafford, April 7, 1994, on file in the Central Records Unit in room B-099 of the Main Commerce Building).

On May 10, 11, and 25, 1994, petitioner submitted information concerning the costs of certain raw

materials which are used in the production of pencils but that were not specifically addressed in the petition. Petitioner also requested that the Department recalculate the petition margins based on the information in its submission of May 25, 1994.

Between June 3, 1994, and this preliminary determination, respondents submitted updated and additional information. Given the late dates on which this information was provided, we found it administratively infeasible to use this information (with the exception of company-specific conversion factors) in our preliminary determination.

**Scope of Investigation**

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

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

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

**Class or Kind of Merchandise**

At the time of our initiation, we solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents have argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils. Based on the information provided, we find that these products do not constitute a separate class or kind of merchandise. (See memorandum from E. Graham to B. Stafford, April 15, 1994.) In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. While this argument was made too late to be considered for our preliminary determination, we will address this in our final determination.

The Asia Pencil Association argued that specialty pencils (e.g., carpenter and art pencils) should constitute a separate class or kind of merchandise. However, the information submitted in support of their claim was insufficient to allow us to make a determination that specialty pencils are a separate class or kind of merchandise.

#### Period of Investigation

The POI is June 1, 1993, through November 30, 1993.

#### Separate Rates

China First, Guangdong, SFTC, and Shanghai Lansheng have each requested a separate rate. Guangdong's and SFTC's business licenses each indicate that they are owned "by all the people." As stated in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586 (May 2, 1994)) ("*Silicon Carbide*") "ownership of a company by all the people does not require the application of a single rate." Accordingly, Guangdong and SFTC are eligible for consideration for separate rates.

Shanghai Lansheng has reported that, for the majority of the POI, it was owned "by all the people" and that it was later reorganized as a shareholding company. It has indicated that its shares are traded on the Shanghai stock exchange. In the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Paper Clips from the People's Republic of China ("Paper Clips")* (59 FR 25885, 25887, May 18, 1994) the Department stated that "a 'municipal government' owns 70 percent of [Shanghai Lansheng's] shares." There is no evidence on the record that this municipality controls other exporters of cased pencils that made sales to the United States during the POI. We will, however, evaluate this issue carefully during verification.

Since ownership by all the people (the situation applicable to Shanghai Lansheng during the majority of the POI) "does not require the application of a single rate" and there was no central government ownership during the later part of the POI, Shanghai Lansheng is eligible for consideration for a separate rate.

China First has reported that it is a shareholding company and has provided a list of its shareholders. According to China First, the shareholders elect the board of directors which, in turn, appoints the general manager. Its questionnaire response states that there are three types of shares: A shares held by Chinese legal

persons, B shares held by non-Chinese legal persons and Enterprise shares. We do not have on the record any information addressing the similarities or differences in rights accruing to the various types of shares.

Based on our examination of the information provided regarding the shareholder identities and the ownership structure of China First, we have determined that we do not have enough information on the record to grant it a separate rate at this time. Due to the proprietary nature of the information, we are not able to discuss the ownership structure of China First in further detail in this notice; however, there is a proprietary decision memorandum regarding this issue on the record (see Decision Memorandum of June 8, 1994). We are assigning China First the PRC country-wide rate for purposes of this preliminary determination.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) ("*Sparklers*") and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

Three PRC laws that have been placed on the record in this proceeding indicate that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 ("*1988 Law*"); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 ("*1992 Regulations*"); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 ("*Export Provisions*").

The 1988 Law and 1992 Regulations shifted control from the government to the enterprises themselves. The 1988 Law provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials.

The 1988 Law also has other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

The *Export Provisions* list those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the export constraints.

The existence of these laws indicates Guangdong, SFTC and Shanghai Lansheng are not *de jure* subject to central government control. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service—China-93-133* (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control.

#### 2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide*).

Guangdong, SFTC and Shanghai Lansheng have each asserted that (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) its management operates with a high degree of autonomy and there is no information on the record that suggests central government

control over selection of management; and (4) it retains the proceeds of its export sales, and has the authority to sell its assets and to obtain loans. In addition, company-specific pricing during the POI does not suggest any coordination among exporters (i.e., the prices for comparable products appear to differ among companies). This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, Guangdong, SFTC and Shanghai Lansheng have preliminarily met the criteria for the application of separate rates. We will examine this issue in detail at verification and determine whether the questionnaire responses are supported by verifiable documentation.

There is an additional issue relating to governmental control that we will consider further for purposes of our final determination. Guangdong and SFTC have indicated that the appointments of their general managers are subject to approval by the local Commission on Foreign Trade and Economic Cooperation (COFTEC) office. While the significance of this is unclear, the evidence cited above indicates that the COFTEC offices do not control the key functions of the enterprises. However, we will examine at verification the precise nature of the authority that the COFTEC offices exercise over the enterprises.

#### *Nonmarket Economy*

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (See, e.g., *Final Determination of Sales at Less than Fair Value: Sebacin Acid from the People's Republic of China* (54 FR 28053 (May 31, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 772(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of the merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, the respondents have urged the Department to make use of the alternative methodology provided in section 773(c)(2) of the Act. In particular, they have argued that the primary input into PRC pencils, lindenwood, cannot be valued elsewhere. Petitioner has also questioned the Department's ability to value certain inputs using publicly available published information (PAPI) from India, as Indian input statistics cover broader product categories. Petitioner does not request that the Department use the alternative methodology for FMV. Instead, it suggests that U.S. producers' costs be used to value these inputs.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed under the FMV section, below. However, as a result of the comments made by petitioner and respondents on the relevance of factor prices in India, we will be seeking additional data on factor values and on export prices that could also be used under the alternative methodology provided in section 773(c)(2) of the Act for possible use in our final determination.

#### *Surrogate Country*

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the countries most comparable to the PRC in terms of overall economic development. (See memorandum from the Office of Policy to the file, dated March 18, 1994.) In addition, there is evidence on the record that pencils are produced in India.

Although India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise, we have resorted to Pakistan and Indonesia for certain surrogate values where Indian values were either unavailable or significantly outdated. We have obtained and relied upon PAPI wherever possible.

#### *Fair Value Comparisons*

To determine whether sales of pencils from the PRC to the United States by Guangdong and Shanghai Lansheng

were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because all of SFTC's responses were not received in time for consideration in this preliminary determination and, therefore, we had only partial information for calculating FMV, we have based SFTC's margin on the best information available (BIA). (See "Best Information Available" section of this notice.)

#### *United States Price*

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

For those exporters that responded to the Department's questionnaire and were found to be eligible for a separate rate, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country.

#### *Foreign Market Value*

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

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the PAPI value which was: (1) An average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

We used surrogate transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as best information available, the most expensive distance/modes combination (i.e., the longest truck rates) that was available from the surrogate information we had selected. For two modes of transportation (man-drawn carts, inland

water transport), we were unable to obtain PAPI or cable information in time for this preliminary determination. To value these two modes of transportation, we assumed that these forms competed effectively with an alternate form of transportation over similar distances and used the applicable rates for the alternate form.

To value the raw materials and packing materials, we used PAPI. Our sources included: Indian Import Statistics for 1989, 1991 and 1992; and Indonesian Import Statistics for 1989.

To value wood slats, we used the Asian market price for jelutong wood in the sawn form during the POI as reported in the Market News Service Report for Tropical Timber and Timber Products dated November 1993. To value wood logs, we used Indian import statistics for a group of woods in rough form which included jelutong wood. The record in this proceeding shows that jelutong wood is used in pencil production and is similar to lindenwood, the input used by the PRC producers. For ferrules we used Indian import statistics for a basket aluminum category and for paint we used the import statistics category identified by respondents.

To value electricity, we used PAPI from the Asian Development Bank. To value coal and natural gas, we used Indian Import Statistics for 1992 and the Monthly Statistics of Mineral Production, Indian Bureau of Mines dated November 1992, respectively. To value water, we used a public cable from the U.S. consulate in Pakistan which was originally provided in the investigation of *Sulfanilic Acid From the PRC* because we could not locate a value for water in any Indian or Pakistani publication.

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

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

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of*

*India Bulletin (RBI)*, December 1992. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. We also used the calculated profit percentage because it was greater than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. We added surrogate freight costs for the delivery of packing materials to the factories producing pencils.

#### Best Information Available

Because information has not been presented to the Department to prove otherwise, any PRC companies not participating in this investigation are not entitled to separate dumping margins. Potential exporters identified by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on BIA. As discussed above, we are also applying BIA to SFTC.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina ("Argentina Steel")*, 58 FR 7066, 7069, 7070 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since some PRC exporters failed to respond to our questionnaire, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and for this determination using petitioner's updated information submitted May 1994. This rate applies to all exporters other than those responding exporters which have shown

their independence from central government control.

Since SFTC has been cooperative in this proceeding, and since we have preliminarily determined it is eligible for a separate rate, we are assigning a margin based on the highest calculated rate for any respondent in the investigation (see *Argentina Steel*).

#### Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Guangdong .....	58.34
SFTC .....	100.98
Shanghai Lansheng .....	100.98
PRC country-wide rate* .....	107.63

\*Including China first.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 8, 1994, and rebuttal briefs, no later than August 12, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be



held at 10 a.m. on August 15, 1994, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

Susan G. Esserman,  
Assistant Secretary for Import  
Administration.

[FR Doc. 94-14624 Filed 6-15-94; 8:45 am]  
BILLING CODE 3510-DS-P

[A-549-808]

**Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From Thailand**

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

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT:  
Vincent Kane or Thomas McGinty,  
Office of Countervailing Investigations,  
Import Administration, International  
Trade Administration, U.S. Department  
of Commerce, 14th Street and  
Constitution Avenue NW., Washington,  
DC, 20230; telephone (202) 482-2815 or  
482-5055.

**PRELIMINARY DETERMINATION:** We preliminarily determine that imports of certain cased pencils from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the initiation of this investigation on November 30, 1993, (58

FR 64548, December 8, 1993), the following events have occurred:

On December 27, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (Investigation Nos.-731-TA-669-670 (Preliminary) (Publication 2713).

On January 5, 1994, the Department of Commerce (the Department) delivered antidumping duty questionnaires to Aruna Company, Ltd. (Aruna) and Nan Mee Industry Co., Ltd. (Nan Mee). At the time a questionnaire was sent to Nan Mee, we did not know that Aruna accounted for over 60 percent of exports of the subject merchandise to the United States. On January 14, 1994, Nan Mee informed the Department that it had no sales for export to the United States during the period of investigation (POI). Based on import statistics obtained from the U.S. Customs Service, we determined that Aruna accounted for at least 60 percent of exports of the subject merchandise to the United States during the period of investigation (POI). These statistics also confirmed that Nan Mee had no exports to the United States during the POI. On January 28, 1994, Aruna notified the Department that it would not participate in this investigation. No questionnaire response was filed by Aruna.

On March 29, 1994, at the request of petitioner, the Department postponed the preliminary determination until June 8, 1994, in accordance with section 733 of the Act.

**Scope of Investigation**

The products covered by these investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

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

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

**Period of Investigation**

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

**Best Information Available**

Because Aruna failed to respond to our questionnaire, we based our preliminary determination on best information available (BIA) in accordance with section 776(c) of the Act. Section 776(c) states that the Department may use BIA where a company has refused to provide information requested in the form required, or has otherwise significantly impeded the Department's investigation.

In determining what rate to use as BIA when a party refuses to provide requested information, the Department follows a two-tiered methodology. See, *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37033, (July 9, 1993). Under this methodology, the Department uses as BIA the higher of (1) the margin alleged in the petition; or (2) the highest calculated rate of any respondent in the investigation. Since there is no calculated rate in this investigation, we have assigned to Aruna and all other exporters the highest rate contained in the petition with one adjustment. Petitioner based the highest rate on a comparison of average U.S. prices from import statistics with the highest of four home market price quotes as the basis for foreign market value (FMV). Rather than use the highest home market price quote as FMV, we have used an average of the four home market price quotes. We have made this adjustment because the petitioner used an average price derived from import statistics as U.S. price. On this basis we have calculated a BIA rate of 48.3 percent.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cased pencils from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/Manufacturer/Exporter	Margin percent-age
All companies	48.3

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 1, 1994, and rebuttal briefs, no later than July 8, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 12, 1994, at 10:00 a.m. at the U.S. Department of Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

**Susan G. Esserman,**  
*Assistant Secretary for Import  
Administration.*

[FR Doc. 94-14625 Filed 6-15-94; 8:45 am]

BILLING CODE 3510-05-P

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**  
[A-570-827]

**Postponement of Final Antidumping  
Duty Determination: Certain Cased  
Pencils From the People's Republic of  
China (PRC)**

**AGENCY:** Import Administration,  
International Trade Administration,  
U.S. Department of Commerce.  
**ACTION:** Notice.

**EFFECTIVE DATE:** August 10, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Kristin M. Heim, Office of  
Countervailing Investigations, Import  
Administration, International Trade  
Administration, U.S. Department of  
Commerce, 14th Street and Constitution  
Avenue, NW, Washington, DC 20230;  
telephone: (202) 482-3798.

**POSTPONEMENT OF FINAL DETERMINATION:**

On June 8, 1994, (59 FR 30911, June 16,  
1994), the Department of Commerce (the  
Department) issued its preliminary  
determination in the antidumping duty  
investigation of certain cased pencils  
from the PRC.

On July 21, 1994, in accordance with  
section 735(a)(2)(A) of the Tariff Act of  
1930, as amended, (the Act) respondents  
requested that the Department postpone  
its final determination in this  
investigation until 135 days after the  
date of publication of the preliminary  
determination. Under section 735(a)(2)  
of the Act and section 353.20(b) of the  
Department's regulations (19 CFR  
353.20(b)) if, subsequent to an  
affirmative preliminary determination,  
the Department receives a written,  
substantiated request for postponement  
of the final determination from  
producers or resellers of a significant  
proportion of the merchandise, the  
Department will, absent compelling  
reasons for denial, grant the request.  
Accordingly, we are postponing our  
final determination in this investigation  
until October 21, 1994.

**Public Comment**

In accordance with 19 CFR 353.38,  
case briefs or other written comments in  
at least ten copies must now be  
submitted to the Assistant Secretary for  
Import Administration no later than  
September 19, 1994, and rebuttal briefs,  
no later than September 26, 1994. We  
have received requests for a hearing by  
the petitioner and respondents and,  
therefore, under 19 CFR 353.38(f), we  
will hold a public hearing to allow  
parties to comment on arguments raised  
in the case or rebuttal briefs.  
Tentatively, the hearing will be held on

October 5, 1994, at 1:00 p.m. at the U.S.  
Department of Commerce, Room 3708,  
14th Street and Constitution Avenue,  
N.W., Washington, D.C. 20230. Parties  
should confirm by telephone the time,  
date, and place of the hearing 48 hours  
before the scheduled time. This notice  
is published pursuant to section 735(d)  
of the Act and 19 CFR 353.20(b)(2).

Dated: August 4, 1994.

Susan G. Esserman,  
Assistant Secretary for Import  
Administration.

[FR Doc. 94-19537 Filed 8-8-94; 8:45 am]

BILLING CODE 3510-06-P

**International Trade Administration**  
[A-570-827]

**Preliminary Affirmative Determination of Critical Circumstances; Certain Cased Pencils From the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.  
**ACTION:** Notice.

**EFFECTIVE DATE:** August 26, 1994.

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

**PRELIMINARY CRITICAL CIRCUMSTANCES DETERMINATION:** The Department of Commerce (the Department) published its preliminary determination of sales at less than fair value in this investigation on June 16, 1994 (54 FR 30911). On July 22, 1994, petitioner in this investigation alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from the People's Republic of China (PRC). On August 1, 1994, petitioner amended the original allegation, submitting additional information regarding the existence of critical circumstances in this investigation.

In accordance with 19 CFR 353.15(b)(2)(ii), since this allegation was filed later than 20 days before the

scheduled date of the preliminary determination, we must issue our preliminary critical circumstances determination not later than 30 days after the allegation was submitted.

Section 733(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if:

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

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

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

**History of Dumping**

In this investigation, the first criterion of analysis is addressed in petitioner's July 22, 1994, submission. This submission provides documentation indicating that in April 1994 the government of Mexico published an antidumping duty order of 451 percent on certain cased pencils produced and exported from the PRC. Therefore, petitioner has established that there is a history of dumping elsewhere of such pencils by PRC producers/exporters.

**Importer Knowledge**

With respect to the alternative first criterion, we have consistently determined that preliminary antidumping duty margins in excess of 25 percent on U.S. purchase price sales are sufficient to impute importer knowledge of sales at less than fair value. See, *Final Determination of Sales at Less Than Fair Value: Silicon Metal from China* (56 FR 18570, April 23, 1991) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia* (57 FR 38465, August 25, 1992). In this investigation, all responding and non-responding companies received preliminary antidumping duty margins in excess of 25 percent. Therefore, we determine that importers either knew or should have known that the exporter was selling certain cased pencils at less than fair value.

**Massive Imports**

Because we have preliminarily found that the first statutory criterion is met for finding critical circumstances in that there is a history of dumping of the

subject merchandise and, alternatively, there is actual or imputed importer knowledge of sales at less than fair value, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period.

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

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

To determine whether there have been massive imports over a relatively short period of time, the Department examines shipment information submitted by the respondent or import statistics, when respondent-specific shipment information is not available.

On August 4, 1994, the Department sent letters to respondents requesting information regarding shipments of certain cased pencils for the period January 1992 to May 1994. On August 16, 1994, we received the requested information filed in proper form for each of the four responding companies. Because company-specific shipment data was provided by the four responding companies in this investigation, we have used this data for our analysis.

To determine whether or not there have been massive imports of certain cased pencils over a relatively short period, we compared each respondent's export volume for the seven months subsequent to the filing of the petition (November 1993 through May 1994) to that during the seven months prior to the filing of the petition (April through October 1993). This period of review was selected based on the Department's practice of using the longest period for which information is available from the month that the petition was filed through the effective date of the preliminary determination of sales at less than fair value, which in this investigation was June 16, 1994. See, *Preliminary Affirmative Determination of Critical Circumstances; Silicon Carbide From the People's Republic of China* (59 FR 16795, April 8, 1994). We were unable to consider the share of

domestic consumption accounted for by the imports, pursuant to § 353.16(f)(1)(iii), because the available data did not permit such a post-filing analysis. In addition, we found no evidence of seasonality, pursuant to 19 CFR 353.16(f)(1)(ii), with respect to PRC exports of certain cased pencils to the U.S.

Based on respondents' shipment information, we find that imports of certain cased pencils from the PRC have been massive over a relatively short period for the following companies: Shanghai Foreign Trade Corporation (SFTC), Shanghai Lansheng Co., Ltd. (SLC), and China First Pencil Co., Ltd. (CFP). In addition, we find that imports from Guangdong Stationery & Sporting Goods I/E Corporation (GSSG), the other respondent in this investigation, have not been massive.

Therefore, because there is a history of dumping, and, alternatively, importers knew or should have known that the exporters were selling the merchandise at less than its fair value, and because imports of certain cased pencils have been massive over a relatively short period of time, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from SFTC, SLC, and CFP. Because imports from GSSG have not been massive, we preliminarily determine that there is not a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of certain cased pencils from GSSG. In addition, with respect to all non-responding procedures/exporters of certain cased pencils from the PRC, we preliminarily determine, as best information available, that critical circumstances exist.

#### **Final Critical Circumstances Determination**

We will make a final determination concerning critical circumstances when we make our final determination of sales at less than fair value in this investigation.

#### **ITC Notification**

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our determination.

#### **Public Comment**

We will accept written comments on this preliminary determination of critical circumstances at the public hearing in this case currently scheduled for October 5, 1994, at 1:00 p.m. in room 3708.

This determination is published pursuant to section 733(f) of the Act.

Dated: August 22, 1994.

Joseph A. Spetrini,  
Acting Assistant Secretary for Import Administration.

[FR Doc. 94-21122 Filed 8-25-94; 8:45 am]

BILLING CODE 3510-08-M

## DEPARTMENT OF COMMERCE

International Trade Administration  
[A-549-808]

**Notice of Final Determination of Sales  
at Less Than Fair Value: Certain Cased  
Pencils From Thailand**

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

EFFECTIVE DATE: August 31, 1994.

FOR FURTHER INFORMATION CONTACT:  
Vincent Kane, Office of Countervailing  
Investigations, Import Administration,  
U.S. Department of Commerce, 14th  
Street and Constitution Avenue, N.W.,  
Washington, DC 20230; telephone (202)  
482-2815.

**Final Determination**

We determine that imports of certain cased pencils from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

The sole company under investigation was Aruna Company, Ltd. (Aruna), a company accounting for over sixty percent of imports of the subject merchandise during the period of investigation. Aruna did not respond to our antidumping questionnaire.

Since our June 8, 1994 preliminary determination (59 FR 30915, June 16, 1994), the following events have occurred.

On May 11, and July 1, 1994, petitioner filed a case brief in this investigation. We received no requests for a hearing.

**Scope of Investigation**

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (e.g., with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

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

**Period of Investigation**

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

**Best Information Available**

Because Aruna failed to respond to our antidumping questionnaire, we are basing our determination on best information available (BIA) in accordance with section 776(c) of the Act. Section 776(c) states that the Department may use BIA where a company has refused to provide information requested in the form required, or has otherwise significantly impeded the Department's investigation.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. See, Final Determination of Sales at Less than Fair Value: Antifriction Bearings, Other than Tapered Roller Bearings, from the Federal Republic of Germany (54 FR 18992 at 19033, May 3, 1989). When a company refuses to cooperate with the Department or otherwise significantly impedes our investigation, we use as BIA the higher of the following margins for the relevant class or kind of merchandise: (1) The highest margin alleged in the petition; or (2) the highest calculated rate of any respondent in the investigation.

Because Aruna failed to respond to our antidumping questionnaire, we consider it to be an uncooperative

respondent. Accordingly, we have assigned to Aruna the highest rate alleged in the petition, which is 115.52 percent. Petitioner calculated this rate based on comparison of the average U.S. price based on IM-146 statistics on pencil imports from Thailand with the highest home market price quote.

**Continuation of Suspension of Liquidation**

We are directing the Customs Service to suspend liquidation of all entries of the subject merchandise from Thailand that are entered, or withdrawn from warehouse, for consumption on or after June 16, 1994, the date of publication of our preliminary determination in the Federal Register (59 FR 30915, June 16, 1994), as previously directed under section 733(d)(1) of the Act. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percent-age
All companies .....	115.52

**ITC Notification**

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

**Notice to Interested Parties**

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

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: August 18, 1994.

Susan G. Esserman,

*Assistant Secretary for Import Administration.*

[FR Doc. 94-21443 Filed 8-30-94; 8:45 am]

BILLING CODE 3510-DS-M

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**APPENDIX B**

**LIST OF WITNESSES APPEARING AT THE HEARING**



## CALENDAR OF THE PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

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

Invs. Nos. : 731-TA-669 and 670 (Final)

Date and time : August 25, 1994 - 9:30 a.m.

Sessions were in connection with the subject investigations in the Main Hearing Room (Room 101) of the USITC Building, 500 E Street, SW, Washington, DC.

### **In support of the imposition of antidumping duties**

Neville, Peterson and Williams  
Washington, DC  
on behalf of--

Pencil Section of the Writing Instrument Manufacturers Association (WMA)

Robert Waller, executive director, WMA  
Robert Spies, senior vice president, Berol Corp.  
James P. Moon, executive vice president, J.R. Moon Pencil Co.  
Christopher Wiedenmayer, chairman of the board and CEO, Faber- Castell Corp.  
Len Dahlberg, senior vice president manufacturing, Dixon Ticonderoga Corp.

John M. Peterson )  
George W. Thompson )--OF COUNSEL  
Peter J. Allen )

### **In opposition to the imposition of antidumping duties**

Willkie Farr and Gallagher  
Washington, DC  
on behalf of--

The Government of Thailand

John M. Peterson )  
Jacqueline A. Weisman )--OF COUNSEL

Debevoise and Plimpton  
Washington, DC  
on behalf of--

Anhui Stationery Co., Ltd.  
China First Pencil Co., Ltd.  
Guangdong Stationery and Sporting Goods Import and Export Corp.  
Shanghai Foreign Trade Corp.  
Shanghai Lansheng Corp.  
Shanghai Three Star Stationery Industry Co., Ltd.

**In opposition to the imposition of antidumping duties--Continued**

Debevoise and Plimpton

Washington, DC

on behalf of--Continued

Guiming Gao, deputy general manager, Shanghai Foreign Trade Corp.  
Li Shan Fen, chief accountant, China First Pencil Co., Ltd.

Francis J. Sailer     }  
Adiane D. Makris    })--OF COUNSEL

**APPENDIX C**  
**SUMMARY TABLES**



Table C-1

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

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

Item	Reported data					Period changes			
	1991	1992	1993	Jan.-June- 1993	1994	1991-93	1991-92	1992-93	Jan.-June 1993-94
U.S. consumption quantity:									
Amount	19,340	21,272	21,366	10,870	11,263	+10.5	+10.0	+0.4	+3.6
Producers' share: <sup>1</sup>									
Finished shipments	***	***	***	***	***	-8.9	-5.9	-3.0	-6.6
Less U.S. imports of raw pencils	***	***	***	***	***	+6.6	+1.2	+5.4	+4.7
Finished shipments of U.S. origin	84.0	76.9	68.5	72.7	61.4	-15.5	-7.1	-8.4	-11.3
Importers' share: <sup>1</sup>									
China/Hong Kong	6.8	15.4	22.1	16.1	30.7	+15.4	+8.6	+6.7	+14.6
Thailand	2.2	1.0	.4	.4	.3	-1.9	-1.3	-0.6	-0.1
Subtotal	9.0	16.4	22.5	16.5	31.0	+13.5	+7.4	+6.1	+14.5
Other sources	7.0	6.8	9.0	10.8	7.6	+2.0	-0.3	+2.3	-3.2
Total	16.0	23.1	31.5	27.3	38.6	+15.5	+7.1	+8.4	+11.3
U.S. consumption value:									
Amount	161,813	190,691	201,159	99,896	103,560	+24.3	+17.8	+5.5	+3.7
Producers' share: <sup>1</sup>									
Finished shipments	***	***	***	***	***	-2.0	-4.0	+2.0	-2.2
Less U.S. imports of raw pencils	***	***	***	***	***	+1.5	+0.3	+1.2	+1.4
Finished shipments of U.S. origin	79.9	75.5	76.3	76.6	73.0	-3.5	-4.4	+0.8	-3.5
Importers' share: <sup>1</sup>									
China/Hong Kong	5.6	9.4	10.8	9.3	11.4	+5.2	+3.8	+1.4	+2.1
Thailand	.6	.3	.2	.2	.2	-0.4	-0.3	-0.1	-0.1
Subtotal	6.2	9.7	11.0	9.5	11.5	+4.8	+3.5	+1.2	+2.0
Other sources	13.9	14.8	12.7	13.9	15.4	-1.3	+0.8	-2.1	+1.5
Total	20.1	24.5	23.7	23.4	27.0	+3.5	+4.4	-0.8	+3.5
U.S. importers' imports from—									
China/Hong Kong:									
Imports quantity	1,306	3,276	4,724	1,752	3,458	+261.7	+150.8	+44.2	+97.4
Imports value	9,029	17,957	21,691	9,247	11,788	+140.2	+98.9	+20.8	+27.5
Unit value	\$6.91	\$5.48	\$4.59	\$5.28	\$3.41	-33.6	-20.7	-16.2	-35.4
Ending inventory quantity	383	578	1,597	619	2,536	+317.0	+50.9	+176.3	+309.7
Thailand:									
Imports quantity	432	204	80	43	36	-81.5	-52.8	-60.8	-16.3
Imports value	993	620	399	243	171	-59.8	-37.6	-35.6	-29.6
Unit value	\$2.30	\$3.04	\$4.97	\$5.72	\$4.78	+116.4	+32.3	+63.6	-16.4
Ending inventory quantity	***	***	***	***	***	+200.0	+200.0	0	+42.9
Subject sources:									
Imports quantity	1,738	3,481	4,804	1,795	3,494	+176.4	+100.3	+38.0	+94.7
Imports value	10,022	18,578	22,089	9,490	11,959	+120.4	+85.4	+18.9	+26.0
Unit value	\$5.77	\$5.34	\$4.60	\$5.29	\$3.42	-20.2	-7.4	-13.9	-35.3
Ending inventory quantity	***	***	***	***	***	+316.7	+51.3	+175.4	+306.7
Other sources:									
Imports quantity	1,359	1,438	1,929	1,175	859	+41.9	+5.8	+34.1	-26.9
Imports value	22,558	28,146	25,516	13,931	15,966	+13.1	+24.8	-9.3	+14.6
Unit value	\$16.59	\$19.58	\$13.22	\$11.86	\$18.58	-20.3	+18.0	-32.5	+56.8
Ending inventory quantity	***	***	***	***	***	+248.9	+74.5	+100.0	+111.0
All sources:									
Imports quantity	3,098	4,918	6,734	2,970	4,353	+117.4	+58.7	+36.9	+46.6
Imports value	32,580	46,724	47,605	23,421	27,925	+46.1	+43.4	+1.9	+19.2
Unit value	\$10.52	\$9.50	\$7.07	\$7.89	\$6.41	-32.8	-9.7	-25.6	-18.7
U.S. producers'—									
Average capacity quantity	21,135	23,017	24,144	13,321	13,304	+14.2	+8.9	+4.9	-0.1
Production quantity	16,912	18,505	18,876	10,091	8,656	+11.6	+9.4	+2.0	-14.2

See footnotes at end of table.

Table C-1—Continued

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

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

Item	Reported data			Jan.-June--		Period changes			
	1991	1992	1993	1993	1994	1991-93	1991-92	1992-93	Jan.-June 1993-94
U.S. producers'—									
Capacity utilization <sup>1</sup> . . . . .	80.0	80.4	78.2	78.3	67.3	-1.8	+0.4	-2.2	-11.0
U.S. shipments:									
Quantity . . . . .	16,508	16,908	16,340	8,327	7,882	-1.0	+2.4	-3.4	-5.3
Value . . . . .	129,924	145,392	157,492	77,370	77,976	+21.2	+11.9	+8.3	+0.8
Unit value . . . . .	\$7.87	\$8.60	\$9.64	\$9.29	\$9.89	+22.5	+9.3	+12.1	+6.5
U.S. shipments of U.S.-origin finished product:									
Quantity . . . . .	16,242	16,354	14,632	7,900	6,910	-9.9	+0.7	-10.5	-12.5
Value . . . . .	129,233	143,967	153,554	76,475	75,635	+18.8	+11.4	+6.7	-1.1
Unit value . . . . .	\$7.96	\$8.80	\$10.49	\$9.68	\$10.95	+31.9	+10.6	+19.2	+13.1
Export shipments:									
Quantity . . . . .	1,018	1,023	1,632	988	743	+60.3	+0.5	+59.5	-24.8
Exports/shipments <sup>2</sup> . . . . .	5.8	5.7	9.1	10.6	8.6	+3.3	-0.1	+3.4	-2.0
Value . . . . .	7,292	7,627	13,405	7,508	6,800	+83.8	+4.6	+75.8	-9.4
Unit value . . . . .	\$7.16	\$7.46	\$8.21	\$7.60	\$9.15	+14.7	+4.1	+10.2	+20.4
Ending inventory quantity . . . . .	2,692	2,893	3,798	3,672	3,829	+41.1	+7.5	+31.3	+4.3
Inventory/shipments <sup>2</sup> . . . . .	15.4	16.1	21.1	19.6	22.1	+5.8	+0.8	+5.0	+2.5
Production workers . . . . .	1,352	1,449	1,385	1,442	1,270	+2.4	+7.2	-4.4	-11.9
Hours worked (1,000s) . . . . .	2,339	2,741	2,812	1,472	1,274	+20.2	+17.2	+2.6	-13.5
Total compensation (\$1,000) . . . . .	25,412	30,523	32,507	17,085	15,081	+27.9	+20.1	+6.5	-11.7
Hourly total compensation . . . . .	\$10.86	\$11.14	\$11.56	\$11.61	\$11.84	+6.4	+2.5	+3.8	+2.0
Productivity (gross/hour) . . . . .	7.2	6.8	6.7	7.3	7.3	-7.2	-6.6	-0.6	-0.1
Unit labor costs . . . . .	\$1.50	\$1.65	\$1.72	\$1.62	\$1.66	+14.6	+9.8	+4.4	+2.5
Net sales—									
Quantity . . . . .	17,611	18,520	17,620	9,309	8,651	+0.1	+5.2	-4.9	-7.1
Value . . . . .	138,926	158,776	171,562	85,233	84,949	+23.5	+14.3	+8.1	-0.3
Cost of goods sold (COGS) . . . . .	113,542	128,387	137,038	66,858	66,513	+20.7	+13.1	+6.7	-0.5
Gross profit (loss) . . . . .	25,384	30,389	34,524	18,375	18,436	+36.0	+19.7	+13.6	+0.3
SG&A expenses . . . . .	26,529	30,637	36,449	18,975	17,193	+37.4	+15.5	+19.0	-9.4
Operating income (loss) . . . . .	(1,145)	(248)	(1,925)	(600)	1,243	-68.1	+78.3	-676.2	+307.2
Capital expenditures . . . . .	5,424	4,391	5,579	3,821	3,068	+2.9	-19.0	+27.1	-19.7
Unit COGS . . . . .	\$6.45	\$6.93	\$7.78	\$7.18	\$7.69	+20.6	+7.5	+12.2	+7.1
COGS/sales <sup>1</sup> . . . . .	81.7	80.9	79.9	78.4	78.3	-1.9	-0.9	-1.0	-0.1
Operating income (loss)/sales <sup>1</sup> . . . . .	(0.8)	(0.2)	(1.1)	(0.7)	1.5	-0.3	+0.7	-1.0	+2.2

<sup>1</sup> "Reported data" are in percent and "period changes" are in percentage points.<sup>2</sup> An increase of less than 0.05 percentage points.

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

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



Table C-2

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

\* \* \* \* \*

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

Table C-3

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

\* \* \* \* \*

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

Table C-4

Cased crayons: Summary data concerning the U.S. market, 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

Table C-5

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

\* \* \* \* \*

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

Table C-6

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

\* \* \* \* \*

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

Table C-7

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

\* \* \* \* \*

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

**APPENDIX D**  
**U.S. PRODUCERS' COSTS OF PRODUCTION**



Table D-1

Costs of production (for which both production quantity and costs were provided) of U.S. producers, including Pentech, of certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994<sup>1</sup>

Item	1991	1992	1993	Jan.-June-- 1993	1994
<hr/>					
Production quantity (1,000 gross)					
Certain cased pencils . . . . .	10,465	11,351	11,765	4,766	4,436
<hr/>					
Value (1,000 dollars)					
Raw materials: <sup>2</sup>					
Purchased pencil blanks or raw pencils . . . . .	0	886	1,973	1,033	1,084
Pencil sheaths:					
Wood . . . . .	25,865	27,860	27,824	12,177	9,474
Paperboard . . . . .	0	447	1,661	519	2,970
Total . . . . .	25,865	28,307	29,485	12,696	12,444
Cores:					
Graphite . . . . .	2,244	2,289	2,386	1,126	1,036
Clay . . . . .	186	192	224	82	80
Wax . . . . .	37	48	41	4	4
Other . . . . .	1,528	1,709	1,710	622	605
Total . . . . .	3,995	4,238	4,361	1,834	1,725
Other raw materials:					
Lacquer . . . . .	1,732	1,979	2,321	962	955
Ferrules or aluminum strips for ferrules . . . . .	2,483	2,855	3,160	1,184	1,165
Erasers . . . . .	1,418	1,683	1,896	731	724
Other . . . . .	9,986	13,089	14,555	3,214	3,495
Total . . . . .	15,619	19,606	21,932	6,091	6,339
Total raw materials . . . . .	45,479	53,037	57,751	21,654	21,592
Direct labor . . . . .	6,197	7,563	8,474	3,071	3,188
Other factory costs:					
Indirect labor . . . . .	2,535	3,009	3,507	1,278	1,409
Utilities . . . . .	750	863	903	268	276
Maintenance and repairs . . . . .	676	1,004	1,144	384	421
Employee benefits . . . . .	2,722	3,646	3,639	1,577	1,482
All other factory costs . . . . .	9,728	10,292	14,280	6,376	6,830
Total . . . . .	16,411	18,814	23,473	9,883	10,418
Total production costs . . . . .	68,087	79,414	89,698	34,608	35,198
Inventory increase or (decrease) . . . . .	(1,160)	(3,925)	858	577	2,540
Total production costs, with inventory change . . . . .	69,247	83,339	88,840	34,031	32,658
<hr/>					
Share of the cost of production (percent)					
Raw materials:					
Purchased pencil blanks or raw pencils . . . . .	0.0	1.1	2.2	3.0	3.1

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Table D-1--Continued

Costs of production (for which both production quantity and costs were provided) of U.S. producers, including Pentech, of certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994<sup>1</sup>

Item	1991	1992	1993	Jan.-June-- 1993	1994
<u>Share of the cost of production (percent)</u>					
Pencil sheaths:					
Wood . . . . .	38.0	35.1	31.0	35.2	26.9
Paperboard . . . . .	0.0	0.6	1.9	1.5	8.4
Total . . . . .	38.0	35.6	32.9	36.7	35.4
Cores:					
Graphite . . . . .	3.3	2.9	2.7	3.3	2.9
Clay . . . . .	0.3	0.2	0.2	0.2	0.2
Wax . . . . .	0.1	0.1	(3)	(3)	(3)
Other . . . . .	2.2	2.2	1.9	1.8	1.7
Total . . . . .	5.9	5.3	4.9	5.3	4.9
Other raw materials:					
Lacquer . . . . .	2.5	2.5	2.6	2.8	2.7
Ferrules or aluminum strips for ferrules . . . . .	3.6	3.6	3.5	3.4	3.3
Erasers . . . . .	2.1	2.1	2.1	2.1	2.1
Other . . . . .	14.7	16.5	16.2	9.3	9.9
Total . . . . .	22.9	24.7	24.5	17.6	18.0
Total raw materials . . . . .	66.8	66.8	64.4	62.6	61.3
Direct labor . . . . .	9.1	9.5	9.4	8.9	9.1
Other factory costs:					
Indirect labor . . . . .	3.7	3.8	3.9	3.7	4.0
Utilities . . . . .	1.1	1.1	1.0	0.8	0.8
Maintenance and repairs . . . . .	1.0	1.3	1.3	1.1	1.2
Employee benefits . . . . .	4.0	4.6	4.1	4.6	4.2
All other factory costs . . . . .	14.3	13.0	15.9	18.4	19.4
Total . . . . .	24.1	23.7	26.2	28.6	29.6
Total production costs . . . . .	100.0	100.0	100.0	100.0	100.0
<u>Unit production costs (per gross)</u>					
Raw materials:					
Purchased pencil blanks or raw pencils . . . . .	\$0.00	\$0.08	\$0.17	\$0.22	\$0.24
Pencil sheaths . . . . .	2.47	2.49	2.51	2.66	2.81
Cores . . . . .	0.38	0.37	0.37	0.38	0.39
Other raw materials . . . . .	1.49	1.73	1.86	1.28	1.43
Direct labor . . . . .	4.35	4.67	4.91	4.54	4.87
Factory Costs . . . . .	1.57	1.66	2.00	2.07	2.35
Total production costs . . . . .	6.51	7.00	7.62	7.26	7.93
<u>Value (per gross)</u>					
Certain cased pencils . . . . .	\$6.51	\$7.00	\$7.62	\$7.26	\$7.93

Continued on next page.

Table D-1--Continued

Costs of production (for which both production quantity and costs were provided) of U.S. producers, including **Pentech**, of certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994<sup>1</sup>

Item	1991	1992	1993	Jan.-June--	
				1993	1994
	Number of firms reporting				
Production quantity . . . . .	4	5	5	3	3
Production costs . . . . .	4	5	5	3	3

<sup>1</sup> All producers except \*\*\*.

<sup>2</sup> One company did not breakdown its raw materials into components. Its total raw materials are included in other raw materials.

<sup>3</sup> Less than 0.05 percent.

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

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

Table D-2

Costs of production of **Pentech** on its production of certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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

Table D-3

Costs of production of U.S. producers, **excluding Pentech**, of certain cased pencils, fiscal years 1991-93, Jan.-June 1993, and Jan.-June 1994

\* \* \* \* \*

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





## **APPENDIX E**

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT  
OF IMPORTS OF CERTAIN CASED PENCILS FROM THE PEOPLE'S  
REPUBLIC OF CHINA AND THAILAND ON THEIR GROWTH,  
INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING  
DEVELOPMENT AND PRODUCTION EFFORTS**



The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of certain cased pencils from China and Thailand on their growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product. Their comments are as follows:

1. Since January 1, 1991, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product, as a result of imports of certain cased pencils from the People's Republic of China and Thailand?

Dixon

"\*\*\*"

Empire-

"\*\*\*"

Faber-

"\*\*\*"

Moon

"\*\*\* "

Musgrave

"\*\*\*"

Pentech

"\*\*\*"

2. Does your firm anticipate any negative impact of imports of certain cased pencils from the People's Republic of China and Thailand?

Dixon

"\*\*\*"

Empire-

"\*\*\*"

Faber

"\*\*\*"

Moon

"\*\*\*"

Musgrave

"\*\*\*"

Pentech

"\*\*\*"

3. Has the scale of capital investments undertaken been influenced by the presence of imports of certain cased pencils from the People's Republic of China and Thailand?

Dixon

"\*\*\*"

Empire

"\*\*\*"

Faber

"\*\*\*"

Moon

"\*\*\*"

Musgrave

"\*\*\*"

Pentech

"\*\*\*"